

AMENDED AND RESTATED JOINT POWERS AGREEMENT AMONG THE CITIES OF FORT BRAGG, UKIAH, WILLITS AND THE COUNTY OF MENDOCINO CREATING THE MENDOCINO SOLID WASTE MANAGEMENT AUTHORITY

THIS AGREEMENT is made and entered into on _____, 2019 among the signatories to this Agreement, which are local governments in Mendocino County, acting through their respective legislative bodies ("PARTIES" and individually a "PARTY") and amends and restates the Joint Powers Agreement between the PARTIES, entered on October 19, 1990, including any amendments thereof prior to the adoption of this Agreement.

WITNESSETH:

WHEREAS, each of the PARTIES to this Agreement is a "public agency" as defined in Government Code Section 6500; and

WHEREAS, pursuant to Title 1, Division 7, Chapter 5, of the Government Code, commonly known as the Joint Exercise of Powers Act, two or more public agencies may, by Agreement, jointly exercise any power common to the contracting PARTIES; and

WHEREAS, each of the PARTIES hereto has the power, in addition to other powers which are common to each of them, to adopt develop and implement programs and activities to increase recycling and other measures to divert solid waste from being disposed in landfills, to provide for the proper handling, reuse and disposal of household hazardous waste, to provide for the clean-up of sites where solid waste has been illegally deposited and to prevent and remove graffiti from public or private property; and

WHEREAS, the California Integrated Waste Management Act (the "Act"), as codified in Division 30 of the Cal. Public Resources Code ("PRC"), as periodically amended, requires each of the PARTIES to prepare a source reduction and recycling element and a household hazardous waste element in compliance with Division 30, Part 2, Chapters 2, 3 and 3.5 of the PRC; and

WHEREAS, the PARTIES find that it would be to their mutual advantage and benefit to work together and share costs to: (1) prepare and implement a source reduction and recycling element and a household hazardous waste element that meets the requirements of the Act; and

WHEREAS, it is the desire of the PARTIES to use any power that they have in common which is reasonably necessary and appropriate to aid in the accomplishment of these goals; and

WHEREAS, the PARTIES desire, by means of this Agreement, to establish a separate agency and procedure to accomplish these goals; and

WHEREAS, it is the intent of the PARTIES that other public agencies within the County that exercise the same common powers of this joint powers agency shared by the PARTIES may at a later date join the agency established by this Agreement as nonvoting public agency members by paying a pro-rata share of the organizational, developmental and other costs or expenditures of the agency, as determined by the agency board created herein; and as provided for by contract between this joint powers agency and said participating nonvoting public agency member;

NOW, THEREFORE, based upon the mutual promises contained herein, the PARTIES hereby agree as follows :

1. Purpose. The purpose of this Agreement is to establish an agency to be known as the MENDOCINO SOLID WASTE MANAGEMENT AUTHORITY ("MSWMA") for the purpose of: (1) preparing and implementing an MSWMA Source Reduction and Recycling Element ("Reduction and Recycling Plan") in compliance with Division 30, Part 2, Chapters 2 and 3 of the PRC and an MSWMA Household Hazardous Waste Element ("Household Hazardous Waste Plan") in compliance with Division 30, Part 2, Chapter 3.5 of the PRC; (2) making reasonable efforts to increase recycling and diversion of materials in order to reduce landfill deposits and achieve the waste diversion goals of the Reduction and Recycling Plan ; (3) providing for the proper handling, reuse or disposal of household hazardous wastes; (4) providing educational outreach to encourage recycling, diversion and proper disposal of solid and household hazardous waste; (5) providing for the cleanup of sites where solid waste has been illegally disposed; (6) removing graffiti; and (7) seeking to obtain funding for MSWMA's activities described in this Section 1.

2. Establishment of the Agency/Composition of the Commission. There is hereby established pursuant to the Joint Exercise Powers Act an agency which shall be a public entity separate from the PARTIES to this Agreement. The name of the agency shall be the MENDOCINO SOLID WASTE MANAGEMENT AUTHORITY and shall hereinafter be referred to as MSWMA, and may use a fictitious name approved by the commission. The governing body of MSWMA shall be a five (5) member commission (the "Commission") composed of one elected member of the legislative body of each of the signatory cities of Ukiah, Willits and Fort Bragg and two elected members of the Board of Supervisors of signatory County of Mendocino, one representative from a coastal supervisorial district and one representative from an inland supervisorial district. No PARTY'S representative to the Commission shall be qualified to serve on the commission and the PARTY shall cease to have a representative on the Commission if that PARTY terminates its participation in this Agreement. The Commission shall be the administering agency of this Joint Powers Agreement, and, as such, shall be vested with the powers set forth in this Agreement, and shall execute and administer this Agreement in accordance with the purposes and functions provided herein.

