

RESOLUTION NO. 3284-2009

RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING AN AMENDMENT TO THE JOINT POWERS AGREEMENT OF THE MENDOCINO COUNCIL OF GOVERNMENTS

WHEREAS, the Mendocino Council of Governments (MCOG) was formed by a Joint Powers Agreement (JPA) (attached as Exhibit "A") in 1972 and amended in 1978, 1993, 1994 and 2008, by the Cities of Fort Bragg, Point Arena, Willits and Ukiah, and the County of Mendocino to serve as the Regional Transportation Planning Agency and other regional purposes; and

WHEREAS, it has been proposed that the JPA be amended to clarify and specify that the JPA has the authority to undertake the function of energy coordination, planning, funding, and development to foster energy efficiency and conservation in Mendocino County; and

WHEREAS, Section 2 of the JPA identifies the general powers of MCOG, which are advisory only; and

WHEREAS, Section 3 of the JPA identifies the specific powers of the Mendocino Council of Governments, as follows:

- a. Act as the transportation planning agency for Mendocino County, as designated by the Secretary of the Business and Transportation Agency of the State of California,
- b. Undertake economic development planning for Mendocino County, and
- c. Any other specific power, including regional planning in other functional areas besides transportation and economic development, which has been expressly authorized by Resolutions adopted by the respective bodies of each of the parties to this agreement; and

WHEREAS, the JPA states that it may be amended at any time by the parties to the agreement, and in order for such an amendment to take effect, it must be approved by resolutions adopted by the respective legislative bodies of each of the parties to this agreement; and

WHEREAS, upon full execution of an amendment, MCOG shall prepare and file a notice of amendment with the California Secretary of State in accord with California Government Code Section 6503.5; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby agree as follows:

1. MCOG's JPA, Section 3(c) shall be replaced with the following:
 - c. Undertake energy coordination, planning, funding, and implementation responsibilities, including the function of Area Energy Authority pursuant to the Community Energy Act of 1984 (AB 1659, Farr); and
2. MCOG's JPA, existing Section 3(c) shall be renumbered as 3(d) and amended to read:

- d. Any other specific power, including regional planning in other functional areas besides transportation, economic development, and energy, which has been expressly authorized by Resolutions adopted by the respective bodies of each of the parties to this agreement.
3. All other terms and conditions set forth in MCOG's Joint Powers Agreement of 1972 as amended in 1978, 1993, 1994, and 2008 shall remain in full force and effect.

The above and foregoing Resolution was introduced by Councilmember Turner, seconded by Councilmember Courtney, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 8th day of June, 2009, by the following vote:

AYES: Councilmembers Turner, Courtney, Gjerde, Melo, and Mayor Hammerstrom.
NOES: None.
ABSENT: None.
ABSTAIN: None.


DOUG HAMMERSTROM,
Mayor

ATTEST:

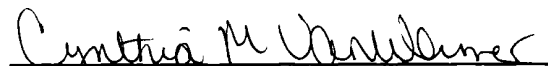

Cynthia M. VanWormer, CMC
City Clerk

EXHIBIT "A"

JOINT POWERS AGREEMENT

MENDOCINO COUNCIL OF GOVERNMENTS

Incorporating All Amendments of 1978, 1993, 1994, and 2008

This is an Amendment to a Joint Powers Agreement executed in 1972 by the CITIES OF FORT BRAGG, POINT ARENA, UKIAH, and WILLITS, and the COUNTY OF MENDOCINO, that Agreement being the legal basis for the Mendocino County and Cities Area Planning Council (MCCPC). This Amendment changes the name to MENDOCINO COUNCIL OF GOVERNMENTS (MCOG), clarifies the powers and purposes of the agency, and establishes a new BOARD OF DIRECTORS. By this Amendment, the above Agreement is changed to read in its entirety as follows:

This AGREEMENT is made by and among the incorporated CITIES OF FORT BRAGG, POINT ARENA, UKIAH, and WILLITS, municipal corporations of the State of California, acting through their respective City Councils, and the COUNTY OF MENDOCINO a body politic and corporate subdivision of the State of California, acting through the Board of Supervisors (hereinafter referred to as PARTIES), as follows:

WHEREAS, Sections 6500 et seq., of the California Government Code (Title 1, Division 7, Chapter 5, Article 1) provide for agreements between two or more public agencies to jointly exercise any power common to the contracting parties; and,

WHEREAS, the parties hereto recognize that Mendocino County is changing from an isolated, rural area to a developed area with continuing expansion of its incorporated cities and formerly underdeveloped areas; and,

WHEREAS, by reason of this growth, governmental problems affecting incorporated and unincorporated areas jointly are frequently arising and are expected to increase in the near future; and,

WHEREAS, it is necessary and desirable that a single regional agency be created with authority to (1) assist and advise on such problems, and (2) in specified functional areas, develop plans and approve or disapprove, in whole or in part, projects to which such plans apply; and,

WHEREAS, existence of such an agency, and action by it upon certain transportation matters, and economic development matters, appear necessary in order for the PARTIES to qualify for allocation of needed funds from the State and Federal Governments;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. The Mendocino County and Cities Area Planning Council (MCCPC) is hereby reconstituted as the MENDOCINO COUNCIL OF GOVERNMENTS (MCOG), which is hereby created and established pursuant to Sections 6500 et seq., of the California Government Code (Title 1, Division 7, Chapter 5, Article 1).

2. MCOG shall have the power to serve the following general purposes, which are advisory only:
 - a. provide a regular forum to facilitate discussion and the exchange of information on matters of mutual interest to the parties to this agreement,
 - b. serve as a vehicle for the joint sponsorship of informational workshops and training programs related to problems for local governments in Mendocino County, and
 - c. advise and assist the parties to this agreement in their efforts to deal with problems which they have in common, or which transcend jurisdictional boundaries.

3. MCOG shall have the power to serve the following specific purposes:
 - a. act as the transportation planning agency for Mendocino County, as designated by the Secretary of the Business and Transportation Agency of the State of California,
 - b. undertake economic development planning for Mendocino County, and
 - c. any other specific power, including regional planning in other functional areas besides transportation and economic development, which has been expressly authorized by Resolutions adopted by the respective bodies of each of the parties to this agreement.

Nothing contained herein shall be construed as limiting in any manner the power of any of the respective parties or other public entities in the County to initiate and complete a local project within their respective jurisdictions. It is understood, however, the recommendations of the MCOG may be considered by agencies of the State or Federal Government in providing financial or other assistance to such a project. The MCOG shall take no action to preclude or discourage any direct appeal by any entity to any State, or Federal Agency for financial or other assistance in that entity's program before, during or after consideration of the proposal by the MCOG.

4. MCOG shall have a BOARD OF DIRECTORS consisting of seven members. The City Council of each of the four incorporated cities in Mendocino County (the cities of Fort Bragg, Point Arena, Willits and Ukiah) shall annually appoint one of its members to serve as a member of the MCOG Board of Directors. The Board of Supervisors of the County of Mendocino shall annually appoint two of its members plus one public appointee to serve as members of the MCOG Board of Directors. In selecting the public appointee, the Board of Supervisors shall give first preference to a countywide elected official. If a countywide elected official does not apply for the position, then the Board of Supervisors may appoint any registered voter of Mendocino County who has an interest in regional transportation issues. Each elected member of the MCOG Board of Directors shall serve only so long as he or she holds the appropriate elective office, and each member shall serve at the pleasure of their respective appointing authority.

MCOG has adopted its own bylaws as allowed by the amendment of 1993.

The appointing authority, for each regular member it appoints, may appoint an alternate member to serve in place of the regular member when the regular member is absent or

disqualified from participating in a meeting of the Council of Governments. Agency alternates must be an elected official.

5. In addition to the incorporated Cities mentioned in this Agreement, any other City which may hereafter be incorporated within the boundaries of Mendocino County, and which may desire to participate in the activities of this Council of Governments may do so by executing this agreement without prior approval or ratification of the named parties herein and shall thereafter be bound by all of the terms and conditions of this agreement as of the date of execution, and shall have all of the rights of the named Cities in relation to the provisions of this Agreement, including the right to appoint a member to the MCOG Board of Directors.

In the event of conflict amongst the members to the MCOG relative to specific issues, individual resolutions may be requested from each of the member agencies to be directed back to the MCOG for review and final action.

6. The undersigned parties to this agreement pledge full cooperation, and agree to appoint members to the MCOG Board of Directors as specified above. The MCOG shall assign individuals to serve as members of any MCOG committee (s) who shall act for and on behalf of their member agencies in any or all matters which shall come before MCOG, subject to any necessary and legal approval of their acts by the legislative bodies of said member agencies.
7. The MCOG acting as the Regional Transportation Planning Agency for Mendocino County shall be administered in accordance with the Transportation Development Act. Funding for this function shall consist of Local Transportation Funds, State Transit Assistance Funds and any federal or state grants. Any other function(s) identified in Section 3 of this agreement must have a correlating funding source for administrative reimbursement.
8. The County Auditor shall be the depository and shall have custody of all funds of MCOG from whatever source and shall hold and disburse such monies in accord with Section 6505.5. There shall be strict accountability by all parties and by MCOG of all funds. MCOG shall contract with a certified public accountant to make an annual audit. The minimum requirements of such an audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code and shall conform to generally accepted auditing standards. Where an audit is made, a report thereof shall be filed as public records with each of the contracting parties to the agreement and also with the County Auditor-Controller. The cost of the audit shall be borne by MCOG (Section 6505).
9. This agreement shall be effective for a period of one year and shall be automatically renewed from year to year thereafter unless and until one of the parties hereto, by Resolution of its legislative body, terminates its consent to the exercise of these joint powers herein agreed upon, and gives written notice of such to MCOG at least ninety days prior to the end of the annual term. In the event of such notice of termination, MCOG shall have continuing authority to act upon all applications filed with it prior to receipt of said ninety day notice of termination and shall take such action in regard thereto as is required under the laws, regulations and policies established by the particular state or federal agency to whom such applications have been made. Upon the conclusion of such action and expiration of said ninety day notice period, following receipt of said notice, this agreement

shall be automatically renewed for another annual term without the withdrawn entity as a party to the agreement, and without a member of the Board of Directors appointed by the withdrawn entity. Once any entity has filed proper notice of withdrawal, there shall be a single sixty day period, during which any remaining Party or Parties to the agreement may also file a ninety day notice of withdrawal, regardless of the expiration date of the annual term.

10. This agreement may be amended at any time by the parties to the agreement. In order for such an amendment to take effect, it must be approved by Resolutions adopted by the respective legislative bodies of each of the parties to this agreement.
11. This amendment shall take effect upon (1) its execution by the legislative body of each of the parties to the above Joint Powers Agreement, such execution occurring by Resolution of the respective legislative bodies, and (2) receipt of a letter from the Secretary of the Business and Transportation Agency of the State of California, officially designating the Mendocino Council of Governments as the transportation planning agency for Mendocino County according to Section 29532(b) of the Government Code of the State of California.
12. MCOG shall prepare and file a notice of this agreement, or any amendment thereto, with the Office of the Secretary of State in accord with Section 6503.5.

Original documents and amending resolutions are executed by:

Cities of Fort Bragg, Point Arena, Willits, and Ukiah
(by Mayor or Vice Mayor; City Attorney and/or City Clerk)

County of Mendocino
(by Chairman, Board of Supervisors; County Counsel; and Clerk of the Board)

I attest to the accuracy of this document. Originals are on file at MCOG's offices.

/s/

Janet M. Orth, MCOG Deputy Director for Administration