

**MEMORANDUM OF AGREEMENT
BETWEEN CITY OF FORT BRAGG, FORT BRAGG MUNICIPAL IMPROVEMENT
DISTRICT NO. 1, AND NOYO CENTER FOR MARINE SCIENCE**

This Memorandum of Agreement ("Agreement") is made this 14th day of December, 2015 between the City of Fort Bragg, a California general law city ("City"), the Fort Bragg Municipal Improvement District No. 1, a special district ("District"), and the Noyo Center for Marine Science, a 501(c)3 non-profit corporation ("Noyo Center"), who are referred to collectively herein as "the Parties."

The following is a brief history of the Noyo Center for Marine Science:

- In 2003, the City of Fort Bragg initiated a community-based planning process that identified the establishment of a marine science and education facility on the former Georgia-Pacific mill site as a key community goal for reuse of the site. The marine science and education center was a key economic development strategy and envisioned to serve as a business incubator, educate the public about coastal and marine resources, and attract visitors to Fort Bragg.
- Subsequently, the City obtained a number of economic development grants that funded preparation of a feasibility study, a strategic planning process, and a Detailed Project Program for the Noyo Center for Marine Science.
- Through these planning processes and numerous workshops and meetings regarding the preliminary Mill Site Specific Plan, an area to the south of the Wastewater Treatment Facility (WWTF) and adjacent to the City's Noyo Headlands Park was identified as the appropriate location for the Noyo Center facility. It was seen as an ideal location due to its proximity to the coastal trail and the Noyo Headlands Preserve, an undisturbed and protected coastal promontory where access is restricted for research and Native American uses.
- In 2009, a 73-foot blue whale washed ashore just south of Fort Bragg. The skeleton was buried and then exhumed in 2013. The National Oceanic and Atmospheric Agency (NOAA) authorized the City of Fort Bragg to possess the skeleton for public education and display. Since then, the Noyo Center has acquired several other sea mammal skeletons including a 26-foot Orca.
- In 2010, using funds from a Sustainable Communities Grant, the City hired a design team (Bauer & Wiley/Jones & Jones) to prepare conceptual site plans for the Noyo Center facility.
- In 2011, the City completed the purchase of approximately 11.6 acres from Georgia-Pacific LLC for the Noyo Center with a "repayable grant" from the State Coastal Conservancy that has since been repaid with revenues from the former Fort Bragg Redevelopment Agency.
- In 2013, the City Council funded the Noyo Center Executive Director position and initial startup costs for launching the Noyo Center non-profit organization for a two-year period. The investment was intended to help spin-off the Noyo Center into an independent non-profit organization that could focus on achieving the vision for the Noyo Center for Marine Science.

- In 2014, the Noyo Center non-profit was formed as a public benefit corporation and in early 2015, the Internal Revenue Service recognized its non-profit status under section 501(c)(3) of the Internal Revenue Code.
- The Noyo Center is currently focused on (1) fundraising and planning for the Blue Whale project, organizational development, and the Noyo Center facilities; (2) delivering innovative marine science education curriculum to local students; (3) continuing to develop research partnerships including collaborations with the California Academy of Science and The Marine Mammal Center.

This Agreement is intended to articulate various agreements and understandings that have developed between the Parties as the Noyo Center for Marine Science has evolved from a City-sponsored economic development initiative to a non-profit organization governed by an independent Board of Directors. The Agreement also establishes indemnification and hold harmless provisions and insurance requirements to protect the interests of the Parties.

1. **Term.** This term of this Agreement will commence when fully executed by the Parties, and continue in perpetuity unless and until terminated by one of the Parties. A party wishing to terminate the Agreement must provide the other parties at least thirty (30) days' written notice.
2. **Noyo Center for Marine Science.** The Parties envision the Noyo Center for Marine Science as a self-supporting organization that fosters a greater understanding of science relating to the marine and coastal environments within our community and beyond. The Noyo Center will be the home of an awe-inspiring Blue Whale skeleton and an "Oceanarium" that immerses visitors in the hidden, wondrous and vibrant world of Mendocino's ocean environment. The Noyo Center will provide education programs, citizen-science opportunities and research facilities, and it will be a unique visitor destination.
3. **Noyo Center's Use of Work Product Developed to Date.** The City intends that the Noyo Center may utilize all of the work products and concepts that have been developed to date and that, as the project evolves over time, the Noyo Center Board of Directors may independently define and refine key concepts, priorities, and direction. Noyo Center's use of such work product shall be at its sole risk and the Noyo Center shall indemnify and hold harmless the City from any and all liability, loss, damage, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, claims expenses, attorney's fees and costs and fees of litigation) of every nature, whether actual, alleged or threatened, arising out of or in connection with Noyo Center' use of work product.
4. **Financial Issues.**
 - a. **Grant from the City to Noyo Center, and Noyo Center's Use of Grant Money.**
The adopted FY 2015/16 City of Fort Bragg Operating Budget appropriates \$150,000 from the Waste Management Community Benefit Fund for a grant to the Noyo Center. Upon execution of this Agreement, the funds will be remitted by City to the Noyo Center within 30 days. The Noyo Center agrees that, in its annual budget, as may be amended from time to time, it will clearly identify how funds received from the City will be expended. The Noyo Center will provide a mid-year and an annual report to the City Council that identifies progress towards its goals, and provides a financial overview of the organization. In addition to its regular reports to the City Council, the Noyo Center will, upon request from the City, provide the City an accounting of how funds received from the City are being used.

