



COUNTY OF HUMBOLDT

AGENDA ITEM NO.
C-8

For the meeting of: April 26, 2016

Date: April 13, 2016
To: Board of Supervisors
From: Amy S. Nilsen, County Administrative Officer *AN*
Subject: Memorandum of Understanding with Del Norte County for Agricultural Commissioner Services

RECOMMENDATION(S):

That the Board of Supervisors approve the attached Memorandum of Understanding (MOU) with Del Norte County for Agricultural Commissioner/Sealer services and authorize the County Administrative Officer to sign.

SOURCE OF FUNDING: General Fund (revenue from Del Norte County)

DISCUSSION:

Under State law, each county within California is required to have an Agricultural Commissioner. Persons desiring appointment as an Agricultural Commissioner must possess certain licenses and certifications, and this fact often makes it difficult for smaller rural counties to find qualified individuals. Food and Agriculture Code Section 2124, however, does provide that, "If the board of supervisors of such adjoining county consents, the board of supervisors of any county in which there is no commissioner may employ a qualified commissioner or a qualified deputy commissioner of the adjoining county to perform the duties

Prepared by Cheryl Dillingham CAO Approval *Elisha Hayes*
REVIEW: Auditor County Counsel *JS* Human Resources Other

TYPE OF ITEM:
 Consent
 Departmental
 Public Hearing
 Other

PREVIOUS ACTION/REFERRAL:

Board Order No. C-1
Meeting of: 7/21/15

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT
Upon motion of Supervisor *Fennell* Seconded by Supervisor *Sundberg*
Ayes *Sundberg, Fennell, Lovelace, Bohn, Bass*
Nays
Abstain
Absent

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: *April 26, 2016*
By: *Kathy Hayes*
Kathy Hayes, Clerk of the Board

of commissioner in the employing county.” Humboldt County previously took advantage of this provision by employing the Siskiyou County Agricultural Commissioner when no properly certified individuals were employed within Humboldt County’s Agriculture Department.

The Agricultural Commissioner/Sealer of Weights and Measures in adjoining Del Norte County has retired and Del Norte County has requested that Humboldt County provide Agricultural Commissioner/Sealer services on an interim basis. This arrangement builds upon an existing relationship under which Humboldt County provides some weights and measures services to Del Norte County (under a memorandum of agreement renewed by your Board on July 21, 2015). Mr. Jeff Dolf, Agricultural Commissioner/Sealer for Humboldt County, believes that the County’s department can provide these services to Del Norte County without creating an undue burden for existing staff or producers in Humboldt County.

To facilitate this arrangement, staff has prepared the attached Memorandum of Understanding (MOU). This agreement provides compensation to Humboldt County from Del Norte County for providing these services. Staff recommends that your Board approve the agreement and authorize the County Administrative Officer to sign it.

Humboldt County continues to cooperate with neighboring counties in providing services that benefit residents of both counties. Humboldt is currently providing Agricultural Commissioner/Sealer services to Trinity County pursuant to a separate agreement, which will expire on June 30, 2016. It is anticipated that this agreement will be renewed.

FINANCIAL IMPACT:

The new MOU provides for a monthly fee of \$2,800 payable from Del Norte County to Humboldt County as compensation for the services, along with actual travel expenses. This is a similar rate to what is charged to Trinity County for Agricultural Commissioner services.

The recommended action supports your Board’s strategic framework, priorities for new initiatives, in that it extends a partnership to promote quality services by building interjurisdictional and regional cooperation.

OTHER AGENCY INVOLVEMENT:

Del Norte County

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board could choose not to approve the agreement. This is not recommended as it would leave Del Norte County without resources to provide required agricultural services.

