

AGREEMENT FOR SHARED EXERCISE OF LAND USE AND CALIFORNIA BUILDING CODE AUTHORITY

THIS AGREEMENT becomes effective on _____ (“Effective Date”) in Ukiah, California, between the City of Ukiah, a general law municipal corporation (“City”) and the County of Mendocino, a general law county and political subdivision of the State of California (“County”), (collectively the “Parties” and individually a “Party”), all of which are organized and existing under and by virtue of the Constitution and the laws of the State of California.

RECITALS:

1. The Parties are each empowered by law within their respective jurisdictional boundaries to adopt and enforce a general plan, zoning ordinances, building codes and to otherwise regulate the use of land in the exercise of their local police powers under California Constitution, Art. XI, Secs. 1, 2, and 7 and under Title 7, Division 1, Chapters 3 and 4 of the Government Code (“Land Use Regulation”).

2. Where a city owns real property in an unincorporated area of a county and itself uses that property for city purposes, the city’s extraterritorial property is not subject to the county’s Land Use Regulation.

3. The City owns property in the unincorporated area of County, described in the deed recorded on Dec. 21, 1993 at Book 2138, page 557 of the Official Records of Mendocino County, and also known as Mendocino County Assessor’s Parcel Number 178-210-01, commonly known as 2300 Vichy Springs Road (“the Vichy Springs Road Property”).

4. The City leases a portion of the Vichy Springs Road Property to the Ukiah Rifle and Pistol Club (“Gun Club”), which is described in the attached Exhibit A (“Gun Club Property”).

5. The term under the lease between the City and the Gun Club (“Gun Club Lease”) is 50 years ending on December 31, 2044.

6. The Gun Club Lease provides the Gun Club with contractual rights to use the Gun Club Property as a gun range and for certain ancillary uses.

7. The City, as Lessor, has contractual rights under the Gun Club Lease to protect its interests as the property owner.

8. The Attorney General of the State of California in Opinion No. 14-403, issued on December 6, 2018 (“Land Use Opinion”), has determined that the County does not exercise Land Use Authority over the City’s use of the Vichy Springs Road Property and that the exemption from County Land Use Authority is not conditional on the City applying its own building and zoning ordinances to its extraterritorial property. However, the City must ensure that any buildings on the property comply with state law, including the California Building Standards Code. The Land Use Opinion further concludes that if the City leases extraterritorial property to a private party, the freedom from the county’s building and zoning ordinances available to the City may be extended to the lessee only if the lessee’s use of the property serves a primarily public, rather than private, purpose.

9. Without deciding whether the Gun Club’s use of the Vichy Springs Property pursuant to the Gun Club Lease serves a primarily public purpose, the City and the County enter this Joint Powers Agreement to mutually exercise Land Use Authority over the Gun Club Property on and after the Effective Date and during the term of the Gun Club Lease.

10. The Parties desire to accomplish the aforesaid purpose by jointly exercising their common powers in the manner set forth in this Agreement.

11. The Parties are authorized to jointly exercise their powers pursuant to the provisions of Article 1, Chapter 5, Division 7, Title 1, Sections 6500 through 6530 of the Government Code of the State of California.

12. In accordance with Government Code Section 6502, it is not required that any power common to the contracting parties be exercisable in the absence of this Agreement by each such contracting party in the geographical area in which such power is to be jointly exercised under the terms of this Agreement.

AGREEMENT:

In reliance upon the above Recitals and the terms and conditions set forth below, the Parties, for and in consideration of the mutual benefits, promises, and agreements set forth herein, agree as follows.

Section 1. Purpose

This Agreement is made pursuant to California Government Code Section 6500, et seq., hereinafter referred to as the "Act," to permit the joint exercise of certain powers common to the Parties. The purpose of this Agreement is to exercise these powers jointly by clarifying what and how Land Use Authority over the Gun Club's use of the Gun Club Property will be exercised by the County and the City.

