

MENDOCINO

Local Agency Formation Commission

Ukiah Valley Conference Center | 200 South School Street | Ukiah, California 95482
Telephone: (707) 463-4470 | E-mail: eo@mendolafo.org | Web: www.mendolafo.org

COMMISSIONERS

Tony Orth, Chair
Brooktrails Township CSD

Scott Ignacio, Vice-Chair
Point Arena City Council

Gerald Ward, Treasurer
Public Member

Matthew Froneberger
Regular Special District

Gerardo Gonzalez
Willits City Council

Glenn McGourty
County Board of Supervisors

Maureen Mulheren
County Board of Supervisors

Jenifer Bazzani, Alternate
Ukiah Valley Fire District

John Haschak, Alternate
County Board of Supervisors

Mari Rodin, Alternate
City Member

Richard Weinkle, Alternate
Public Member

STAFF

Executive Officer
Uma Hinman

Analyst
Larkyn Feiler

Commission Clerk
Kristen Meadows

Counsel
Scott Browne

REGULAR MEETINGS

First Monday of each month
at 9:00 AM in the
Mendocino County
Board of Supervisors
Chambers
501 Low Gap Road, Ukiah

Executive Committee Meeting

A G E N D A

September 23, 2021, 9:00 a.m.

Meeting to be held remotely via Zoom and teleconference due to pandemic.

Important Notice

Pursuant to State Executive Order N-29-20 pertaining to the convening of public meetings in response to the COVID-19 pandemic, effective March 20, 2020, the Mendocino Local Agency Formation Commission (LAFCo) meetings will be conducted via Zoom and will not be available for in person public participation until further notice. See website [meeting documents](#) webpage for participation information.

Zoom meeting link: <https://mendocinocounty.zoom.us/j/8481696680>

By phone: (669) 900-9128; Meeting ID: 848 1696 6680

Submit **written comments** electronically to eo@mendolafo.org by 9:00 a.m. on September 23. In the subject line, specify the agenda item number for your comments, "To be read aloud" if desired, and in the body of the email include your name. If to be read aloud, please keep your comments to 500 words or less. All written comments will be provided as soon as feasible to the Commission and posted on the [meeting documents](#) webpage.

1. CALL TO ORDER & ROLL CALL

Chair Tony Orth, Vice Chair Scott Ignacio, and Treasurer Gerald Ward

2. PUBLIC EXPRESSION

3. MATTERS FOR DISCUSSION & POSSIBLE ACTION

3a) Approval of the August 10, 2021 Executive Committee Minutes

3b) Drought Emergency Response and Out of Agency Water Transfers

The Executive Committee will discuss options presented to the Commission during its September 13, 2021 meeting regarding emergency water provision between agencies and Government Code §56133.

4. EXECUTIVE OFFICER REPORT

ADJOURNMENT

The next Regular Commission Meeting is scheduled for
October 4, 2021

Meeting to be held remotely via Zoom and teleconference due to pandemic.

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Agenda Item 3a

DRAFT Executive Committee Meeting Minutes

August 10, 2021, 1:00 p.m.

Meeting held remotely via Zoom due to pandemic.

COMMISSIONERS

Tony Orth, Chair

Brooktrails Township CSD

Scott Ignacio, Vice-Chair

Point Arena City Council

Gerald Ward, Treasurer

Public Member

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First Monday of each month
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Mendocino County
Board of Supervisors
Chambers
501 Low Gap Road, Ukiah

1. CALL TO ORDER & ROLL CALL

Chair Orth called the meeting to order at 1:02 p.m.

Members Present: Commissioners Orth and Ward

Staff Present: Executive Officer Hinman, Analyst Feiler, Legal Counsel Browne

2. PUBLIC EXPRESSION

Elizabeth Salomone, General Manager of the Mendocino County Russian River Flood Control and Water Conservation Improvement District, provided an update on current activities, resources, and education opportunities related to water supply conditions and conservation efforts in the Ukiah Valley due to forecasted drought conditions.

3. MATTERS FOR DISCUSSION & POSSIBLE ACTION

3a) Approval of the March 30, 2021 Executive Committee Minutes

Upon motion by Commissioner Ward and second by Chair Orth, the March 30, 2021 Executive Committee Meeting Minutes were approved unanimously.

