

**MUTUAL AID AGREEMENT PROVIDING FOR EMERGENCY
ASSISTANCE AMONG THE COUNTY OF MENDOCINO, CITY OF UKIAH, CITY OF
FORT BRAGG AND OTHER SIGNATORY CITIES OR SPECIAL DISTRICTS**

This Mutual Aid Agreement ("Agreement") is made and entered into by and between the County of Mendocino ("County"), the City of Ukiah ("Ukiah"), the City of Fort Bragg ("Fort Bragg") and other signatory cities or special districts in Mendocino County which may be referred to herein individually as "Party" and collectively as the "Parties." County, Ukiah and Fort Bragg shall be referred to herein as the "Original Signatory Parties."

RECITALS

1. The Parties recognize that all water supplies in Mendocino County are potentially vulnerable to natural and manmade disasters, such as earthquakes, fires, pandemics, droughts and other emergencies, and desire to establish a mutual aid plan during an emergency to maximize the utilization of available water supplies, distribution facilities, equipment, and personnel to conserve, allocate, and distribute water equitably and sustain the safe and reliable operation of wholesale and retail water systems and wells and water systems serving individual residents and businesses in the County and avoid any catastrophic interruption to normal production and/or delivery facilities.
2. Mutual aid is defined as emergency assistance given from one public agency to another, under a prearranged agreement.
3. It is desirable that the Parties should be free to voluntarily aid and assist each other in a timely manner both in preparation for an emergency and in response to any emergency situation, or extraordinary or unusual circumstance, such as in the event of an earthquake, flood, fire, sabotage, riot, pandemic, drought or other emergency in the County (hereinafter referred to as an "emergency" or "unforeseen circumstance").
4. Such assistance may include the interchange of materials, resources, including potable, non-potable and recycled water (hereafter "resources"), facilities, services, equipment, and personnel to cope with the problems which would arise in the event of a major emergency or unforeseen circumstances.
5. Materials, resources, facilities, services, equipment and/or personnel are provided on the basis that the providing agency can continue operations and simultaneously meet the health and safety needs of its residents and businesses and the receiving agency has, or is about to, exhaust resources required to meet the health and safety needs of its residents and businesses.

6. The Parties are each willing to assume risks due to the use of resources, equipment, materials and personnel furnished by a Party; and

7. To the extent provided herein, the Parties agree to indemnify and hold each other harmless from any liability for injury, illness, or property damage incurred by a Party or its employees, officers or agents, or by third parties in the course of, or as a result of a Party's activities performed pursuant to this agreement.

8. This Agreement is not intended as a joint use or joint purchasing program.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein, the Parties agree as follows:

AGREEMENT

1. MUTUAL AID: ADOPTION OF EMERGENCY PLANS. Subject to the terms and conditions of this Agreement, the Parties agree to furnish to each other resources, facilities, personnel, and services to respond to emergencies and unforeseen circumstances in accordance with duly adopted or hereafter duly adopted emergency plans. The Party making a request for mutual aid shall be called a "Recipient" and the Party giving aid and assistance shall be called a "Provider."

1.1 Emergency Plan. The Parties shall develop emergency plans ("Emergency Plans") providing for the effective mobilization of their resources, facilities, and services to respond to any type of emergency.

1.2 Voluntary Participation. No Party to this Agreement shall be liable for its failure or inability to provide, or attempt to provide, assistance to any other Party. It is the intent of the Parties to provide assistance on a strictly voluntary basis. No Party shall be required to lend any items or to unreasonably deplete its own resources, facilities, and services in furnishing such mutual aid.

2. INTENT OF PROVIDER AND RECIPIENT. It is the intent hereof that each Recipient will use the procedures herein established only for emergency situations or unforeseen circumstances requiring resources beyond its existing resources and only for as long as necessary to respond to those situations or circumstances. Each Provider should assist other Parties to the extent it can do so without detriment to its own needs or impairing its ability to perform its own normal work requirements. If the Provider determines, in its sole and absolute discretion, that its needs are greater than those of the Recipient's, the Provider has first priority and sole authority over its own equipment, personnel, resources and materials.

3. REQUEST FOR AID OR ASSISTANCE. If a Party has an emergency or unforeseen circumstance, it may make a request to any other Party or Parties for emergency assistance

under this Agreement. The requesting Party will explain the nature of the circumstance and the type of resources, materials, equipment or personnel expected to be needed.

3.1 Documentation. All mutual aid assistance, whether given or received, shall be documented either in advance of providing/receiving assistance, or after the emergency assistance is no longer required, as these records may be needed for federal and state emergency assistance funding application requirements and must be available to the Provider/Recipient within 30 days of the resolution of the emergency. The Parties shall develop a standard documentation form as soon as possible after this agreement is executed by the Original Signatory Parties.