ATTACHMENTS:

1. Memorandum of Understanding

**MEMORANDUM OF UNDERSTANDING FOR
AGRICULTURAL COMMISSIONER/SEALER OF WEIGHTS AND MEASURES SERVICES**

This Memorandum of Understanding (MOU), entered into this ____ day of _____, 2016, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as "HUMBOLDT," and the County of Del Norte, a political subdivision of the State of California, hereinafter referred to as "DEL NORTE," is made upon the following considerations:

WHEREAS, the Agricultural Commissioner/Sealer of Weights and Measures for DEL NORTE has retired and DEL NORTE has previously done recruitments for the position without success; and

WHEREAS, HUMBOLDT currently provides some weights and measures services to DEL NORTE pursuant to a separate MOU; and

WHEREAS, HUMBOLDT and DEL NORTE desire to continue this mutually beneficial relationship and for HUMBOLDT to provide additional Commissioner/Sealer services to DEL NORTE on a temporary basis (until such time as DEL NORTE can hire a permanent Agricultural Commissioner and Sealer of Weights and Measures) in order for DEL NORTE to meet the requirements of the California Department of Food and Agriculture (CDFA);

NOW, THEREFORE, HUMBOLDT AND DEL NORTE mutually agree to the following:

1. **Scope of Services**

HUMBOLDT agrees to provide DEL NORTE the full range of Commissioner/Sealer services sufficient to meet the requirements of the CDFA to the extent that such services are not capable of being performed by employees of DEL NORTE. Such services may be provided personally by the Agricultural Commissioner/Sealer of Weights and Measures of HUMBOLDT or by staff of HUMBOLDT under the authority of the Commissioner/Sealer, as appropriate. These services include, but are not limited to, the following:

- a. The Commissioner/Sealer of HUMBOLDT shall act as head of DEL NORTE's Agricultural Department, providing direction to staff of DEL NORTE in performance of Agricultural Department activities, interacting with residents and elected officials of DEL NORTE when required and authorized by DEL NORTE's County Administrative Officer, and—subject to the review and control of DEL NORTE's County Administrative Officer—providing for the appointment, training, and performance review of DEL NORTE employees in the Agricultural Department. The Parties acknowledge that this role is provided to DEL NORTE on a contractual basis, that the Commissioner/Sealer of HUMBOLDT shall in no way be deemed an employee of DEL NORTE in the performance of these duties, and that DEL NORTE shall indemnify and hold harmless HUMBOLDT and the Commissioner/Sealer in connection with the performance of these duties as provided in this MOU.
- b. The Commissioner/Sealer of HUMBOLDT is NOT responsible NOR will HUMBOLDT oversee any services related to Animal Control services on behalf of DEL NORTE's Agricultural Department.

- c. Services do not include inspections of weights and measures, which HUMBOLDT provides to DEL NORTE by separate MOU dated July 21, 2015.

HUMBOLDT shall devote as much time as is necessary to adequately perform these services pursuant to this MOU. The Parties acknowledge that HUMBOLDT's responsibility includes consultative and administrative duties as well as limited on-site inspections and supervision, many of which will not require a physical presence within Del Norte County.

2. **Compensation**

- a. DEL NORTE shall pay HUMBOLDT as compensation for Commissioner/Sealer services a flat rate payment, of \$2,800.00 per month for each month and any part of which the services described herein are provided. This amount will be paid no later than the last business day of the month following the month in which the services were provided.
- b. When requested by the DEL NORTE County Administrative Officer, HUMBOLDT shall provide Commissioner/Sealer services on-site in Del Norte County. If and when this occurs, HUMBOLDT shall pay the traveler mileage and other travel expenses in amounts consistent with current HUMBOLDT policies related to such expenses. HUMBOLDT will periodically provide DEL NORTE with a statement setting forth the travel expenses paid. DEL NORTE shall thereafter pay HUMBOLDT for travel expenses stated within thirty (30) days of submission of such statement. These payments shall be made in addition to the flat, monthly payments specified above.
- c. The total payments to be made by DEL NORTE to HUMBOLDT under this MOU, including all payments specified in paragraphs 2a and 2b immediately above shall not exceed \$50,000.00 within any fiscal year.

3. **Term**

This MOU shall commence May 1, 2016 (or upon authorization by both parties) and shall terminate June 30, 2018. Early termination of the MOU may be effectuated by written notice from either County Administrative Officer, without the need for action or ratification by the Board of Supervisors, upon twenty (20) days written notice of such termination. The Notice of Termination shall be delivered as provided in section 17 herein. In the event of any termination of this MOU, HUMBOLDT shall be entitled to compensation for uncompensated services rendered under this MOU through and including the effective date of such termination; provided, however, that this provision shall in no way limit or reduce any damages owing to either Party resulting from a breach of this MOU.

The services provided by HUMBOLDT under this MOU will be temporary in nature and only required by DEL NORTE on a temporary basis (until such time as DEL NORTE can hire a permanent Agricultural Commissions and Sealer of Weights and Measures).

4. **Relationship of Parties**

HUMBOLDT and DEL NORTE are separate subdivisions of the State of California and are independent contractors with respect to each other. This MOU is not intended to, and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or any

other similar association. Nothing in this MOU shall be construed to create an employment relationship between DEL NORTE and any employee of HUMBOLDT, or between HUMBOLDT and any employee of DEL NORTE. Each Party shall be solely responsible for the acts or omissions of its officers, agents, employees, and subcontractors. Neither Party's employees shall be entitled to any employee benefits from the other Party.

5. **Authority Over Persons Providing Services**

Authority to direct the duties and functions of HUMBOLDT employees providing services, supplies and information to DEL NORTE as required by this MOU shall continue to reside with HUMBOLDT. It is mutually understood and agreed that HUMBOLDT employees assigned to provide services, supplies or information to DEL NORTE as required by this MOU shall be acting as HUMBOLDT employees. HUMBOLDT agrees to require its department heads and employees to respond in a timely manner to requests from DEL NORTE for services and information related to this MOU.

6. **Mutual Indemnification**

- a. Each Party shall indemnify, defend and hold harmless the other Party hereto and their officers, officials, employees, agents and volunteers from any and all claims, demands, losses, damages, and liabilities of any kind or nature, including, without limitation, attorneys' fees and other litigation costs, arising out of, or in connection with, the performance of its duties and obligations hereunder, except such loss or damage which was caused by the sole negligence or willful misconduct of the other Party.
- b. Notwithstanding paragraph 6a above, in the event that more than one Party is held to be negligently or willfully responsible, each responsible Party will bear its proportionate share of liability as determined in any such proceeding. Each Party will bear its own costs and attorneys' fees.

7. **Insurance Coverage**

Without limiting the Parties' indemnification obligations provided for herein, each Party will maintain in full force and effect, at its own expense, comprehensive general liability and property damage insurance, comprehensive automobile insurance, workers' compensation and professional liability insurance throughout the term of this MOU.

8. **Dispute Resolution**

Disputes between HUMBOLDT and DEL NORTE in connection with any matter relating to the terms or provisions of this MOU shall first be considered jointly by the County Administrative Officer of HUMBOLDT and the County Administrative Officer of DEL NORTE.

Prior to taking any judicial action to interpret or enforce provisions of this MOU, the Parties agree to first submit the matter to a mediator, to be mutually agreed upon by the Parties hereto, in concert with a representative of each Party.

However, pending resolution, the existence of any dispute (except for disputed charges for which notice was timely provided as required herein) will not absolve either Party of the responsibility

for making timely payments for provided services nor will such disputes absolve either Party of the responsibility for timely performance of its agreed upon services to the other.

9. **Record Retention and Inspection**

- a. Each Party agrees to timely prepare accurate and complete financial and performance records relating to the services provided hereunder, and to maintain and preserve said records for at least three (3) years from the date of final payment under this MOU, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising therefrom.
- b. Pursuant to California Government Code Section 8546.7, all records, documents, conditions and activities of either Party, related to the services provided hereunder, shall be subject to the examination and audit of the California State Auditor and other duly authorized agents of the State of California for a period of three (3) years after final payment under this MOU. Each Party hereby agrees to make such records available during normal business hours to inspection, audit and reproduction by any duly authorized agents of the State of California or the federal government. Each Party further agrees to allow interviews of any of its employees who might reasonably have information related to such records by any duly authorized agents of the State of California or the federal government. All examinations and audits conducted under this section shall be strictly confined to those matters connected with the performance of this MOU, including, the costs of administering this MOU.

10. **Nuclear Free Humboldt County Ordinance Compliance**

DEL NORTE certifies by its signature below that DEL NORTE is not a nuclear weapons contractor, in that DEL NORTE is not knowingly or intentionally engaged in the research, development, production, or testing of nuclear warheads, nuclear weapons systems, or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. DEL NORTE agrees to notify HUMBOLDT immediately if it becomes a nuclear weapons contractor as defined above. HUMBOLDT may immediately terminate this MOU if it determines that the foregoing certification is false or if DEL NORTE becomes a nuclear weapons contractor.

11. **Discontinuance of Services**

In the event notice is given by HUMBOLDT that a service, in whole or in part, will no longer be provided, or notice is given by DEL NORTE that a certain service will no longer be utilized, DEL NORTE shall pay for all services utilized up to the date of termination of the services.

12. **Strict Compliance**

The failure of either Party to insist on strict compliance with any provision of this MOU shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either Party of either performance or payment shall not be considered a waiver of any preceding breach of the MOU by the other Party.

13. **Compliance with Laws**

Both Parties hereto agree to observe and comply with all applicable local, state, and federal laws

and regulations. Both Parties further agree to comply with all applicable local, state and federal licensure and certification requirements at all times during the term of this MOU.

14. **Jurisdiction and Venue**

This MOU shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder or relating to this MOU shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 and 395.

15. **Equal Opportunity**

DEL NORTE and HUMBOLDT shall each comply with Title VII of the Civil Rights Act of 1964 and no person shall, on the grounds of race, religion or religious creed, color, age (over 40), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, marital status, medical condition (including cancer and genetic characteristics), mental or physical disability (including HIV status and AIDS), military service, or any other classification protected by federal, state, or local laws and ordinances be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this MOU.

16. **Severability**

This MOU is subject to all applicable laws and regulations. If any provision of this MOU is found by any court or other legal authority, or is agreed upon by the Parties to be in conflict with any code or regulation, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of this MOU to either Party is lost, this MOU may be terminated at the option of the affected Party. In all other instances, the remainder of this MOU shall remain in full force and effect.

17. **Notices**

Any notice required to be given pursuant to the terms and provisions herein shall be in writing and shall be sent by First Class Mail to:

County of Humboldt
County Administrative Officer
825 Fifth Street, Room 112
Eureka, CA 95501

County of Del Norte
County Administrative Officer
981 H Street, Suite 210
Crescent City, CA 95531

18. **Amendment**

No addition to, or alteration of, the terms of this MOU shall be valid unless made in writing and signed by the Parties.

19. **Binding Effect**

All provisions of this MOU shall be fully binding upon, and inure to the benefit of, the Parties and to each of their heirs, executors, administrators, successors and assigns.

20. **Interpretation**

This MOU, as well as its individual provisions, shall be deemed to have been prepared equally by both of the Parties hereto, and shall not be construed or interpreted more favorably for one Party on the basis that the other Party prepared it.

21. **Force Majeure**

Neither Party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such Party and without fault or negligence of such Party. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

22. **Entire Agreement**

This MOU shall constitute the entire agreement between the Parties regarding the subject matter of this MOU, and shall supersede any previous agreements, promises, representations, understandings or negotiations, whether oral or written, concerning the same subject matter.

23. **Authority to Execute**

Each person executing this MOU represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this MOU. Each Party represents and warrants to the other that the execution and delivery of this MOU and the performance of such Party's obligations hereunder have been duly authorized.

IN WITNESS WHEREOF, the Parties hereto have entered into this MOU as of the date written above:

COUNTY OF DEL NORTE:

By: _____
Jay Sarina
County Administrative Officer

Date: _____

COUNTY OF HUMBOLDT:

By: _____
Amy S. Nilsen
County Administrative Officer
*Pursuant to delegation of authority
by the Humboldt County Board of
Supervisors on April 26, 2016*

Date: _____