Commissioner Ignacio joined the meeting at 1:05 p.m. and had to leave at 1:08 p.m. due to a wildfire emergency evacuation at the Point Arena City Hall.

3b) Drought Emergency Response and Out of Agency Water Transfers

EO Hinman provided a report on drought emergency plans and out of agency water transfers including notice to the Mendocino County Water Agency (MCWA) and special districts in the County. Chair Orth inquired about urgency consideration for the declared drought emergency and EO Hinman explained that local policy allows administrative level approval of applications with ratification at the following Commission meeting. Chair Orth inquired about whether the \$500 application fee was sufficient and EO Hinman explained that the \$500 deposit to cost and agreement to pay form will be sufficient. Commissioner Ward inquired about why the Cities were not sent the notification letter about the LAFCo requirement for determination of exemptions for non-potable water transfers and approval for potable water transfers and EO Hinman explained there was a version control issue with the contact list which has been remedied. Commissioner Ward encouraged LAFCo collaboration with the County Drought Ad Hoc Committee and MCWA, noted the significant increase in water trucks throughout the County and the importance of tracking where water is coming from and where it is going to, and requested an update on the number of Out of Agency Water Transfer permits at the September Commission meeting. Janet Pauli, Chair of the Mendocino County Inland Water and Power Commission, commented that one of the

biggest concerns in the worsening pattern of drought conditions is securing a reliable water source for the future.

3c) Applications and Work Load

EO Hinman and Analyst Feiler provided a report on current workload including applications, Work Plan efforts, and policy updates. Discussion ensued regarding the Ukiah Valley Fire District (UVFD) annexation application and the time sensitive nature of staff efforts to try and complete the process by the December 1st State Board of Equalization deadline for the UVFD special taxes to take effect in Fiscal Year 2022-23, and the Commissioners recognized the importance of streamlining the concurrent MSR/SOI Update process and potentially scheduling a special meeting for consideration of the application. Further discussion ensued regarding a recent letter LAFCo sent to the County Board of Supervisors regarding the County Service Area 3 Benefit Zone Pilot Program for Sherwood Road and next steps for activating latent powers, including researching Sonoma County CSA 40 and 41 as recommended by Chari Orth; on-going meetings with the City of Ukiah and Ukiah Valley Sanitation District (UVSD) to plan next steps for moving forward with the consultant prepared MSR/SOI Update process; and new applications including the pending Elk Community Services District Activation of Latent Powers for Wastewater Services and inquiries received related to potential activation of latent powers for the Caspar South Water District, and potential creation of a park and recreation district near the Town of Mendocino and a second Grand Jury Report released on the Mendocino Coast Recreation and Park District. Commissioner Ward inquired about whether the RFP Ad Hoc Committee was dissolved and EO Hinman confirmed that it was replaced by the Work Plan Ad Hoc Committee.

3d) Anticipated Expiration of State Executive Order N-29-20

The Committee discussed the September 30, 2021 scheduled expiration date of State Executive Order N- 29-20 and directed staff to research the County Board of Supervisors approach for an in-person/remote participation hybrid model.

4. EXECUTIVE OFFICER REPORT

EO Hinman reported that the early bird registration for the CALAFCO Annual Conference in the fall ends on August 30th and she has only received interest to attend from Commissioner Mulhern to date and September 7th is the deadline for designating a voting delegate for the CALAFCO Annual Membership Meeting. Chair Orth designated Commissioner Mulhern as the voting delegate for the 2021 CALAFCO Conference and designated the alternate voting delegate as the next Commissioner to sign-up for attending the conference. Commissioner Ward expressed interest in attending if newer Commissioners are not interested in attending. EO Hinman also reported that CALAFCO is currently hosting a training series, staff efforts to add functionality to the LAFCo website including a list of special district websites and a link to the July 13, 2021 KZYX interview with Citizen U host Mari Rodin and EO Hinman. Commissioner Ward noted that the radio interview was very well done, and encouraged all Commissioners to listen to it, and also requested a summary of the Best Best & Krieger White Paper on The Metamorphosis of Special Districts at the September Commission meeting.

https://calafco.org/sites/default/files/documents/Metamorphosis%20of%20Special%20Districts%20White%20Paper_Updated%20Feb%202015.pdf

5. CLOSED SESSION

5a) Conference with Legal Counsel – Potential for Exposure to Litigation; 1 case

A conference with Legal Counsel was not held.

