

TEMPORARY WATER SHARING AGREEMENT

This WATER SHARING AGREEMENT (“**Agreement**”) is entered into this ___ day of _____, 2021, (“**Effective Date**”) by and between FORT BRAGG UNITED SCHOOL DISTRICT (**District**) and CITY OF FORT BRAGG (“**City**”) (each individually a “**Party**” and collectively, the “**Parties**”).

1. RECITALS

A. District is the owner of that certain real property (“**District Property**”) located in the City of Fort Bragg, Mendocino County, California, more particularly identified as Mendocino County Assessor Parcel Number _____ 008-340-02-00.

B. The District Property includes water supply improvements, including, but not limited to a groundwater well and pump (collectively, “**Well**”), which District uses to supply water for the District’s various irrigation ~~and consumption~~ needs.

C. City is the owner of a public water system that supplies water within and to select customers just outside its boundaries.

~~E.D.~~ On August 9, 2021, after a public hearing, the City declared a Stage 3 Water Emergency for the Fort Bragg Water System.

~~D.E.~~ City desires to extract certain supplies of water from the Well during times of water shortage in order to treat and inject the water back into the City’s water supply system.

~~F. District has agreed to assist the City in meeting its water supply needs on a temporary basis upon the terms and conditions of this Agreement. City determined that the temporary use of the District’s Well water is exempt pursuant to the California Environmental Quality Act (“CEQA”) and Title 14, the California Code of Regulations (“CEQA Guidelines”), Section 15269 (c) as an emergency project to prevent or mitigate an emergency.~~

~~E.G. City consulted with a water law attorney and based on such advice, represents and warrants that this Water Sharing Agreement does not violate federal, state or local laws or regulations.~~

NOW THEREFORE, the Parties agree as follows:

2. **TERM.** The primary term of this Agreement shall begin on the Effective Date and remain in effect until October 31, 2021 (“**Primary Term**”) unless both Parties mutually agree to an extension (“**Extended Term**”). All of the provisions of this Agreement shall bind the Parties during any Extended Term. The Primary Term and the Extended Term shall be collectively referred to herein as the “**Term**”.

3. **RIGHTS OF USE.** District grants the City the following rights under this Agreement (collectively, the “**Authorized Use**”):

A. to extract water from the Well for treatment and subsequent injection into the City's existing water supply system on an intermittent basis; and

B. to construct certain temporary improvements to convey water from the Well to temporary treatment facilities on or near the District Property ("**Improvements**"), and add it to the City's water system through a nearby hydrant.

4. **RESTRICTIONS ON USE.** City shall exercise the Authorized Use subject to the following limits and restrictions:

A. Restriction on Use of Water. City agrees to use water from the Well solely within the boundaries of the City, City further agrees to abide by any and all local, state and federal laws governing water use.

B. Operation of Well. District shall operate and maintain the Well at all times.

C. Priority of Use. The Parties agree that the first priority use of water from the Well shall at all times be for reasonable use on District Property. The Parties shall each be entitled to use as much of the water produced by the Well during the Term as they desire as long as there is no interference with any other Party's use or the priority set forth in this section. The Parties agree to work together to equitably schedule the use in order to achieve equitable water distribution consistent with this priority. The Parties further agree that water from the Well under this Agreement shall be used only after the City has exhausted all other reasonably available sources of water, and City agrees to coordinate with District whenever it intend to exercise its rights under this Agreement.

5. **OWNERSHIP AND MAINTENANCE.** District shall ensure that at all times the Well is connected to power sources suitable for use of the pump for extraction of water from the Well. Ownership of the Well shall at all times remain with the District, and District shall at all times maintain the Well. Should any element of the Well require maintenance, repair, or replacement, District shall promptly cause such maintenance, repair, or replacement to occur at District's expense. Ownership of the Improvements shall at all times remain with the City, and City shall at all times maintain the Improvements at its sole cost.

6. **MEASUREMENT.** Prior to extraction of water from the Well, City shall purchase and install a meter capable of measuring and recording City's water use from the Well, at City's sole cost.

7. **PAYMENT.** As consideration for the water pumped and taken by the City under this Agreement, District shall receive a credit on its water bill from the City equal to the amount of water diverted by the City as measured by the meter. City shall provide District with a monthly total of water diverted from the Well under this Agreement.

8. **NON EXCLUSIVE.** District hereby reserves to itself the right to use the District Property for any purposes that will not interfere with the City's exercise of its rights under this Agreement.

Notwithstanding the foregoing, District agrees not to grant any other rights of use in the Well during the Term.

9. **INDEMNIFICATION AND INSURANCE.** City shall fully indemnify, hold harmless, and defend District for any and all liability related to or arising out of the exercise by City of the rights granted under this Agreement, including, without limitation, claims by neighboring landowners related to impacts to their wells. ~~In addition, the Parties each agree to protect, indemnify and hold harmless the others from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon, incurred by, or asserted against any one of the Parties by reason of the actions of the other Party on the District Property.~~ The obligations under this Section 9 shall survive any termination of this Agreement. During the Term, all Parties, at their own cost, shall maintain comprehensive liability and property damage insurance on the District Property in the amount of One Million Dollars (\$1,000,000.00) combined single limit per occurrence. Documentation of all coverage, including additional insured certificates and endorsements, shall be provided to a Party upon request.

10. **NO GUARANTY AS TO QUANTITY.** District does not make any guaranty concerning the quantity or quality of water agreed to be taken under this Agreement or concerning the continuing availability of water in the future as a result of natural causes or regulatory actions by the State of California or any regulatory agency thereof.

11. MISCELLANEOUS.

A. Entire Agreement. This Agreement contains the entire agreement between the Parties relating to the rights herein granted and the obligations herein assumed. Unless otherwise expressly set forth in this Agreement, any oral representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing, signed by the Parties.

B. Remedies for Breach. Because water is a scarce and precious resource, the Parties will not have an adequate remedy at law and thus may request a court of competent jurisdiction to order equitable remedies, to compel the other Party to limit or curtail pumping of water in a manner that violates the terms and conditions of this Agreement. This remedy shall be available whether or not any other remedies available for enforcement of this Agreement are available or pursued.

C. Notice. Any notice or communication required or permitted hereunder shall be in writing and shall be delivered personally, delivered by nationally recognized overnight courier service or sent by certified or registered mail, postage prepaid, or sent by electronic transmission (subject to confirmation of such electronic transmission). Any such notice or communication shall be deemed to have been given (i) when delivered, if personally delivered, (ii) three (3) Business Days after it is deposited with a nationally recognized overnight courier service, if sent by nationally recognized overnight courier service, (iii) the day of sending, if sent by email prior to 5:00 p.m. (PT). or the next succeeding day if sent by email after 5:00 p.m. (PT) or (iv) five (5) days after the date of mailing, if mailed by certified or registered mail, postage prepaid, in each case, to the following address or email address, or to such other address or addresses or email address as

such Party may subsequently designate to the other Parties by notice given hereunder:

District: Fort Bragg Unified School District
Attention: Nancy Klein
312 S Lincoln Street
Fort Bragg, CA 95437
Phone: (707) 961-2850
Email: nklein@sclscal.org

City: City of Fort Bragg
Attention: Tabatha Miller, City Manager
416 North Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Email: tmiller@fortbragg.com

D. Attorney's Fees. In the event a dispute should arise concerning this Agreement resulting in suit or litigation, the prevailing Party shall be entitled to attorneys' fees and reasonable costs.

FORT BRAGG UNIFIED SCHOOL DISTRICT

By: _____
Name: _____
Its: _____

CITY OF FORT BRAGG

By: _____
Name: _____
Its: _____