Section 2. Land Use Authority Exercised by County over Gun Club use of Gun Club Property.

On and after the Effective Date the County shall exercise land use jurisdiction over the Gun Club's use of the Gun Club Property in accordance with the County's duly adopted zoning ordinance as it currently reads in Title 20 of the Mendocino County Code or as it may be amended or superseded in the future.

Section 3. Land Use Authority Exercise by City over Gun Club Use of Gun Club Property.

The City rather than the County shall continue to assure that any improvements constructed on the Gun Club Property comply with the procedures and substantive requirements of the Model Codes adopted by the City pursuant to Division 3, Chapter 1 of the Ukiah City Code ("UCC") as it currently reads or as it may be amended or superseded in the future.

Section 4. City Verification of County Zoning Review.

The City and the County shall agree upon a process by which the City can verify that County has made all necessary zoning review, prior to the City issuing a permit.

Section 5. Manner of the Parties' exercise of Land Use Authority.

In exercising their respective jurisdiction as provided in Sections 2 and 3, above, the County and the City shall each administer the applicable local ordinances in the same manner and subject to the same procedures as apply generally in the County and the City. The Parties do not intend and nothing in this Agreement shall be deemed to limit the exercise of discretion by the County or the City otherwise conferred by law in connection with the administration and enforcement of County or City ordinances.

Section 6. Term

This Joint Powers Agreement shall commence on the Effective Date and remain in effect as long as the Gun Club continues to lease the Gun Club Property from the City.

Section 7. Withdrawal; Termination

A Party may withdraw as a party to this Agreement without penalty upon a minimum of ninety (90) days prior written notice with a July 1st effective date unless otherwise agreed to by both Parties. Such withdrawing Party shall perform all obligations under this Agreement until the noticed July 1 date of withdrawal. A withdrawing Party shall remain obligated to perform obligations, arising prior to the July 1 withdrawal date,

Section 8. Amendment to Agreement

This Agreement may only be amended by approval of all the Parties to this Agreement.

Section 9. Notices

Whenever notice or other communication is permitted or required by this agreement, it shall be deemed given when personally delivered or when received, if delivered by overnight courier or email, if receipt is acknowledged in writing or 48 hours after it is deposited in the United States mail with proper first class postage affixed thereto and addressed as follows:

To City: City of Ukiah
300 Seminary Ave.
Ukiah, CA 95482
Email: ssangiacomo@cityofukiah.com
Attention: City Manager

To County: County Administration Offices
860 North Bush Street
Ukiah, CA 95482
Email: PBS@mendocinocounty.org

A Party may change the address and email address to which notices shall be sent by giving notice of the change as provided herein.

Section 10. Hold Harmless and Indemnity

Each party agrees to defend, indemnify, and save all other parties harmless from any and all claims arising out of said party's employees' negligent acts, errors, omissions or willful misconduct while performing pursuant to this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of said party, its officers, employees, or agents.

Each party hereby agrees to defend itself from any claim, action or proceeding by third parties arising out of the concurrent acts or omissions of their employees. In such cases, each party agrees to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs.

Notwithstanding the above, where a trial verdict or arbitration award allocates or determines the comparative fault of the members, the members may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments and awards, consistent with said comparative fault.

As required by Section 10 herein, the Parties are responsible to provide workers compensation insurance for injuries sustained in the normal course and scope of their respective employees' performance of services. The Parties waive any right of subrogation against each other for any and all losses sustained by the Parties, subject to such workers compensation coverage. The Parties further acknowledge that the so-called "firefighter's rule" regarding primary assumption of risk generally prevents public safety officers employed by one agency, or their agency itself, from being exposed to liability for injuries suffered by public safety officers employed by another agency in the line of duty. To the extent any such claims of liability or actions are brought by any employee(s) of one Party against another Party to this Agreement, or such other Party sustains any losses thereby, the Party employing such claimant(s) shall indemnify the other Party for any such claims, actions, or losses.