ADJOURNMENT

There being no further business, the meeting was adjourned at 2:05 p.m. by motion from Commissioner Orth.

**MENDOCINO
Local Agency Formation Commission**

Staff Report

MEETING September 23, 2021
TO Mendocino Local Agency Formation Commission Executive Committee
FROM Uma Hinman, Executive Officer
SUBJECT **Drought Emergency Response and Out of Agency Water Transfers**

RECOMMENDATION

The Executive Committee will review options for addressing the emergency deliveries of water between agencies during the drought emergency and Government Code Section 56133.

DISCUSSION

The Mendocino County Board of Supervisors assigned a Drought Ad Hoc Committee and has activated the Mendocino County Water Agency to coordinate identification of needs and options to support communities experiencing water supply emergencies due to the drought. Water agencies countywide have been supporting each other by coordinating development of plans for inter-agency aid through deliveries of water to communities in need, particularly from inland agencies to the coastal communities.

With a record 25 wells reported dry in the town of Mendocino this past month, during a [Special Meeting August 24th](#) the Mendocino County Board of Supervisors approved up to \$1.5 million to cover potential water hauling program costs for coastal communities. PG&E Settlement funds will serve as initial funds to start the program while grant funds and State reimbursements are sought.

In late August/early September, the Cities of Fort Bragg and Ukiah entered into a [Mutual Aid Agreement](#) with the County to establish a mutual aid plan during the drought emergency to: (a) maximize the utilization of available water supplies, distribution facilities, equipment, and personnel to conserve, allocate, and distribute water equitably, (b) 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 (c) avoid any catastrophic interruption to normal production and/or delivery facilities. The Agreement is written so as to allow other entities to be added in the future. No time limits were identified in the Mutual Aid Agreement.

Water deliveries under the [Mutual Aid Agreement](#) from the City of Ukiah to Fort Bragg started on September 8th and as of last week are occurring at approximately 20,000 gallons per day. It is anticipated that additional entities in the County will sign on to the mutual aid agreement in the coming weeks and months.

LAFCo Role

The LAFCo role in the drought emergency response relates to the powers granted under the [Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000](#) to authorize services and jurisdictional boundary changes such as annexations and extensions of service outside jurisdictional boundaries and

even outside of adopted spheres of influence when addressing public health and safety concerns ([Government Code \(GC\) §56133](#); Attachment 1). Typically, LAFCo addresses this issue by either processing annexations into a city or district, or authorizing an extension of services (a much less expensive and faster solution during an emergency situation).

Under GC §56133, LAFCo review involves a number of steps, first of which is to determine whether the services to be extended qualify as an exemption. For example, while transfer of raw, non-potable or untreated water is an exemption under §56133(e)(2), the transfer of potable water outside a provider's jurisdiction requires LAFCo approval. Both GC §56133 and [Mendocino LAFCo Policy 12.2.5](#) (Attachment 2) requires LAFCo to review any proposal for either a determination of exemption or approval before any such extensions of service are provided.

In emergency situations, GC §56133(d) and [Mendocino LAFCo Policy 12.2.4](#) (Attachment 2) authorizes the Executive Officer to administratively approve a city or district request for extended services by contract or agreement if there is an existing and urgent public health or safety emergency as identified in writing from the local public health officer. The policy states that the Commission shall ratify the Executive Officer's determination at the next regularly scheduled meeting.

The Countywide coordination, planning and implementation of plans to support communities experiencing drought-related water supply shortages is commendable and it is important that LAFCo support those efforts and be part of the solution. Staff has been participating in the Mendocino County Drought Coordinating Committee meetings.