The Noyo Center will allow the City, its auditors, or third parties designated by City, to review or inspect its financial records. Noyo Center will retain its financial records for at least five (5) years after the creation date of the records.

- b. **Grants Received by City that are Used to Fund the Noyo Center.** The City has two open grant agreements which help fund programs and activities of the Noyo Center: *State Coastal Conservancy grant #13-036 (Noyo Center Blue Whale Interpretive Program)*; and *California Coastal Commission grant #WT-13-35 (Noyo Center Blue Whale Education Program)*. The Parties anticipate that the activities funded by these agreements will be completed by Noyo Center before the end of FY 2015-16, at which times the grants will terminate. Until such time, and because the grant agreements are between the City and the granting agencies, the City will continue to serve as fiscal agent for these grants. The City does not anticipate re-applying for these grants on behalf of the Noyo Center.
5. **Wastewater Treatment Facility (WWTF).** The WWTF is located at 101 W. Cypress Street and owned by the District. As explained elsewhere in this Agreement, the Noyo Center currently utilizes the WWTF for storage of and activities related to its collection of marine mammal specimens. This Agreement memorializes Noyo Center's current and future use and access to the WWTF.
6. **Noyo Center Parcel.** The City owns an approximately 11.6-acre parcel of land that is adjacent to Noyo Headlands Park just south of the WWTF. The City purchased the property from the State Coastal Conservancy with a Repayable Grant, which was reimbursed by tax-increment revenue from the former Fort Bragg Redevelopment Agency. The deed of the property includes restrictive covenants that bind the City and its assigns and successors of interest. The deed restrictions allow use of the property for "the purposes of open space, public access, passive recreation, and marine education and research."

 - a. Noyo Center will have unrestricted access to the property for programs and educational purposes. Noyo Center need not notify the City prior to its use of the property.
 - b. Noyo Center must obtain City permission prior to engaging in any modifications or improvements to the property.
 - c. The City shall retain the right to end or limit Noyo Center's access to the property at any time, with thirty (30) days notice, in writing, to the Noyo Center Executive Director.
 - d. It is the Parties' intention that, in the next 3-7 years, the Noyo Center will, at its own expense (which may include contributions or assistance in fundraising efforts from the City), construct and occupy a marine science and education facility on the property. At that point, the City and Noyo Center shall enter into a long-term lease or transfer of the property. This potential transfer will be the subject of a separate agreement between the Parties.
7. **Noyo Center Specimen Collection and Use of the Wastewater Treatment Facility.** With the help of many community partners, the City obtained the skeleton of a 73-foot Blue Whale that washed ashore just south of Fort Bragg in October of 2009. The Parties envision that the Blue Whale skeleton will be a central exhibit of the Oceanarium at the Noyo Center for Marine Science. Since obtaining the Blue Whale skeleton, the Noyo Center has obtained a 26-foot Orca skeleton, as well as skeletons of several smaller marine mammals.

- a. **Possession.** The National Oceanic & Atmospheric Agency (NOAA) has granted the City of Fort Bragg permission to possess the Blue Whale skeleton for public education and display purposes. It is the intent of the Parties that the Noyo Center will, with the City's support, seek permission from NOAA to possess the skeleton for display at the Noyo Center for Marine Science.
- b. **Bone Storage.** As of November 2015, the Blue Whale skeleton is stored at the WWTF. It is the Parties' intent that the Blue Whale skeleton, as well as any other specimens currently located at the WWTF, or received by the Noyo Center prior to the Noyo Center's ability to secure another appropriate facility, will be relocated to another storage facility as soon as is practicable.
- c. **Specimen Cleaning.** The WWTF is uniquely well-suited for the initial bone-cleaning activities for the Noyo Centers specimen collection. The City/District thus agree to permit the Noyo Center to utilize the WWTF premises for any necessary cleaning or repairing of the Blue Whale skeleton, or any other specimen agreed to in advance by the Parties.
- d. **Access to WWTF.** Noyo Center staff, contractors and volunteers may access the WWTF during normal working hours (Monday-Friday, 8 AM-5 PM) for the purposes of cleaning or repairing bones, tending to bones that are stored at the WWTF, or any other purpose articulated in this Agreement. If access is needed after-hours or on weekends, the Noyo Center Director will notify the City/District Operations Manager in advance. Noyo Center access to the WWTF shall be restricted to areas where the bones are stored and/or cleaned.
- e. **Educational Programs at the WWTF.** Noyo Center may conduct on-site educational programs involving any specimens stored at the WWTF during the time that the specimens are stored at the WWTF. Logistics and specific measures to ensure participant safety are subject to approval by the Public Works Operations Manager and must be submitted by Noyo Center at least two weeks in advance of the date of the proposed program. The Noyo Center will ensure that all program participants who enter the WWTF site sign the City/District "General Release and Waiver of Liability" form. Such forms for participants who are under the age of 18 must be signed by a parent or legal guardian.
- f. **Use of Equipment.** The Blue Whale bones are presently stored on shelving in a garage at the WWTF. Certain areas outside of the garage are currently utilized for the temporary storage and cleaning of other items in the specimen collection. The City/ District own heavy equipment that is located at the WWTF, such as a forklift and high pressure washer. The Parties agree that Noyo Center personnel who have received the appropriate training may operate City/District equipment to assist with bone storage and cleaning operations. Noyo Center personnel may only operate equipment with the advance authorization of the Operations Manager, and in accordance with procedures established by the Operations Manager. Noyo Center personnel will also coordinate use of the equipment with the Operations Manager in advance. The Operations Manager may revoke permission to use equipment at any time.
- g. **Blue Whale Bone Degreasing.** Noyo Center intends to degrease the Blue Whale bones using a specialized "mobile degreasing unit" beginning in 2016. City/District will allow the bone degreasing process to occur at the WWTF or on the City's Noyo Center parcel. All logistics regarding placement and operation of the mobile degreasing unit, including temporary access to utilities, payment for utilities, and

obtaining required permits and approvals from other agencies, shall be addressed through the issuance of an encroachment permit for the temporary use of City/District property. The Noyo Center will apply for an encroachment permit separate from this Agreement. All costs associated with degreasing the bones, including renting or leasing the mobile degreasing unit, shall be the sole responsibility of Noyo Center.

- 8. Visitor Center Building ("Chalet").** The City has acquired the former Georgia-Pacific Visitor Center building (also known as the "Chalet") for use as a visitor facility for the Coastal Trail and/or Noyo Center. The Chalet has been moved to a location on the City's Noyo Headlands Park property adjacent to the Noyo Center site. It is the Parties' intent that the Chalet will be used by the Noyo Center as a visitor center and for educational and administrative purposes. Separate from this Agreement, the Parties intend to negotiate a Lease Agreement to address the occupancy and use of the Chalet by Noyo Center, including payment for utilities and any improvements Noyo Center makes to the Chalet.
- 9. Noyo Center Employees and Contractors.** The Parties agree that Noyo Center employees are not serving as employees or agents of the City/District, nor are persons who serve as contractors to the Noyo Center serving as employees or agents of the City/District. Noyo Center is solely responsible for the payment of its employees and contractors and for payment of any taxes or benefits incurred or required under federal or state law.
- 10. Indemnification and Hold Harmless.** To the maximum extent permitted by law, Noyo Center agrees to indemnify, defend with counsel acceptable to the City/District (which acceptance will not be unreasonably withheld), and hold harmless City/District and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, claims expenses, attorney's fees and costs and fees of litigation) of every nature, whether actual, alleged or threatened, arising out of or in connection with the Noyo Center, including without limitation its officers, officials, employees, agents, subcontractors, or volunteers, that arise as a result of or are related to the actions taken or activities contemplated by this Agreement.

Likewise, the City/ District agree to indemnify, defend with counsel acceptable to the Noyo Center (which shall not be unreasonably withheld), and hold harmless the Noyo Center and its officials, employees, agents and volunteers, from any claims arising out of City/District activities at the WWTF or Noyo Center Parcel that are unrelated to or do not involve the Noyo Center, as well as conditions on the WWTF or the Noyo Center Parcel that are solely within the City and/or District's control, and do not involve the Noyo Center.
- 11. Insurance.** The Parties agree that, for as long as Noyo Center uses City/District-owned property, facilities and /or equipment, Noyo Center shall maintain the following insurance coverages:

 - a. Noyo Center, at its own cost and expense, must maintain commercial general liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, TWO MILLION DOLLARS (\$2,000,000.00) aggregate, combined single limit coverage for risks associated with activities undertaken in accordance with this Agreement. If a Commercial General Liability Insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the activities

undertaken in accordance with this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement. All insurance coverages required pursuant to this Agreement must include or be endorsed to include the following:

- i. City/District and its officials, officers, employees, agents, and volunteers ("Additional Insured") shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Noyo Center and premises owned, occupied, or used by Noyo Center. The coverage may contain no special limitations on the scope of protection afforded to City/District or its officials, officers, employees, agents, or volunteers.
- b. The Additional Insured coverage under the Noyo Center's policy shall be "primary and non-contributory" and Noyo Center's coverage will not seek contribution from the City/District insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.
- c. The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City/District (if agreed to in a written contract or agreement) before the City/District insurance or self-insurance shall be called upon to protect it as a named insured.
- d. Insurance coverage required pursuant to this Agreement must include or be endorsed to include the following:
 - i. Any failure of Noyo Center to comply with reporting provisions of the policy shall not affect coverage provided to City/District and its officers, employees, agents, and volunteers.
 - ii. Required insurance coverage may not be suspended, voided, canceled, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City/District.
- e. All insurance required under this Agreement must be placed with insurers with a Best's rating of no less than A:VII unless otherwise approved by the City/District.
- f. The City/District may approve a variation in the foregoing insurance requirements, upon a determination that the coverages, scope, limits, and forms of such insurance are either not commercially available, or that the City/District's interests are otherwise fully protected.
- g. All self-insured retentions (SIR) must be disclosed to City/District for approval and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or the City/District. City/District reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

12. Notices. Any notice, consent, authorization or other communication to be given shall be in writing and deemed duly given and received when (a) delivered personally, (b) transmitted by facsimile or email, (c) one business day after being deposited for next-day delivery with a nationally recognized overnight delivery service, or (d) three business days after being mailed by first class mail, and in all cases properly addressed to the party to receive such notice.

Notices to the City/District shall be addressed as follows:

City/District Manager
City of Fort Bragg
416 N. Franklin Street
Fort Bragg, CA 95437
Email address: LRuffing@fortbragg.com

with a copy sent to:

City Clerk/District Secretary
City of Fort Bragg
416 N. Franklin Street
Fort Bragg, CA 95437
Email address: JLemos@fortbragg.com

Notice to the Noyo Center shall be addressed as follows:

Noyo Center Executive Director
PO Box 1321
Fort Bragg, CA 95437
Email address: Sheila@noyocenter.org

with a copy sent to:

Noyo Center Board Chair
PO Box 1321
Fort Bragg, CA 95437
Email address: DAlden@mcn.org

13. Miscellaneous Provisions.

- a. No Assignments or Transfers.** Noyo Center may not assign, transfer, encumber or hypothecate its rights or obligations under this Agreement without the express written consent of City, which may be withheld in City's sole and absolute discretion. Any unpermitted assignment or transfer or pledge, or any attempt to do so, shall not confer any rights upon the purported assignee or transferee and shall constitute Noyo Center's immediate and incurable material default of this Agreement, and City may, without providing Noyo Center notice or opportunity to cure, immediately terminate the Agreement.
- b. Integration and Amendment.** This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations or agreements, whether written or oral. If a discrepancy, disagreement, ambiguity, inconsistency or difference in interpretation of terms

arises as to terms or provisions of this Agreement and any Exhibit(s) attached to this Agreement, this Agreement shall control and shall be deemed to reflect the intent of the Parties with respect to the subject matter herein. This Agreement may only be amended by a writing signed by a representative authorized to bind the Noyo Center and a representative authorized to bind the City/District.

- c. **Applicable Law and Venue.** The laws of the State of California shall govern the rights, obligations, duties and liabilities of the Parties to this Agreement and the interpretation of this Agreement. Any action or proceeding that is initiated or undertaken to enforce or interpret any provision, performance, obligation or covenant set forth in this Agreement shall be brought in a state court in Mendocino County.
- d. **Severability.** If a court of competent jurisdiction finds or rules, or if the Parties so agree, that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged or determined will remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

Noyo Center for Marine Science

By: 
David Alden, Board Chair


Date: 12/15/2015

City of Fort Bragg

By: 
Linda Ruffing, City Manager

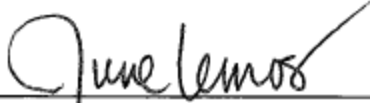
Date: 12.16.15

Fort Bragg Municipal Improvement District No. 1

By: 
Linda Ruffing, District Manager

Date: 12.16.15

ATTEST:



June Lemos
City Clerk/District Secretary

APPROVED AS TO FORM:

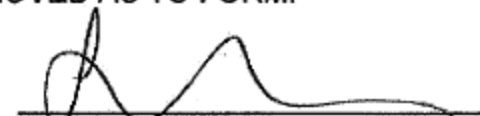
By: see attached
Samantha W. Zutler, City Attorney

ATTEST:

June Lemos
City Clerk/District Secretary

APPROVED AS TO FORM:

By:



Samantha W. Zutler, City Attorney