

KATHARINE L. ELLIOTT
COUNTY COUNSEL



TELEPHONE:
(707) 234-6885
FAX NUMBER:
(707) 463-4592

DEPUTY COUNTY COUNSELS

BRINA A. BLANTON
DOUGLAS V. PARKER
MATTHEW T. KIEDROWSKI
REBECCA L. CHENOWETH
CHARLOTTE E. SCOTT
MICHAEL J. MAKDISI
CHRISTIAN M. CURTIS

REC'D NOV 10 2016

OFFICE OF THE
COUNTY COUNSEL
ADMINISTRATION CENTER
501 LOW GAP ROAD, RM. 1030
UKIAH, CALIFORNIA 95482

November 7, 2016

City Hall

Attn: Scott Schneider, Acting City Manager
416 N. Franklin Street
Fort Bragg, CA 95437

Re: First Amendment to the Joint Powers Agreement

Dear Mr. Schneider,

Enclosed you will find two original executed copies of the First Amendment to the Joint Powers Agreement Between the County of Mendocino and City of Fort Bragg for Caspar Landfill and Solid Waste Transfer Station. Thank you very much for your patience. If you have any questions or concerns, please don't hesitate to contact our office.

cocosupport@co.mendocino.ca.us

Sincerely,

KATHARINE L. ELLIOTT,
County Counsel


Julie Chapman
Legal Services Supervisor

/jc

Enclosures

**FIRST AMENDMENT TO THE JOINT POWERS AGREEMENT BETWEEN
THE COUNTY OF MENDOCINO AND CITY OF FORT BRAGG FOR
CASPAR LANDFILL AND SOLID WASTE TRANSFER STATION**

This First Amendment to the Joint Powers Agreement between the County of Mendocino and City of Fort Bragg for Caspar Landfill and Solid Waste Transfer Station (hereinafter, "Agreement") is made and entered into on this 19th day of September 2016.

WHEREAS, the County of Mendocino (hereinafter, "County") and City of Fort Bragg (hereinafter, "City") entered into the Agreement on January 25, 2011 to revise and update their relationship concerning the Caspar Landfill and solid waste disposal generally in the greater Fort Bragg area; and

WHEREAS, the Agreement states that replacement or expansion of the Caspar Transfer Station is necessary to accommodate commercial solid waste collection trucks and allow long-haul direct transfer to a destination landfill, and that County and City shall cooperate in a siting and development project to provide such an expanded facility, either at the Caspar property or another site, and shall amend this Agreement as necessary to implement the expansion; and

WHEREAS, the County Board of Supervisors and City Council designated 30075 Highway 20, Fort Bragg, as the preferred site for a new solid waste transfer station (hereinafter, "Transfer Station") on August 13, 2013 and authorized the preparation of an Environmental Impact Report; and

WHEREAS, a draft Environmental Impact Report was issued on February 9, 2015 and a final Environmental Impact Report on July 1, 2015; and

WHEREAS, a revised draft Environmental Impact Report was issued on May 11, 2016 and a revised final Environmental Impact Report on September 9, 2016; and

WHEREAS, the County Board of Supervisors and City Council certified the Environmental Impact Report as fulfilling the requirements of the California Environmental Quality Act on September 19, 2016 and authorized further steps to proceed with the Transfer Station project; and

WHEREAS, an amendment to the Agreement is necessary to stipulate how the County and City will cooperate in development and operation of the Transfer Station;

THEREFORE BE IT RESOLVED that this First Amendment to the Agreement is made as follows:

I. Section 10 is added:

10. A. County shall exercise the option provided by Public Resources Section 4659 to take title to the Transfer Station site.

B. City and County shall prepare a Request for Proposals (RFP) for a private industry contract (hereinafter, "Contract") to design, build and operate the Transfer Station for a term of twenty-five (25) years. With the City's consent, County shall issue the RFP. City or County may authorize staff to perform their participation and review.

C. City and County shall jointly evaluate responses to the RFP, negotiate with proposers, and either decline all proposals and reissue an RFP or make a recommendation for acceptance of a proposal. If the City consents, County shall execute a design, build and operate Contract with a private-industry entity with the County alone as the contracting party. City or County may authorize staff to perform their participation and review.

D. The Contract shall require the private-industry entity (i.e., "Contractor") to indemnify the County and City for any and all claims, actions or liabilities that may arise from Contractor's design, construction and/or operation of the Transfer Station. The Contract shall require the Contractor to name the County and City as additional insured under all of the Contractor's insurance policies, including but not limited to the Contractor's general liability and vehicle liability insurance policies. Any judgment or assessment concerning the Transfer Station that is not paid by Contractor or Contractor's insurer pursuant to the indemnification and insurance provisions of this subsection, and that is assessed against either the County and/or the City, shall be shared equally (50% City/50% County) by the County and the City.

E. The Contract may include a provision for a contract administration fee to be paid by the users of the Transfer Station to reimburse County's actual cost of administering the Contract, pursuant to subsections C and G of this Section.

F. The Contract shall include provisions authorizing the County to act independently to address emergency situations affecting public health and safety.

G. County shall independently administer and monitor the Contract to ensure compliance with all contract obligations and that the Transfer Station is self-supporting. No amendment to the Contract or increase in tipping fees, beyond annual rate adjustments made in accordance with contract provisions, shall be approved by the County without the prior consent of the City.

H. Insofar as it is sufficient, the Caspar self-haul transfer station rent, as described in Section 5 of the Agreement, shall be used to pay expenses associated with the City and County administrative costs in the further advancement of the project, including but not limited to: (1) any in-kind contributions by the City and County but excluding personnel costs of City and County staff; (2) all legal fees incurred by the City and/or County during the pre-approval administrative CEQA process, the post-approval RFP process and/or any related post-approval litigation. Additional costs exceeding the funding available from the Caspar rent shall be shared equally by City and County (50% City/50% County) and each party shall approve in advance any activity that will require its direct financial contribution.

I. In accordance with Public Resources Code Section 4659, County and City shall execute when necessary the required conservation easement and purchase option for the Caspar Landfill property in favor of the California Department of Parks & Recreation.

J. County shall exercise its authority to direct all solid waste disposal from the region identified as County Solid Waste Refuse Disposal Area No. Two, Coastal Division, to the Transfer Station and City shall exercise its authority to direct all solid waste disposal from within the City Limits to the Transfer Station.

K. Upon the opening of the Transfer Station, the Caspar self-haul transfer station shall cease operations, all portable equipment and structures shall be removed, and the operations contract with Solid Wastes of Willits, Inc., shall be terminated by County. County shall continue to perform landfill post-closure duties as provided by Section 3 of the Agreement and shall additionally supervise, monitor and control the entire 61-acre Caspar Landfill site.

L. The Caspar Joint Coordinating Committee shall review all activities of City and County staff in furtherance of the Transfer Station project, including future contract administration concerning the operation of the Transfer Station, and shall make recommendations as appropriate to the City Council and Board of Supervisors. If any dispute or disagreement arises between County and City

concerning the Transfer Station, the Caspar Joint Coordinating Committee shall meet to seek resolution. If the JCC cannot recommend an acceptable resolution and/or County and City do not mutually agree to that resolution, the County and City shall mutually agree to the selection and equally share the cost of hiring a mediator to attempt to settle the dispute. If the County and City cannot mutually agree on the selection of a mediator, either entity may apply to the Presiding Judge of the Mendocino Superior Court to name a mediator. No civil action may be initiated for enforcement of the Joint Powers Agreement prior to completion of good faith efforts to resolve the dispute through mediation.

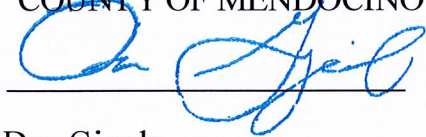
M. City approval as required herein may be made by either the City Manager or City Council as the City shall designate.

N. County approval as required herein may be made by either the Chief Executive Officer or Board of Supervisors as the County shall designate.

II. All other terms and conditions of the Agreement remain in effect.

IN WITNESS WHEREOF, County and City, by their duly authorized representatives, have executed this First Amendment on the day and year first written above.

COUNTY OF MENDOCINO



Dan Gjerde
Chair, Board of Supervisors

Date: SEP 19 2016

CITY OF FORT BRAGG



Linda Ruffing
City Manager

Date: 10/25/16

ATTEST:

Carmel Angelo, Clerk of the Board

By:  **SEP 19 2016**

The foregoing instrument is a correct copy of the original on file in this office.

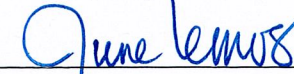
ATTEST:

CARMEL J ANGELO Clerk of the Board
of Supervisors of the County of
Mendocino, State of California

By:  **SEP 19 2016**

ATTEST:

June Lemos, City Clerk

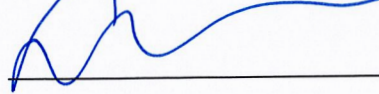
By: 

APPROVED AS TO FORM:



Katharine L. Elliott, County Counsel


APPROVED AS TO FORM:



Samantha Zutler, City Attorney

INSURANCE REVIEW:

RISK MANAGER

By: 
ALAN D. FLORA, Risk Manager

**MENDOCINO SOLID WASTE MANAGEMENT
AUTHORITY:**

By: 
LOUISA K. MORRIS, General Manager

FISCAL REVIEW:

By: 
Deputy CEO/Fiscal

EXECUTIVE REVIEW:

APPROVAL RECOMMENDED


CARMEL J. ANGELO
CHIEF EXECUTIVE OFFICER

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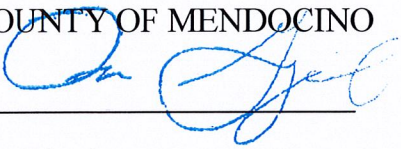
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COUNTY OF MENDOCINO


Dan Gjerde
Chair, Board of Supervisors

Date: SEP 19 2016

ATTEST:

Carmel Angelo, Clerk of the Board
SEP 19 2016

By: 

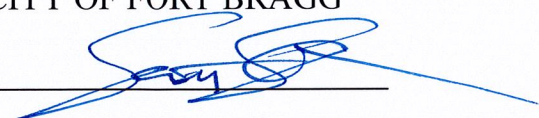
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of Supervisors of the County of
Mendocino, State of California

By:  DEPUTY

CITY OF FORT BRAGG


Linda Ruffing
City Manager

Date: 10/25/16

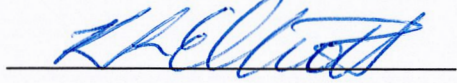
ATTEST:

June Lemos, City Clerk

By: 

SEP 19 2016

APPROVED AS TO FORM:



Katharine L. Elliott, County Counsel


APPROVED AS TO FORM:



Samantha Zutler, City Attorney

INSURANCE REVIEW:

RISK MANAGER

By: 
ALAN D. FLORA, Risk Manager

MENDOCINO SOLID WASTE MANAGEMENT
AUTHORITY:

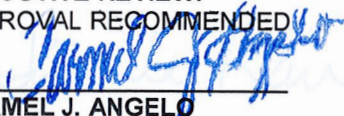
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FISCAL REVIEW:

By: 
Deputy CEO/Fiscal

EXECUTIVE REVIEW:

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CHIEF EXECUTIVE OFFICER