3. Nonvoting Public Agency Members. Public agencies which jointly exercise any power common to MSWMA, other than the PARTIES hereto (the cities of Ukiah, Willits, and Fort Bragg and the County of Mendocino) may be granted the status of a nonvoting public agency member of MSWMA by the Commission. A nonvoting member is not a PARTY under this Agreement.

4. Organization of the Commission. The Commissioners shall:

- (a) Elect a chairperson and a vice-chairperson and such other officers as the Commission shall find appropriate, to serve the Commission at its pleasure or for such term as may be provided by Commission rule or bylaw.
- (b) Establish such committees and prescribe their duties and authority as the Commission finds appropriate or as provided in bylaws adopted by the Commission.
- (c) Take appropriate measures to meet the financial requirements of MSWMA, by assessments and other contributions as hereafter provided for, and make other provisions as they shall find appropriate for the work of the Commission.

5. Executive Officers. The Chairperson of MSWMA shall preside at all meetings of the Commission and perform such other duties as the Commission shall instruct. The Vice Chairperson shall serve as Chairperson when the Chairperson is unavailable or unable to perform the duties of Chairperson and perform such other duties as are the usual and customary duties of a Vice Chairperson. The General Manager shall perform the duties of Secretary to the Commission who shall be responsible for the preparation of minutes and other documents requiring Commission approval and acting as the custodian of records for the Commission. The Commission by rule or bylaw may create other officers as it seems necessary or appropriate and prescribe additional duties for all Commission officers.

6. Treasurer. The Treasurer of this Agency shall be the General Manager. If the General Manager fails or refuses to perform the duties of Treasurer, the Commission may appoint one of its officers or hire an employee to replace or fill the position. The Treasurer of the Agency shall cause an independent audit of the Agency's finances to be made by a certified public accountant, or public accountant, in compliance with Section 6505 of the Government Code., who shall report directly to and file the audit report with the Commission. The Treasurer of the Agency shall be the depositor and have custody of all the money of the Agency from whatever source. The Treasurer shall draw warrants to pay demands against the Agency when the demands have been approved by the Commission or by the General Manager or the Assistant General Manager pursuant to any delegation of authority adopted by the Commission. The Treasurer shall comply strictly with the provisions of the statutes relating to its duties found in Chapter 5, Division 7, Title 1 of the Government Code, beginning with Section 6500. The Treasurer shall file an official bond in the amount determined from time to time by the Commission

7. General Manager:

- (a) The Commission may appoint a General Manager, and may appoint one or more Assistant General Managers, to serve at the pleasure of the Commission. Alternatively, the Commission

may independently contract for the services of a General Manager which shall not be considered an employee of the Authority or have any rights or benefits otherwise provided to MSWMA employees. The contractor's employees shall perform the duties of General Manager and shall be regarded as the employees of the contractor and not of the Authority. The services shall be provided pursuant to a written contract between the contractor and the Agency. The contract shall specify any additional staff responsibilities to be provided by the contractor and shall require the contractor to indemnify and defend the Authority for and against any claim, liability or expense resulting from a determination that the contractor or its employees are employees of the Authority.

(b) The General Manager shall have charge of, handle, or have access to any property of this Agency, and shall furnish bond in an amount to be fixed by the Commission. "Property of this Authority" as used in this paragraph does not include property of a PARTY used for Agency purposes, unless that Agency member specifically authorizes such use.

(c) The General Manager shall report to the Commission and exercise operational control of Authority tasks and activities as outlined in Commission policy, or in the case of an independent contractor, tasks and activities as governed by the General Manager agreement between the Authority and the contractor.

8. Meetings. The Commission shall provide for regular meetings and special meetings in accordance with the Ralph M. Brown Act, Chapter 9, Part 1, Division 2, Title 5, of the Government Code beginning with Section 54950, or in accordance with such other regulations as the legislature may hereafter provide. Each PARTY to this Agreement shall authorize and designate its representative or representatives to vote for it at all meetings of the Commission. In addition, each PARTY to this Agreement shall designate one or more alternates, who shall have the power to vote in the place and stead of the designated representative, or representatives, in his/her absence. Each PARTY shall file with the Authority a certified copy of the minutes of the meeting or resolution reflecting the appointment of such representative or alternate(s) provided each alternate is an elected member of the legislative body of each PARTY and so long as the County of Mendocino maintains the coastal and inland representation described herein.