3.1.1 Documentation shall include one or more of the following, as applicable: (1) photographs of damage and repairs; (2) documentation of insufficient resources; (3) documentation of the type or amount of equipment, resources, or materials provided; (4) notes on damage and repairs; (5) clippings of press reports; (6) a record of all expenditures; (7) a record of all pertinent conversations about specific damages and/or repairs to damaged facilities; (8) retained receipts, invoices, statements, and other relevant paperwork for services rendered by a contractor or vendor; and (9) any other documents reasonably requested by a Provider or a Recipient or any state or federal agency regulating the emergency service or reimbursing the costs thereof.

3.1.2 Books, documents, papers, accounting records, and other evidence pertaining to costs incurred or compensation provided under this Agreement shall be maintained by each Party and made available at all reasonable times for four (4) years from the date of payment for inspection by another Party or state or federal agencies regulating or reimbursing expenses incurred in providing mutual aid under this Agreement.

3.2 Procedures for Providers. A Provider may require a Recipient to comply with procedures adopted by the Provider in its Emergency Plan to document requests made hereunder.

4. CONTROL SAFETY SUPERVISION AND RECALL. It is expressly understood that the Recipient, in whose jurisdiction the incident requiring mutual aid has occurred, shall remain in charge for such incident, including the schedule of the work and the direction and supervision of such personnel and equipment provided to it through the operation of this Agreement. Safe work procedures and practices shall be observed by a Provider. Employees lending assistance to a Recipient will not be asked to perform tasks which could lead to reasonably foreseeable injury or illness. Equipment shall be operated according to standards and procedures, if any, provided by the Provider at the time such equipment is provided. A Provider may recall any equipment, personnel or unused materials or supplies at any time, but shall give the Recipient as much notice as practical prior to such recall.

5. CHARGES FOR MATERIALS, RESOURCES, PERSONNEL, AND EQUIPMENT.

5.1 Materials. All materials borrowed but not utilized shall be returned to the Provider in the same condition as they were when they were borrowed. The Recipient shall pay the Provider either the purchase or replacement cost (whichever is higher) for all materials obtained, utilized, and not returned under this Agreement with the prior approval of the Provider, the Recipient may replace materials and return them to the site of the Provider as soon as practical instead of making payments.

5.2 Resources. The Recipient shall pay the Provider for the use of resources in an amount agreed upon by the Recipient and Provider. Such charge shall be approximately the fair market value but it should reflect a return to the Provider sufficient to reimburse for the costs of production or treatment.

5.3 Personnel. The Recipient shall pay the Provider's cost of salaries for the time spent by all personnel in assisting the Recipient, including a provision for overtime, vacation, holidays, sick leave, insurance, retirement, payroll taxes, and other direct salary costs. No overhead costs shall be included.

5.4 Equipment and Facilities. The Recipient shall pay the Provider for the use of equipment and facilities in an amount agreed upon by the Recipient and Provider. Such charge shall be approximately the fair market value- rental charge but it should reflect a return to the Provider sufficient to reimburse for the costs of ownership and operation. Unless otherwise arranged, the default rate for equipment is the current FEMA reimbursement rate.

The Recipient shall return all equipment and facilities in undamaged condition, subject to reasonable wear and tear. If equipment and/or facilities are damaged, the Recipient shall pay the cost of repair. If equipment is damaged beyond repair, it shall be replaced by the Recipient with new or comparable used equipment, acceptable to the Provider. The Recipient shall not be responsible to repair pre-existing damage on equipment or facilities.

5.5 Invoicing and Payment. The Provider shall provide the Recipient a detailed invoice for the cost of the mutual aid services. The invoice will include assigned personnel classification, dates and hours worked, hourly billing rates, equipment used, materials provided, and a summary of total costs incurred. The Recipient shall notify the Provider of any dispute of the information in the invoice within thirty (30) days of receipt. The Parties will cooperate to resolve any disputes before resorting to legal remedies.

The Recipient shall pay the Provider within sixty (60) days of receipt of the invoice for any undisputed charges or within fifteen (15) days after resolution of any disputed charges. By mutual consent, the Provider and Recipient may agree to an alternate payment

schedule and/or charges in consideration of federal and/or state reimbursements or other factors.