For purposes of this section, the terms "employee" or "employees" shall refer to and include employees, officers, agents, representatives, subcontractors or volunteers.

Notwithstanding the foregoing, no employee, officer, agent, representative, subcontractor or volunteer of any party to this Agreement shall be considered an "employee" of any other party to this Agreement for purposes of indemnification.

Section 11. Insurance

Each Party shall be responsible for maintaining a program of insurance that shall cover each Party's indemnification obligations. Without in any way affecting the indemnity herein provided and in addition thereto, each Party shall secure and maintain throughout the Agreement the following types of insurance, including coverage through a pooled risk joint powers agency such as the Redwood Empire Municipal Insurance Fund with limits as shown.

A. Workers' Compensation:

A program of Workers' Compensation Insurance or a state-approved self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons providing services on behalf of each Party and all risks to such persons under this Agreement.

B. Comprehensive General and Automobile Liability Insurance:

This coverage is to include contractual coverage and automobile liability coverage for owned, hired, and non-owned vehicles. The policy or self-insurance shall have combined single limits for bodily injury and property damage of not less than two million dollars (\$2,000,000.00).

Additional Named Insured:

All policies, and/or memoranda of coverage, except Workers' Compensation, shall contain additional endorsements naming each Party and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of each Party's performance hereunder.

C. Policies Primary and non-Contributory:

All policies required above are to be the primary and non-contributory with any insurance or self-insurance carried or administered by each Party.

Section 12. Mediation

Should any dispute arise out of this Agreement, any Party may request that it be submitted to mediation. The Parties shall meet in mediation within 30 days of a request. The mediator shall be agreed to by the Parties; in the absence of an agreement, the parties shall each submit one name from mediators listed by an agreed-upon service or parties themselves. The mediator shall be selected by a “blindfolded” process. The cost of mediation shall be borne equally by the Parties. No Party shall be deemed the prevailing party. No Party shall be permitted to file a legal action without first meeting in mediation and making a good-faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall not last more than 60 days, unless the 60-day period is extended in writing by the Parties.

Section 13. Additional Documents and Agreements

The parties agree to cooperate in the execution of any additional documents or agreements that may be required to carry out the terms of this Agreement.

Section 14. Warranty of Legal Authority

Each party warrants and covenants that it has the present legal authority to enter into this Agreement and to perform the acts required of it hereunder. If any party is found to lack the authority to perform the acts required of it hereunder or is prevented from performing the acts by a court of competent jurisdiction, this Agreement shall be void.

Section 15. Assignment/Delegation

Neither party hereto shall assign, sublet, or transfer any interest in this Agreement or any duty hereunder without written consent of the other, and no assignment shall be of any force or effect whatsoever unless and until the other party shall have so consented.

Section 16. No Third-Party Beneficiary

This Agreement is only for the benefit of the Parties as municipal or corporate entities and shall not be construed as or deemed to operate as an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action or obtain any right to benefits or position of any kind for any reason whatsoever.

Section 17. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 18. Entire Agreement

This document is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement.

Section 19. Execution of Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, all of which shall constitute one and the same instrument. Electronic signatures or signatures on copies transmitted by email or telefax shall have the same force and effect as original signatures and any copy of this Agreement with executed counterparts so transmitted shall be admissible in any administrative or judicial proceeding as evidence of the Parties' agreement.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper duly authorized officers as of the day and year first above written.

CITY OF UKIAH

COUNTY OF MENDOCINO

By: Juan Orozco, Mayor
Ukiah City Council

By: Dan Gjerde, Chairman
Board of Supervisors

ATTEST:
Kristine Lawler, City Clerk

ATTEST:
_____, Clerk of the Board

APPROVED AS TO FORM:

APPROVED AS TO FORM:

David J. Rapport, City Attorney

Christian Curtis, County Counsel