Each PARTY to this Agreement, so long as this Agreement has not in any way been terminated as to such PARTY, shall have one vote, except for the County of Mendocino which shall have two votes . Except as otherwise provided in this Agreement, the affirmative vote of a majority of a quorum of the Commission shall be necessary for it to take action, except that none of the terms and conditions set forth in this Agreement, nor any of the procedures expressly provided for herein, may be altered, changed, or amended by such a vote, or by any means, except by written amendment to this Agreement executed by all PARTIES hereto.

9. Powers and Functions . MSWMA shall have any and all powers authorized by law to all of the PARTIES hereto, and separately to the Agency herein created, relating to (a) preparing and implementing the MSWMA Reduction and Recycling Plan and Hazardous Waste Plans which meet the requirement of the Act; (b) making reasonable efforts to increase recycling and diversion of materials in order to reduce landfill deposits and achieve the diversion rates specified by the plan; (c) providing for the proper handling, reuse or disposal of household hazardous wastes; (d) providing educational outreach to encourage recycling, diversion and proper disposal of solid waste; (e) providing for the cleanup of the illegal dumping of solid waste in the PARTIES' jurisdictions; (f) removing of graffiti; and (g) identifying and obtaining funding to accomplish such tasks. All powers common to the PARTIES are specified as powers of MSWMA.

MSWMA is hereby authorized to do all acts necessary for the exercise of such powers, including, but not limited to, any or all of the following: to make and enter into contracts; to employ agents and employees; to acquire, construct, provide for maintenance and operation of, or maintain and operate, any buildings, works or improvements; to acquire, hold or dispose of property wherever located; to incur debts, liabilities or obligations ; to receive gifts, contributions and donations of property, funds, services and other forms of assistance from persons, firms, corporation and any governmental entity; and to sue and be sued in its own name; and generally to do any and all things necessary or convenient to perform its functions or achieve its purposes as set forth in this Agreement.

Without limiting the foregoing generality, MSWMA may:

- (a) acquire and dispose of all kinds of property and utilize the power of eminent domain, except that the power of eminent domain may not be exercised within the territorial limits of any PARTY without the consent of said PARTY;
- (b) issue or cause to be issued bonded and other indebtedness, and pledge any property or revenue as security to the extent permitted by law under Article 2, Chapter 5, Division 7, Title 1 (commencing with Section 6540) of the Government Code or otherwise including, but not limited to, bonds or other evidences of indebtedness of a nonprofit corporation issued on behalf of MSWMA or any of its PARTIES;
- (c) obtain in its own name all necessary permits and licenses, opinions and rulings;
- (d) whenever necessary to facilitate the exercise of its powers, form and administer nonprofit corporations to do any part of what MSWMA could do, or to perform any proper corporate function, and enter into agreements with such a corporation.
- (e) request a member to direct a franchise holder or contractor operating a transfer station in the member's jurisdiction to collect and remit to MSWMA a per ton surcharge adopted by MSWMA to fund specific functions of MSWMA as identified in Section 9. Any increase in the MSWMA Transfer Station per ton Surcharge shall require the approval of all the Members' elected bodies. Any decrease in such surcharge may be approved by a majority vote of the Commission.

10. Exercise of Powers. The manner in which the MSWMA, the administering agency, shall exercise its powers and perform its duties is and shall be subject to the restrictions upon the manner in which a general law city which is a PARTY hereof could exercise such powers and perform such duties; and shall not be subject to any restriction applicable to the manner in which any other public agency could exercise such powers or perform such duties, whether such agency is a PARTY to this Agreement or not.

11. Debts. None of the debts, liabilities or obligations of MSWMA shall be the debts, liabilities or obligations of any of the PARTIES of MSWMA unless assumed in a particular case by resolution of the governing body of the PARTY to be charged.

12. Membership. This Agreement shall become effective on the date of its execution as hereinabove stated; provided, that if any "public agency" of the County, as such term is defined in Section 6500 of the Government Code of the State of California, desires to participate, as a nonvoting member, it may do so by separate agreement with MSWMA at that time and payment to MSWMA of a pro-rata share of organization, planning and other costs and charges as determined by the Commission to be appropriate. The Agreement between the PARTIES shall remain in effect as to any PARTY, unless and until it is terminated as to such PARTY by notice in writing to all other PARTIES given by the withdrawing PARTY at least one hundred twenty (120) days in advance of the effective date of such termination; provided that such termination by and as to any PARTY shall not terminate this Agreement as to the remaining PARTIES or the existence of the MSWMA, or the Commission, herein created.