LAFCo is responsible for balancing logical and orderly development with the efficient provision of municipal services when preparing municipal service reviews, amending spheres of influence, and considering proposed changes of organization. It is unknown the extent to which prolonged drought conditions will continue to impact water service providers in the coming years and the potential long-term implications of a new trend towards overall dryer conditions necessitating more resilient water systems.

In order to fulfill our legislative mandates, the Commission needs sufficient data to evaluate the ability of an agency to serve current and future populations within their service area. Water is considered a growth-inducing service; therefore, it is important that Commission decisions regarding agency capacity and growth account for historic, current, and future reliance on water hauling to meet service demands, which has not been studied in relevant MSRs to date.

In carrying out the mandates for which LAFCo is responsible, the Commission should determine how best to address the issue of emergency water deliveries and to what extent GC 56133 applies to the current conditions.

Question: Does GC 56133 apply to emergency water deliveries and does establishment of a mutual aid agreement circumvent it?

The issue of water hauling is being discussed amongst LAFCos across the State and it is a common stance that GC 56133 does apply in these instances. It has been suggested that in establishing a mutual aid agreement, GC 56133 is circumvented. An in-depth review of mutual aid law has not been undertaken and Staff does not have a definitive answer to this question.

GC 56133 includes two potentially applicable exemptions:

- 56133(e)(1): alternative or substitute services between two agencies – while it may apply between agencies, it may not apply if the water is then distributed outside the agency's boundaries unless that service has been provided prior to 2001 (56133(e)(4)).
- 56133(e)(2): transfer of non-potable water – does not appear to apply to the current mutual aid agreement as the water being provided from Ukiah is potable.

LAFCo's essential charge is to facilitate orderly growth relative to local conditions and recognizing and measuring the increasing fragility of existing water supplies and municipal systems is part of the equation. Following are a number of concerns identified by staff that are recommended in order to support LAFCo's directives and regulatory requirements:

- Defined timeframe: Prevent the continuation of emergency water hauling once the emergency declaration expires. Once the emergency is expired or terminated by the agency declaring the emergency, then the interim provision of water must cease.
- Defined conditions: establish protections to avoid agencies bypassing GC 56133 once the emergency condition passes or the expiration of some defined reasonable amount of time.
- Reporting/Data: Receive reporting of emergency water delivery quantities, agencies (providers/receivers), duration, etc., for evaluation in future MSRs and applications for reorganization.

A number of options were identified for the Commission's consideration and which were directed to the Executive Committee for further review:

- Develop a policy addressing temporary emergency water hauling
- Blanket out-of-agency service agreement (OASA) for temporary emergency water hauling
- Out-of-agency service agreements per GC 56133
- Waive application requirements for temporary emergency water hauling associated with the declaration of drought emergency and coordinate with the County Drought Ad Hoc Committee and affected agencies to obtain data and reporting

- Attachments
1. Government Code Section 56133
 2. Mendocino LAFCo Policies & Procedures Manual (Excerpt)
 3. Mutual Aid Agreement between Mendocino County, Ukiah and Fort Bragg

Attachment 1

Government Code Section 56133

(bold = emphasis added)

(a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundary only if it first requests and receives written approval from the commission.

(b) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundary but within its sphere of influence in anticipation of a later change of organization.

(c) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundary and outside its sphere of influence to respond to an existing or impending threat to the health or safety of the public or the residents of the affected territory, if both of the following requirements are met:

(1) The entity applying for approval has provided the commission with documentation of a threat to the health and safety of the public or the affected residents.

(2) The commission has notified any alternate service provider, including any water corporation as defined in Section 241 of the Public Utilities Code, that has filed a map and a statement of its service capabilities with the commission.

(d) The executive officer, within 30 days of receipt of a request for approval by a city or district to extend services outside its jurisdictional boundary, shall determine whether the request is complete and acceptable for filing or whether the request is incomplete. If a request is determined not to be complete, the executive officer shall immediately transmit that determination to the requester, specifying those parts of the request that are incomplete and the manner in which they can be made complete. When the request is deemed complete, the executive officer shall place the request on the agenda of the next commission meeting for which adequate notice can be given but not more than 90 days from the date that the request is deemed complete, unless the commission has delegated approval of requests made pursuant to this section to the executive officer. The commission or executive officer shall approve, disapprove, or approve with conditions the extended services. If the new or extended services are disapproved or approved with conditions, the applicant may request reconsideration, citing the reasons for reconsideration.

