

**Memorandum of Understanding  
between the County of Humboldt and City of Eureka  
for the Installation and Operation of an Automated Trail Counter  
on the Eureka Waterfront Trail**

This Memorandum of Understanding (“MOU”), entered into this 21<sup>st</sup> day of September, 2022, by and between the Humboldt County Public Works Department, hereinafter referred to as “County,” and the City of Eureka Community Services Department, hereinafter referred to as “City,” is made upon the following considerations:

WHEREAS, the Humboldt County Board of Supervisors approved the donation of funds from the Humboldt Trails Council to County to purchase and install two automatic trail counters; and

WHEREAS, this MOU reflects the intention and commitment of the County and City to collaborate in the installation and operation of an automatic trail counter on the Eureka Waterfront Trail; and

WHEREAS, data will be used to quantify usage levels, provide a more comprehensive picture of visitor access and circulation, and support assessment of before-and after conditions associated with the future Humboldt Bay Trail South project; and

WHEREAS, the counter system will be located on the Eureka Waterfront Trail between Y Street and the Eureka Slough bridge.

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. RIGHTS AND RESPONSIBILITIES OF THE PARTIES:

A. County agrees to:

- Purchase an Eco-Counter MULTI multiple-use counter system.
- Operate the counter system and collect, analyze, and share the data.
- Perform normal maintenance and repairs.

B. City agrees to:

- Install the counter system.
- Authorize ongoing operation of the counter system.

C. County and City agree:

- That neither County nor City is responsible for replacing the counter system in the event of severe damage due to vandalism or other causes.
- That County and City will work cooperatively to secure funding to pay for abnormal maintenance costs and/or decommissioning the counter system.

2. TERM:

This MOU shall begin on September 21, 2022, and shall remain in full force and effect until September 20, 2027, unless sooner terminated as provided herein.

3. TERMINATION:

- A. Termination for Cause. Either party may immediately terminate this MOU, upon written notice, in the event the other party materially defaults in performing any obligation under this MOU, or violates any local, state or federal law, regulation or standard applicable to its performance hereunder.
- B. Termination without Cause. Either party may terminate this MOU without cause upon thirty (30) days advance written notice which states the effective date of the termination.
- C. Termination due to Insufficient Funding. The parties' obligations under this MOU are contingent upon the availability of local, state and/or federal funds. In the event such funding is reduced or eliminated, the parties may, at their sole discretion, determine whether this Agreement shall be terminated. The terminating party shall provide the other party seven (7) days advance written notice of its intent to terminate.

4. NOTICES:

Any and all notices required to be given pursuant to the terms and conditions of this MOU shall be in writing and sent via electronic mail, or may be served personally to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

Humboldt County Department of Public Works  
Attention: Hank Seemann  
Address: 1106 Second Street  
Eureka, California 95501  
Email address: hseemann@co.humboldt.ca.us

City of Eureka Community Services Department  
Attention: Donna Wood  
Address: 531 K Street  
Eureka, California 95501  
Email address: dwood@ci.eureka.ca.gov

5. COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS AND STANDARDS:

- A. General Legal Requirements. Each party hereto agrees to comply with any and all local, state and federal laws, regulations, policies, procedures and standards, including, without limitation, any and all local, state and federal licensure, certification and accreditation requirements, applicable to its performance hereunder.

B. Accessibility Requirements. Each party hereto agrees to comply with any and all applicable accessibility requirements set forth in the Americans with Disabilities Act, Section 508 of the Rehabilitation Act of 1973, as amended, California Government Code Section 1135 and any current and future implementing regulations, policies, procedures and standards promulgated thereunder, including, without limitation, the federal accessibility standards set forth in 36 C.F.R. Section 1194.1, all as may be amended from time to time.

C. Conflict of Interest Requirements. Each party hereto agrees to comply with any and all applicable conflict of interest requirements set forth in the California Political Reform Act and any current and future implementing regulations, policies, procedures and standards promulgated thereunder, including, without limitation, COUNTY's Conflict of Interest Code, all as may be amended from time to time.

6. PROVISIONS REQUIRED BY LAW:

This MOU is subject to any additional local, state and federal restrictions, limitations or conditions that may affect the terms, conditions or funding of this MOU. This MOU shall be read and enforced as though all legally required provisions are included herein, and if for any reason any such provision is not included, or is not correctly stated, the parties agree to amend the pertinent section to make such insertion or correction.

7. AMENDMENT:

This MOU may be amended at any time during the term hereof upon the mutual consent of both parties. No addition to, or alteration of, the terms of this MOU shall be valid unless made in writing and signed by an authorized representative of each party hereto.

8. DISPUTE RESOLUTION:

Each party hereto agrees to make their best efforts to resolve any and all disputes arising hereunder, or relating hereto, by good faith discussion whenever possible. If either party believes that a breach of this MOU has occurred or is not satisfied that a dispute has been resolved, either party may request to meet and confer with the Humboldt County Administrative Officer and the Eureka City Manager.

9. MUTUAL INDEMNIFICATION:

Each party hereto shall hold harmless, defend and indemnify the other party and its agents, officers, officials, employees and volunteers from and against any and all claims, demands, losses, damages, liabilities and costs of any kind or nature, including, without limitation, attorney's fees and other costs of litigation, arising out of, or in connection with, the negligent performance of, or failure to comply with, any of the duties and/or obligations contained herein, except such loss or damage which was caused by the sole negligence or willful misconduct of the other party or its agents, officers, officials, employees or volunteers.

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10. RELATIONSHIPS OF PARTIES:

It is understood that this Agreement is by and between two (2) independent entities and 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.

11. CONFLICTING TERMS OR CONDITIONS:

In the event of any conflict in the terms or conditions set forth in any other agreements in place between the parties hereto and the terms and conditions set forth in this MOU, the terms and conditions set forth herein shall have priority.

12. 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 (1) party on the basis that the other party prepared it.

13. INDEPENDENT CONSTRUCTION:

The titles of the sections and subsections set forth herein are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this MOU.

14. FORCE MAJEURE:

Neither party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control, and without the 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.

15. JURISDICTION AND VENUE:

This MOU shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder, or relating hereto, 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 or 395.

16. ENTIRE AGREEMENT:

This MOU contains all of the terms and conditions agreed upon by the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or to bind either of the parties hereto. In addition, this MOU shall supersede in their entirety any and all prior agreements, promises, representations, understandings and negotiations of the parties, whether oral or written, concerning the same subject matter. Any and all acts which may have already been consummated pursuant to the terms and conditions of this MOU are hereby ratified.

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17. COUNTERPART EXECUTION:

This MOU, and any amendments hereto, may be executed in one (1) or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one (1) and the same agreement. This MOU, and any amendments hereto, may be signed by manual or electronic signatures in accordance with any and all applicable local, state and federal laws, regulations and standards, and such signatures shall constitute original signatures for all purposes. A signed copy of this MOU, and any amendments hereto, transmitted by email or by other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this MOU and any amendments hereto.

18. 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 have entered into this MOU as of the date first written above.

CITY OF EUREKA:

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Miles Slattery, City Manager

Approved as to content:

By: \_\_\_\_\_  
Donna Wood, Community Services Director

Approved as to form:

Attest:

By: \_\_\_\_\_ By: \_\_\_\_\_  
Autumn E. Luna, City Attorney Pamela J. Powell, City Clerk

COUNTY OF HUMBOLDT:

BY: \_\_\_\_\_ Dated: \_\_\_\_\_  
Hank Seemann, Public Works Deputy-Director