Any PARTY so terminating its participation in this Agreement shall be obligated to pay its pro-rata share of all encumbrances and indebtedness of the MSWMA (based on the number of MSWMA PARTIES and the total indebtedness of MSWMA) as of the date of service of the PARTY's notice of termination on MSWMA. The withdrawal of the PARTY from MSWMA and the termination of this Agreement as to such PARTY shall not become effective until the PARTY has paid the amounts to MSWMA specified herein. The withdrawing member shall have no obligation to pay any share of an indebtedness of MSWMA or a nonprofit corporation created by MSWMA which is secured by contracts with member PARTIES or by nonvoting public agency members. The obligation to pay such an indebtedness shall be the sole responsibility of the parties to the contract and shall be paid as provided in the contract.

The termination of participation by nonvoting public agency members shall be determined by the terms of the contract between MSWMA and the nonvoting public agency defining the relationship of MSWMA and the nonvoting public agency.

13. Staff. The staff of the Commission may be hired as full-time or part-time employees of MSWMA or the Commission may independently contract for the provision of such professional services as it requires. Staff may also be appointed to serve the Commission from the existing staff of the PARTIES to be paid by the Commission or at the expense of the employer agency. MSWMA

staff other than employees of an independent contractor providing General Manager services pursuant to Section 7 and employees of a PARTY performing services for MSWMA, shall be hired, promoted, disciplined or terminated and shall have such rights of employment as the Commission shall determine subject to any applicable provisions of federal or state law.

14. Term. This Agreement shall remain in effect until terminated by a majority vote of the PARTIES.

15. Budget Process/Funding. The Commission shall approve the MSWMA's budget for each fiscal year, in the following manner:

- (a) The General Manager shall once each year, during the months of February and March, prepare and submit to the Commission and each PARTY for review a proposed budget for the MSWMA, including the proposed contribution, if any, from each PARTY. Each PARTY's share of the total proposed contribution by the PARTIES shall be based on its population as a ratio of the total population of all the PARTIES as established and certified by the State Department of Finance. Required contributions from each PARTY and the amount thereof must be approved by a 4/5 vote of the full Commission. If no contribution by the PARTIES is required, the budget can be approved by a 3/5 vote of the full Commission. In no event shall the total contribution of the PARTIES exceed One Hundred Thousand Dollars (\$100,000) without the approval of each PARTY.
- (b) By no later than May 30 of each year, the Commission shall adopt a final budget for the fiscal year and promptly provide a copy of the adopted budget to each PARTY, including a notice as to whether a financial contribution from the PARTY is required to fund the budget and the amount thereof.
- (c) Each PARTY's contribution shall be due and payable in accordance with a schedule established by the General Manager and approved by the Commission.
- (d) In addition to the annual audits required by Government Code Section 6505, special audits may be called for and paid for by the Commission at any time.

16. Additional Funding. Upon the request or approval of MSWMA, any PARTY hereto may make payments, advances or contributions to MSWMA from its treasury for any and all purposes set forth herein, and upon request or approval of MSWMA, may contribute personnel, equipment or property, in lieu of other contributions or advances, to assist in the accomplishment of one or more of such purposes. All such payments, advances or contributions, whether in cash or in kind, shall be made to and may be disbursed or used by the agency herein created. Except as in this Agreement otherwise provided, there shall be no repayment or return to any PARTY of all or any part of any payments, advances, or contributions in cash or in kind.

17. Repayment or Return of Contributions. Repayment or return to any contributing PARTY of all or part of any payment, advances or contributions in cash or in kind may be authorized by the Commission from revenues produced from the operation of the agency or from the proceeds of the issuance of bonds or other evidences of indebtedness by the agency. Repayment or return of contributions shall be made on a pro-rata basis at the time specified by the Commission in conformity with Government Code Section 6512.1.

18. Accountability. MSWMA shall be held strictly accountable for all funds and shall make an annual report to all PARTIES to this Agreement of all receipts and disbursements, all in accordance with Section 6505 of the Government Code and other applicable statutes , utilizing sound account practices .

19. Dissolution. Upon dissolution of the MSWMA as a legal entity, all debts of and advances of MSWMA shall be paid, and then the property of MSWMA, whether real or personal, shall be divided among and distributed to all of the PARTIES who at any time during the existence of MSWMA were PARTIES to this Agreement in proportion to the costs borne by each such PARTY to the MSWMA during its legal existence by non-reimbursed contributions made pursuant this Agreement.