(e) This section does not apply to any of the following:

(1) Two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider.

(2) The transfer of nonpotable or nontreated water.

(3) The provision of surplus water to agricultural lands and facilities, including, but not limited to, incidental residential structures, for projects that serve conservation purposes or that directly support agricultural industries. However, prior to extending surplus water service to any project that will support or induce development, the city or district shall first request and receive written approval from the commission in the affected county.

(4) An extended service that a city or district was providing on or before January 1, 2001.

(5) A local publicly owned electric utility, as defined by Section 9604 of the Public Utilities Code, providing electric services that do not involve the acquisition, construction, or installation of electric distribution facilities by the local publicly owned electric utility, outside of the utility's jurisdictional boundary.

(6) A fire protection contract, as defined in subdivision (a) of Section 56134.

(f) This section applies only to the commission of the county in which the extension of service is proposed.

(Amended by Stats. 2019, Ch. 20, Sec. 3. (AB 1822) Effective January 1, 2020.)

Attachment 2

Mendocino LAFCo Policies & Procedures

(Excerpt)

12.2 EXTENSION OF SERVICES BY CONTRACT

12.2.1 COMMISSION APPROVAL REQUIRED

Except for the specific situations exempted by G.C. §56133(e), a city or district shall not provide new or extended services to any party or property outside its jurisdictional boundaries unless it has obtained written approval from LAFCo, consistent with the CKH Act and the policies described herein.

12.2.2 EXTENSION OF SERVICES WITHIN SPHERE

Annexation to cities and special districts involving territory located within the affected agency's sphere of influence is generally preferred to extending services by contract or agreement. The Commission recognizes, however, there may be local circumstances that justify approval of extended services by contract or agreement within the affected agency's sphere of influence.

Such local circumstances most frequently involve extension of service to meet an existing health and safety need, where annexation is not practical or deemed undesirable for other policy reasons. The Commission will give great weight to properly documented existing health and safety needs when considering justification of such extensions. The Commission discourages use of contract service extensions for the purpose of extending services to new development. The Commission will approve such extensions only under extraordinary circumstance and may apply strict limitations on such services

12.2.3 EXTENSION OF SERVICES OUTSIDE SPHERE

The Commission shall authorize a city or special district's request to provide new or extended services outside their jurisdictional boundary and sphere of influence only in response to an existing or future threat to public health or safety in accordance with G.C. §56133(c).

12.2.4 ADMINISTRATIVE APPROVAL UNDER URGENT CIRCUMSTANCES

The Commission authorizes the Executive Officer, in accordance with G.C. §56133(d), to administratively approve a city or special district's request for extended services by contract or agreement if there is an existing and urgent public health or safety emergency as identified in writing from the local public health officer. The Commission shall ratify the Executive Officer's determination at the next regularly scheduled meeting.

12.2.5 EXEMPTIONS TO LAFCO APPROVAL REQUIREMENT

Commission approval may not be required for cities or special districts to provide new or extended services outside their jurisdictional boundaries in accordance with the provisions of G.C. §56133(e). The Executive Officer shall consult with cities and districts to determine whether extended services agreements are subject to Commission review.

12.2.6 ANTICIPATION OF LATER ANNEXATION.

G.C. §56133(b) authorizes the Commission to approve contracts for extension of services "in anticipation of a later change of organization". The Commission defines the term "anticipation of a later change of organization" as follows:

- a) The inclusion of the area to be served within the sphere of influence of the serving agency shall be sufficient to comply with this provision.

12.2.7 AGREEMENTS CONSENTING TO ANNEX

Whenever the Commission determines to condition the approval upon a later annexation of the affected property, the condition shall normally include a requirement that the owner record an agreement consenting to annex the territory, which agreement shall bind future owners of the property. The agreement shall be prepared by LAFCo legal counsel and provided to the landowners for execution and recording. Proof of recordation will be require before the LAFCo contract approval becomes final and effective.

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, including timecards and logs documenting equipment hours; (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 extent 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: