

MEMORANDUM OF AGREEMENT
BETWEEN
MENDOCINO SOLID WASTE MANAGEMENT AUTHORITY
AND
THE COUNTY OF MENDOCINO

THIS AGREEMENT, entered into effect on October 20____, 2009, is a Memorandum Of Agreement which identifies and sets forth the joint and individual responsibility of the Mendocino Solid Waste Management Authority, a joint powers agency created by the County of Mendocino, City of Ukiah, City of Fort Bragg, and the City of Willits, (hereinafter referred to as "MSWMA") and the County of Mendocino, (hereinafter referred to as the "COUNTY") in the administration and management of certain County solid waste activities as set forth herein.

It is hereby agreed between the MSWMA and the COUNTY that:

1. SCOPE OF WORK

A. The MSWMA General Manager, in addition to MSWMA duties, will serve as Solid Waste Director (hereinafter "Director") for the County of Mendocino and will act in that capacity for and on behalf of the County of Mendocino to administer and manage the County's Solid Waste Disposal System. The Director will provide contract administration for franchise area collection contracts, processing of Construction & Demolition permits in coordination with County Planning & Building Department and in accordance with Mendocino County Code Chapter 18.35. The Director will also be responsible for the preparation and presentation of issues to the Board of Supervisors for their review and consent when required, including, but not limited to, rate and fee changes, contract extensions or renewals, and contract bidding.

B. The Director will administer all County contracts relating to the operation of County-owned transfer stations by private operators, and shall assist in the negotiation, drafting and presentation of such contracts. The Director will represent the County interests with respect to its contract with Solid Waste of Willits for the Willits Transfer Station and will serve as contract administrator so long as there is consent from a majority of public-agency parties to that contract.

C. For transfer stations that remain under County operation, The Department of Transportation will provide day-to-day operational management, personnel supervision, accounts payable, accounts receivable, tabulation of material quantities, and coordination of outhaul by hauling contractors, budgetary tracking and control. The Director will administer contracts for hauling services for the transfer stations and will serve as a consultant without compensation in addition to the annual payment set forth in Section 6 to the Director of Transportation on all matters related to County-operated transfer stations.

D. The Department of Transportation will provide closure and post-closure management, maintenance, monitoring and reporting for all landfills. The Director will have no responsibilities for closure and post-closure but will serve as a consultant without compensation in addition to the annual payment set forth in Section 6 on an as needed basis and with the approval of the Director of the Department of Transportation. The Department of Transportation will also perform any site maintenance duties that may be assigned to the County under transfer station operations contract with private operators.

2. SUPERVISION

As County Solid Waste Director under contract, the MSWMA General Manager will report to Mendocino County Board of Supervisors through the COUNTY Chief Executive Officer or his designee. All powers, ownership, rights, responsibility and

authority possessed by COUNTY under its solid waste contracts and ordinances shall remain with the COUNTY. In the exercise of duties as COUNTY Director, the MSWMA General Manager will act on behalf of COUNTY, and not on the behalf of MSWMA. The right to review and consent as appropriate and customary to the actions of the Director shall remain with COUNTY, the Chief Executive Officer or his designee and the Board of Supervisors.

3. APPLICABILITY OF COUNTY RULES AND REGULATIONS

The Director shall adhere to all COUNTY ordinances, rules and regulations, County Purchasing Agreements and State contracting law. The Director shall coordinate and cooperate as necessary with all COUNTY Departments including the Chief Executive Office, Department of Transportation, Planning & Building Services, Health and Human Services, Clerk of the Board, General Services Agency and the Office of County Counsel.

4. CONFLICT OF INTEREST

MSWMA acknowledges and accepts the provisions of Government Code Section 1126 relating to inconsistent, incompatible, or conflicting employment. MSWMA hereby agrees to allow its General Manager to accept this engagement with the COUNTY. If any dispute, conflict, or significant difference of interest develops between COUNTY and MSWMA or another MSWMA member, jurisdiction on any matter involving the MSWMA General Manager's duties as the COUNTY Solid Waste Director, the General Manager shall disclose and describe any such matter as soon as it is known, to the affected parties, and cooperate fully with any party that may seek separate representation of its interests in such matter. This agreement shall in no way be construed to be a waiver of any conflict between the parties.

5. MSWMA EMPLOYEE

No relationship of employer and employee is created by this Agreement; it being

understood and agreed that the MSWMA General Manager serving as Director shall remain an employee of MSWMA. The Director is not the employee of the COUNTY and shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

MSWMA shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold County harmless from any and all liability which COUNTY may incur because of MSWMA's failure to pay such amounts.

