

JOINT POWERS AGREEMENT BETWEEN 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 this 19th day of
October, 1990 by and between the signatories to this
Agreement, which are local governments in Mendocino County,
acting through their respective legislative bodies ("PARTIES"),

WITNESSETH:

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

WHEREAS, pursuant to Title 1, Division 7, Chapter 5, of the
Government Code of the State of California, 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
site, develop, construct and operate sanitary landfills for the
collection and disposal of garbage, trash and rubbish generated
within each of the PARTIES' territorial boundaries; and

WHEREAS, the California Integrated Waste Management Act of
1989 ("Act") requires each of the PARTIES to prepare a source
reduction and recycling plan which includes a landfill siting
element; and

WHEREAS, the PARTIES find that it would be to their mutual advantage and benefit to work together and share costs to: (1) site, license, construct and operate sanitary landfills and (2) prepare a source reduction and recycling plan 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 MSWMA 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 MENDOCINO SOLID WASTE MANAGEMENT AUTHORITY 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: (a) siting, licensing, developing, constructing, maintaining, and operating MSWMA

disposal sites or sanitary landfills, (b) preparing and implementing a MSWMA Solid Waste Management Plan which meets the requirement of the Act, and (c) exercising all other appropriate powers reasonably necessary to carry out the purpose of this Agreement.

2. Establishment of the Agency/Composition of the Commission. There is hereby established pursuant to the Joint Exercise Powers Act (Section 6500 et seq., of the Government Code of the State of California) an Agency which shall be a public entity separate from the PARTIES to this Agreement. The name of said agency shall be the MENDOCINO SOLID WASTE MANAGEMENT AUTHORITY, and shall hereinafter be referred to as MSWMA. The governing body of MSWMA shall be a five (5) member 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 City of Ukiah, City of Willits, City of 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 chairman, a vice-chairman, and a secretary, 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.

(b) Establish an Executive Committee, and such other committees as they shall find appropriate. For two years from the effective date of this Agreement, the Executive Committee shall consist of the County Administrator, the Fort Bragg City Administrator and the City Managers of Ukiah and Willits. After this two year term, the Commission shall designate the membership of the Executive Committee in its bylaws. The Committee shall make policy recommendations to the Commission and may exercise any other power of the Commission delegated to it by bylaws adopted by the Commission.

(c) Provide general directives for the work of such committees.

(d) 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 Chairman of MSWMA shall preside at all meetings of the Commission and perform such other duties as the Commission shall instruct. The duties of the Vice-Chairman and the Secretary shall be the usual and customary duties of such officers.

6. Treasurer and Controller. The Treasurer of this Agency shall be the Treasurer of the City of Ukiah. The Auditor or Controller or other chief financial officer of the City whose treasurer is the Treasurer of this Agency shall be the Controller of this Agency. The Commission may at any time after the adoption of this Agreement, appoint one of its officers or hire an employee to replace or fill either or both of these positions. 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. The Treasurer of the Agency shall be the depositor and have custody of all the money of the Agency from whatever source. The Controller of the Agency 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 and Controller shall comply strictly with the provisions of the statutes relating to their duties found in Chapter 5, Division 7, Title 1 of the

Government Code, beginning with Section 6500. The Controller and the Treasurer shall each file an official bond in the amount determined from time to time by the Commission.

7. General Manager. The Commission may appoint a General Manager, and may appoint one or more Assistant General Managers, to serve at the pleasure of the Commission. 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 member public entity used for Agency purposes, unless that Agency member specifically authorizes such use.

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. The affirmative or negative vote of a majority of the entire 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 the acquisition, siting, licensing, construction, financing, disposition, use, operation and maintenance of solid waste disposal sites or sanitary landfills for the disposal or recycling of garbage, rubbish and trash generated within the boundaries of such PARTIES, and preparation of a solid waste management plan that meets all the requirements of the Act. Such powers shall include the common powers specified in this Agreement and may be exercised in the manner and according to the method provided in this Agreement. 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 provide landfill sites for the disposal of garbage, rubbish and refuse.

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;

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 said date) as of the date of service of notice of termination on MSWMA, as a condition precedent to such termination and withdrawal; provided, however, that this obligation shall not extend to indebtedness of MSWMA or a nonprofit corporation created by MSWMA and secured by contracts with member PARTIES or by nonvoting public agency members, as the liability of these agencies will be determined by contracts entered into by these agencies with the MSWMA.

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 professional services as required. 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 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. It is the intent of this Agreement that each PARTY shall jointly approve the MSWMA's proposed budget for each fiscal year's operation of MSWMA, in the following manner, namely:

1. MSWMA shall once each year, during the months of March and April, prepare a proposed budget for the MSWMA.

2. After preparation of the budget, MSWMA shall transmit a copy of the proposed budget to each PARTY. Each PARTY shall promptly review the proposed budget.

3. In the event any PARTY has specific comments, objections, additions or deletions to the proposed budget for the forthcoming fiscal year, that PARTY shall notify MSWMA of same in writing on or before the 15th day of May of each year. A failure to respond by the 15th day of May shall be treated as a PARTY's approval of the proposed budget.

4. In the event a PARTY is not in agreement with the proposed budget, the Commission shall notify that PARTY of the

time and place of the MSWMA hearings and it shall be incumbent upon said PARTY to be present at such hearings so that a resolution of the matter can be reached. The PARTY's failure to attend such hearing shall be treated as approval of the proposed budget.

5. By no later than _____, 1990, the Commission shall adopt the final budget. Upon final adoption of the budget by the MSWMA, each PARTY shall be so notified and each party shall immediately act to encumber or otherwise provide for that PARTY's share of applicable expense for the ensuing fiscal year.

6. Each PARTY shall pay its share of the budget 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.

7. Each PARTY's share shall be due and payable in accordance with a schedule established by the Controller and approved by the Commission.

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 in 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 recommendations, 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.

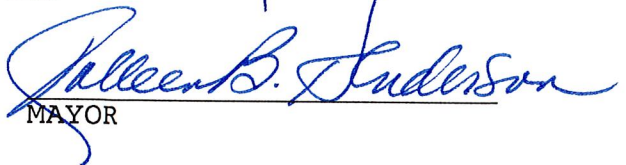
24. Notices. All notices required or given pursuant to this Agreement shall be deemed properly served when deposited, postage prepaid, in the United States mail, addressed to each PARTY at the address indicated on this Agreement adjacent to the signature line of each PARTY.

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 have executed this Agreement on the date first above written.

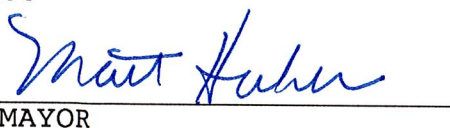
ATTEST: 
CITY CLERK

CITY OF UKIAH
300 Seminary Ave
ADDRESS

BY: 
MAYOR

ATTEST: 
CITY CLERK

CITY OF FORT BRAGG
416 N. Franklin Street
ADDRESS

BY: 
MAYOR

[Signature]
ATTEST:
CITY CLERK

CITY OF WILLITS
111 E Commercial St
ADDRESS Willits Ca 95490

BY: *[Signature]*
MAYOR

COUNTY OF MENDOCINO

Courthouse, Ukiah, Ca.
ADDRESS 95482

ATTEST: *[Signature]*
CLERK OF THE BOARD

BY: *[Signature]*
CHAIRMAN, BOARD
OF SUPERVISORS

APPROVED AS TO FORM:
[Signature]
H. PETER KLEIN
County Counsel

INCORPORATED CHANGES

FIRST AMENDMENT
JOINT POWERS AGREEMENT BETWEEN
THE CITIES OF FORT BRAGG, UKIAH, WILLITS
AND THE COUNTY OF MENDOCINO CREATING THE
MENDOCINO SOLID WASTE MANAGEMENT AUTHORITY

This first amendment to the Agreement dated October 19,
1990 is made and entered into by and between the signatories
which are local governments in Mendocino County acting through
their respective legislative bodies (PARTIES).

The PARTIES hereby agree:

To amend Section 1 of the Joint Powers Agreement executed by
the PARTIES October 19, 1990 to read 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), empowered to undertake the following:

A. Siting, licensing, developing, constructing,
maintaining, and operating disposal sites, sanitary landfills,
and recycling centers. In fulfillment of these powers:

1) When requested to do so by an ownership entity,
MSWMA may assume the role and responsibility of operational
management of recycling centers at existing or future landfills
or other sites within Mendocino County.

2) When requested to do so by an ownership entity,
MSWMA may assume operational management of existing landfill
operations on a contract basis with jurisdictions owning
landfills.

3) When requested to do so by an ownership entity, MSWMA may exercise rate setting authority, including the establishment of gate fees, at those landfills owned, managed or contract operated by MSWMA for, but not limited to, sufficient set-asides for remediation, closure and post-closure costs.

4) The MSWMA may exercise and assume responsibility for the siting, development and operational management of new landfills, material recovery facilities and/or transfer stations.

5) The MSWMA may enter into cooperative public ventures with other public agencies or Joint Powers Authorities to site, develop and/or operate regional landfills, material recovery facilities and/or transfer stations.

6) To the extent permitted by law, the MSWMA may enter into cooperative ventures with any individual, partnership, joint venture, unincorporated private organization, or private corporation to site, develop and/or operate regional landfills, material recovery facilities and/or transfer stations.

7) When requested to do so by a member entity, the MSWMA may assume franchising and franchise administration responsibility for solid waste handling services administered by said entity.

B. Preparing and implementing a MSWMA Solid Waste Management Plan which meets the requirement of the Act.

C. The exercise of all other appropriate powers reasonably necessary to carry out the purpose of this Agreement."

2. All remaining portions of the Joint Powers Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the PARTIES hereto have executed this First Amendment on this _____ day of _____, 199__.

ATTEST: _____
CITY CLERK

CITY OF UKIAH

by _____
MAYOR

ATTEST: s/DeeLynn Carpenter
CITY CLERK

NOTE: The Fort Bragg City Council by minute action of January 13, 1992 authorized execution of this First Amendment.

CITY OF FORT BRAGG

by s/Mathew V. Huber
MAYOR

ATTEST: _____
CITY CLERK

CITY OF WILLITS

by _____
MAYOR

ATTEST: _____
CLERK OF SAID BOARD

COUNTY OF MENDOCINO

by _____
CHAIRMAN,
Board of Supervisors

APPROVED AS TO FORM:



H. PETER KLEIN
County Counsel