6. INDEMNIFICATION.

6.1 Indemnity for Requested Assistance. To the fullest extent provided by law, each Recipient shall fully indemnify and hold the Provider and its elected officials, officers, employees, contractors, authorized volunteers and agents ("Indemnified Parties") harmless from any liabilities, claims, demands, causes of action, costs, expenses, losses or damages, including attorney's fees and expert witness fees (collectively, "Claims") arising out of, or occurring during or in the course of the provision of assistance under this Agreement. Recipient shall assume on behalf of the Provider, the defense of any Claims in which liability is sought to be imposed on the Provider or shall reimburse the Provider for all reasonable costs of defending or responding to such action, claim or demand, including reasonable attorneys' fees. Notwithstanding the above, Recipient shall have no obligation to indemnify, defend, or hold harmless the Indemnified Parties to the extent the Claims are caused by the negligence, recklessness, or willful misconduct of an Indemnified Party. Obligations arising out of this section shall survive the termination or withdrawal from this Agreement by a Party hereto.

6.2 Liability for Joining. In the event of any Claims of whatever kind or nature arising out of the rendering of assistance pursuant to this Agreement, the Parties involved in rendering or receiving assistance agree to indemnify and hold harmless, to the fullest permitted by law, each signatory to this Agreement, whose only involvement in the transaction or occurrence which is the subject of such Claims, is the execution and approval of this Agreement. Such indemnification shall include indemnity for all Claims, including but not limited to Claims for personal injury and property damage.

7. WORKERS' COMPENSATION AND EMPLOYEE CLAIMS; EMPLOYER RESPONSIBILITIES.

Notwithstanding any provision of this Agreement, it is the intent of the Parties that, to the fullest extent permitted by law, any employee of a Provider that provides labor pursuant to this Agreement, is performing the labor within the course and scope of employment for Provider and, therefore, will be covered by Provider's workers' compensation insurance coverage during performance of any labor provided under this Agreement. Without limiting the generality of Section 6.1, the Provider shall indemnify and hold the Recipient and its elected officials, officers, employees, contractors, authorized volunteers and agents harmless from any and all Claims for personal injury or death incurred by such officers, employees or agents while engaged in carrying out their duties, functions or activities under this Agreement, except to the extent the Claims are caused by the negligence, recklessness, or willful misconduct of an Indemnified Party.

Each Party shall pay all wages, salaries, and other amounts due to its employees and agents in connection with any and all services performed under this Agreement and as

required by law. Each Party shall be responsible for all reports and obligations respecting their own employees, including, but not limited to, social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance. Employees or agents of one Party shall not be deemed employees of any other Party for any purpose.

8. 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 with limits as shown.

8.1 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.

8.2 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).

8.3 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.

8.4 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.

9. EXECUTION AND EFFECTIVE DATE. 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. Each Party shall, upon approval of this Agreement, forward a certified copy of its resolution or other action approving the Agreement to all other Parties.

10. TERMINATION NOTICE. This Agreement shall remain operative and effective as between each and every Party that has heretofore or hereafter approved or executed this

Agreement until participation in this Agreement is terminated by the Party. A Party which no longer desires to participate shall, by resolution or other action, give notice terminating its participation in this Agreement to all other Parties. This Agreement is terminated as to such party 30 days after notice to all Parties has been given.

11. AGREEMENT BINDING. This Agreement shall be binding upon and inure to the benefit of the Original Signatory Parties and all parties who may subsequently enter into this Agreement, and their successors and assigns.
12. THIRD PARTY RIGHTS. This Agreement is only for the benefit of the Parties as municipal or local government 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.
13. SEVERABILITY. In the event that any one or more phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder.
14. GOVERNING LAW. This Agreement shall be governed by the laws of the State of California. Venue shall be in the state courts located in Mendocino County. In the event any Party seeks to change venue under Code Civ. Proc. §394, the Parties agree to waive the right to a jury trial and stipulate to the appointment of an out-of-county judge by the Judicial Council to hear the case in Mendocino County.
15. ENTIRE AGREEMENT. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a written agreement signed by each of the Parties hereto.
16. NON-WAIVER. None of the provisions of this Agreement shall be considered waived by any Party unless such waiver is specifically provided in writing.
17. Addition of Signatory Parties: Additional cities or special districts in Mendocino County may become parties to this agreement with the approval of the Original Signatory Parties by duly approving and executing this Agreement in accordance with Section 9. The Chief Executive Officer of the County and the city managers of Ukiah and Fort Bragg are hereby delegated the authority by their respective governing bodies to approve the addition of a party or parties to this Agreement.

SIGNATURES ON THE FOLLOWING PAGE(S)

IN WITNESS WHEREOF, each of the Parties have caused this Mutual Aid Agreement to be executed by its authorized agent or official evidencing the consent of its legislative body hereto.

CITY OF UKIAH

COUNTY OF MENDOCINO

By: Mayor Juan Orozco
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

CITY OF FORT BRAGG

By: Mayor Bernie Norvell
Fort Bragg City Council

ATTEST:

June Lemos, City Clerk

APPROVED AS TO FORM:
