



COUNTY OF HUMBOLDT

AGENDA ITEM NO.
C-7

For the meeting of: June 28, 2016

Date: June 15, 2016
To: Board of Supervisors
From: Amy S. Nilsen, County Administrative Officer
Subject: Memorandum of Understanding with Trinity County for Agricultural Commissioner/Sealer of Weights and Measures Services

RECOMMENDATION(S):

That the Board of Supervisors:

- 1. Authorizes the County Administrative Officer to execute the Memorandum of Understanding (MOU) with Trinity County for Agricultural Commissioner/Sealer of Weights and Measures services (Attachment 1).

SOURCE OF FUNDING: General Fund

DISCUSSION:

Humboldt County continues to cooperate with neighboring counties in providing services that benefit residents of both Trinity and Humboldt counties. In particular, Humboldt has provided services to Trinity County that include weights and measures inspection services, Child Support fiscal services, Agricultural Commissioner/Sealer of Weights and Measures services, and Interim Child Support Director services.

Prepared by Amy S. Nilsen CAO Approval *E. Nilsen*
REVIEW: Auditor _____ County Counsel *SM* Human Resources _____ Other _____

TYPE OF ITEM:
 Consent
 Departmental
 Public Hearing
 Other _____

PREVIOUS ACTION/REFERRAL:
Board Order No. C-1, C-6, C-16, H-1
Meeting of: 8/14/12, 5/6/14, 6/23/2015, 12/15/2015

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT
Upon motion of Supervisor *Sundberg* Seconded by Supervisor *Bass*
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: *June 28, 2016*
By: *Kathy Hayes*
Kathy Hayes, Clerk of the Board

Before your Board today, is an MOU that continues to combine the services of weights and measures inspections with the overall Agricultural Commissioner/Sealer of Weights and Measures services. The term is for two years.

FINANCIAL IMPACT:

The new MOU provides for a monthly fee of \$3,400 payable from Trinity County to Humboldt County as compensation for the services, along with actual travel expenses. This is a slight increase from the prior rate in order to fully compensate Humboldt County for time spent on services to Trinity County.

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:

Trinity County

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board could choose not to extend the agreements. This is not recommended as this would leave Trinity County without resources to provide services and would hamper efforts to more closely integrated the counties' services in the future.

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 Trinity, a political subdivision of the State of California, hereinafter referred to as "TRINITY," is made upon the following considerations:

WHEREAS, pursuant to previous agreement, HUMBOLDT has been providing weights and measures inspection services for TRINITY from July 1, 2012, through June 30, 2016; and

WHEREAS, on November 15, 2012, HUMBOLDT began providing additional services as Agricultural Commissioner and Sealer of Weights and Measures (Commissioner/Sealer) in order for TRINITY to meet the requirements of the California Department of Food and Agriculture (CDFA); and

WHEREAS, HUMBOLDT and TRINITY desire to continue this mutually beneficial relationship for HUMBOLDT to provide Commissioner/Sealer services to TRINITY.

NOW, THEREFORE, HUMBOLDT AND TRINITY mutually agree to the following:

1. **Scope of Services.**

HUMBOLDT agrees to provide TRINITY the full range of Commissioner/Sealer services, including inspections of weights and measures, sufficient to meet the requirements of the CDFA to the extent that such services are not capable of being performed by employees of TRINITY. 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 serve as TRINITY's representative to the Cooperative Agricultural Support Services Authority and shall serve as a board member on behalf of TRINITY. The Cooperative Agricultural Support Services Authority is a joint exercise of powers authority currently consisting of CDFA, TRINITY, and the County of Yolo.
- b. The Commissioner/Sealer of HUMBOLDT shall act as head of TRINITY's Agricultural Department, including preparation and monitoring of the departmental budget, providing direction to staff of TRINITY in performance of Agricultural Department activities, interacting with residents and elected officials of TRINITY, and—subject to the review and control of TRINITY's County Administrative Officer—providing for the appointment, training, performance review and appraisal, and discipline (up to and including dismissal) of TRINITY employees in the Agricultural Department. The Parties acknowledge that this role is provided to TRINITY on a contractual basis, that the Commissioner/Sealer of HUMBOLDT shall in no way be deemed an employee of TRINITY in the performance of these duties, and that TRINITY shall indemnify and hold harmless HUMBOLDT and the Commissioner/Sealer in connection with the performance of these duties as provided in this MOU.

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 Trinity County.

2. **Compensation.**

- a. TRINITY shall pay HUMBOLDT as compensation for Commissioner/Sealer services a flat rate payment, of \$3,400.00 per month for each month 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 TRINITY County Administrative Officer, HUMBOLDT shall provide Commissioner/Sealer services on-site in Trinity 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 TRINITY with a statement setting forth the travel expenses paid. TRINITY 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 TRINITY to HUMBOLDT under this MOU, including all payments specified in paragraphs 2a and 2b immediately above, shall not exceed \$52,400.00.

3. **Term.**

This MOU shall commence July 1, 2016, 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. 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.

4. **Relationship of Parties.**

HUMBOLDT and TRINITY 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 TRINITY and any employee of HUMBOLDT, or between HUMBOLDT and any employee of TRINITY. 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 TRINITY 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 TRINITY 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 TRINITY 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 their 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 TRINITY 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 TRINITY.

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.**

TRINITY certifies by its signature below that TRINITY is not a nuclear weapons contractor, in that TRINITY 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. TRINITY 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 TRINITY 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 TRINITY that a certain service will no longer be utilized, TRINITY 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.**

Each Party hereto agrees 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.**

TRINITY 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 Trinity
County Administrative Officer
P.O. Box 1613
Weaverville, CA 96093

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.**

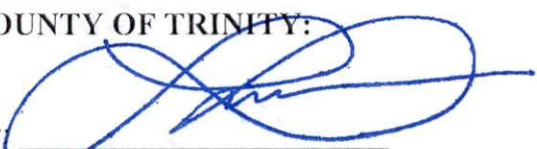
This MOU shall constitute the entire agreement between the Parties regarding the subject matter of this MOU, and shall supersede any previous agreements, promises, representations, understandings or negotiations, whether oral or written, concerning the same subject matter.

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 TRINITY:

By 
Karl Fisher, Chairman of the Board of Supervisor

Date: 6/7/16

COUNTY OF HUMBOLDT:

By: _____

Amy S. Nilsen
County Administrative Officer
*Pursuant to delegation of authority
by the Humboldt County Board of
Supervisors on June 23, 2015*

Date: _____