MSWMA may employ other staff who will assist the General Manager in the performance of the WORK described in this Agreement. In carrying out the work contemplated herein, MSWMA shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the employees conducting and participating in the work; and agrees that such employees shall not be treated or considered in any way as employees of COUNTY. All costs incurred in the performance of the WORK, including salaries, benefits, office rental, telephone, and vehicles, will be paid by MSWMA, subject to reimbursement by COUNTY as set forth herein.

6. COUNTY REIMBURSEMENT

The COUNTY shall reimburse MSWMA for the costs incurred by MSWMA in performing the services under this Memorandum of Agreement, in quarterly payments following invoicing by MSWMA. The cost of services shall initially be in the amount of ninety nine thousand five hundred and seventy two dollars (\$99,572) per year. This amount shall be adjusted annually by a percentage equal to any cost of living adjustment granted by the MSWMA Board of Commissioners to MSWMA employees generally and also adjusted by any amount agreed to by COUNTY and MSWMA following a review of the costs of the services to be performed. The cost of services shall be reduced by any in-kind services provided to MSWMA by COUNTY as agreed to by MSWMA and COUNTY. Any special costs incurred by MSWMA in performance of this Agreement, such as outside consultant contracts, shall be paid by COUNTY following prior approval by the Chief Executive Officer or the Board of Supervisors. The contract administration fee under the Willits Transfer Station contract shall be paid to MSWMA as contract administrator.

7. OWNERSHIP AND LIABILITY

The Agreement does not change any ownership aspects of the COUNTY infrastructure or maintenance responsibilities, and MSWMA shall not incur any responsibility, cost or liability for any matter arising from the duties of the MSWMA General Manager as COUNTY Solid Waste Director.

8. EXISTING SERVICES

MSWMA currently provides a variety of services to COUNTY, including CIWMB annual report filing, administration of certain grants, household hazardous waste collection, appliance hazardous waste removal, trailer/motor home demolition, and roadside illegal dumping abatement. This Agreement is not intended to affect or revise any existing MSWMA services to COUNTY or require new or additional COUNTY payments for those preexisting services. Pursuant to the MSWMA Joint Powers Agreement, MSWMA shall continue to provide services to its member jurisdictions

under terms and conditions decided by the MSWMA Board of Commissioners, separate from the WORK described in this Agreement.

9. INDEMNIFICATION

COUNTY will indemnify, defend, and hold harmless MSWMA and its elected and appointed officials, officers, employees and agents from and against all loss, risk of loss, damages, injuries and expenses (including without limitation, actual attorney's fees and defense costs), because of or by reason of any and all claims, demands, suits, actions, judgments, including any violation of federal, state or municipal law or regulation and by whomever and whenever made or obtained, allegedly caused by arising out or relating in any manner to the performance or non-performance under this agreement and whether it is caused in whole or in part by any negligent act, omission or willful misconduct or a breach of fiduciary duty, or breach of any representation or warranty made by COUNTY that was not in good faith, or by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. MSWMA may participate in the defense of any such claim without relieving COUNTY of any obligation hereunder.

10. AMENDMENT

No alteration of the terms of this Agreement shall be valid unless made in writing and signed by PARTIES hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the PARTIES' hereto.

11. TERMINATION


The COUNTY may terminate this Agreement and the appointment of MSWMA General Manager as COUNTY Solid Waste Director at any time upon written notice; however, COUNTY compensation payments made to MSWMA shall continue to be due and payable for 90 days after termination initiated by the COUNTY. MSWMA may terminate this Agreement upon 90 days written notice to COUNTY.

12. SEVERABILITY

The provisions of this agreement are separate and severable. If any provision of this agreement is for any reason held by a court to be unconstitutional or invalid, such unconstitutionality or invalidity shall therefore not affect the remaining provisions of this agreement or the validity of its application to other persons or circumstances.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute this Agreement the day and year first above written.

**MENDOCINO COUNTY SOLID WASTE
MANAGEMENT AUTHORITY**



CHAIR, MSWMA

COUNTY OF MENDOCINO



CHAIR, BOARD OF SUPERVISORS

Recommending Approval:



TOM MITCHELL, Chief Executive Officer
County of Mendocino

I hereby certify that according to the
provisions of Government Code
Sections 25103, delivery of this
document has been made.

KRISTI FURMAN
Clerk of the Board

By: 

INSURANCE REQUIREMENTS:

KRISTIN McMENOMEY, Director
General Services Agency

By: 

Risk Manager

Attest:

KRISTI FURMAN, Clerk of the Board

By: 

APPROVED AS TO FORM:



JEANINE B. NADEL, County Counsel