20. Insurance. The Commission of MSWMA is authorized to and shall procure general comprehensive liability and other insurance by such means and in such amounts as it deems advisable to protect the MSWMA and each of the PARTIES hereto, charging the cost thereof to the operating costs of the MSWMA.

21. Immunity. All of the privileges and immunities from liabilities , exemptions from laws, ordinances and rules, all pension, relief, disability, worker's compensation, and other benefits which apply to the activity of officers, agents or employees of any such public agency when performing their respective functions within the territorial limits of their respective public agencies, shall apply to them to the same degree and extent while engaged in the performance of any of their functions or duties extraterritorially under the provision of Article 1 of Chapter 5, division 7 of Title 1 of the Government Code of the State of California and as provided by law.

22. Breach. In the event that any PARTY to this Agreement should at any time claim that another PARTY has in any way breached or is breaching this Agreement, the complaining PARTY shall file with the governing body of the other PARTY, and with the Commission, a written claim of said breach, describing the alleged breach and otherwise giving full information respecting the same. The Commission shall thereupon, at a reasonable time and place, specified by it, give all PARTIES full opportunity to be heard on the matter, and shall, upon conclusion of said hearing, give the legislative or governing bodies of all PARTIES a full report of its findings and recommendations . Said report, findings and recommendations shall be deemed advisory only, shall not in any way bind any of the PARTIES hereto, and shall not be deemed to establish any facts, either presumptively or finally. Upon receipt of said report and recommendation s, if any PARTY should be dissatisfied with or disagree with the same, the legislative or governing bodies of the PARTIES in disagreement shall jointly meet with each other at a reasonable time and place to be determined by them, for the purpose of resolving their differences. No action for breach of this Agreement, and no action for any legal relief because of any such breach or alleged breach of this Agreement, shall be filed or commenced, and nothing shall be done by any PARTY to rescind or terminate this Agreement, except as provided in this Agreement, unless and until such PARTY has first given to the other PARTIES a reasonable time, after the conclusion of said joint meeting of the legislative or governing bodies that have met to resolve their differences, within which to cure any breach or alleged breach.

23. Severability. It is hereby declared to be the intention of the signatories to this Agreement that the paragraphs, sentences, clauses and phrases of this Agreement are severable, and if any phrase, clause, sentence, or paragraph of this Agreement shall be declared unconstitutional or invalid for any

reason by a valid judgment or decree of a Court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining paragraphs, clauses, phrases, and sentences of this Agreement.

24. Notices. All notices required or given pursuant to this Agreement shall be deemed properly served when deposited, postage prepaid, in the United States mail, addressed to each PARTY at the address indicated on this Agreement adjacent to the signature line of each PARTY.

25. Duplicate Originals. This Agreement can be executed in one or more duplicate originals, each bearing the original signatures of the parties, and when so executed each duplicate original shall be deemed an original of the Agreement admissible in court as evidence of the terms of the Agreement.

IN WITNESS WHEREOF the PARTIES hereto pursuant to resolutions adopted by their governing bodies have executed this Agreement on the date first above written.

CITY OF UKIAH

CITY OF WILLITS

By: _

By: _

ATTEST:

ATTEST:

CITY OF FORT BRAGG

Approved as to form

COUNTY OF MENDOCINO

By: _

By: _

ATTEST:

ATTEST:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

DEPARTMENT FISCAL REVIEW: Transportation

Howard N. Dashiell 11/12/19
HOWARD N. DASHIELL, Director DATE

Budgeted: ☐ Yes ☒ No

Budget Unit: N/A

Line Item: N/A

Grant: ☐ Yes ☒ No N/A

Grant No.: _____

COUNTY OF MENDOCINO

By: _____
CARRE BROWN, Chair
BOARD OF SUPERVISORS

ATTEST:

CARMEL J. ANGELO, Clerk of said Board

By: _____
Deputy

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

CARMEL J. ANGELO, Clerk of said Board

By: _____
Deputy

INSURANCE REVIEW:

By: Carmel J. Angelo
Risk Management

EXECUTIVE OFFICE/FISCAL REVIEW:

APPROVAL RECOMMENDED

By: Jonelle Rawn
Deputy CEO

CONTRACTOR/COMPANY NAME:

By: _____

NAME AND ADDRESS OF CONTRACTOR:

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

CHRISTIAN M. CURTIS,
Acting County Counsel

By: Christian M. Curtis
Deputy

Signatory Authority: \$0-25,000 Department; \$25,001-50,000 Purchasing Agent; \$50,001+ Board of Supervisors
Exception to Bid Process Required/Completed ☐ _____
Mendocino County Business License: Valid ☐ _____
Exempt Pursuant to MCC Section: _____