

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF FORT BRAGG AND NOYO HARBOR DISTRICT
REGARDING TRANSFER OF DREDGE SANDS**

This Agreement is made and entered into on this ____ day of July 2016, by and between the City of Fort Bragg, a municipal corporation (“City”) and the Noyo Harbor District, a Port district formed pursuant to California Harbors and Navigation Code sections 6210-6233 (“District”), collectively referred to as the “Parties.”

WHEREAS, the Noyo Harbor District desires to remove dredge material from the Noyo Harbor dredge material holding site, approximately 16,000 cubic yards of which the District desires to transfer to the City (“Dredge Sands”);

WHEREAS, the City desires to accept the Dredge Sands for restoration on its Fort Bragg Coastal Trail Property (“Coastal Trail Property”);

WHEREAS, Regional Water Quality Control Board approval is required to transfer the subject Dredge Sands to the City’s Coastal Trail Property. The District bears responsibility for securing a letter of approval from the North Coast Regional Water Quality Control Board authorizing placement of Dredge Sands on the Coastal Trail Property in the area described in Exhibit “A”.

NOW, THEREFORE, in consideration of the promises and covenants contained in this Agreement, the City and District agree as follows:

1. Recitals. The above recitals are true and correct and serve in part as a basis for this Agreement.
2. Obligations of Parties.
 - a. Noyo Harbor District Obligations.
 1. Coastal Development Permit. The District shall install and follow all Special Conditions regarding dust control, best management practices (“BMPs”), stockpiling height and extent, and air quality as required by the Coastal Development Permit for the placement of the Dredge Sands on the Coastal Trail Property.
 2. Removal and Delivery. The District shall retain full responsibility for removal and storage of the Dredge Sands until delivery to the Coastal Trail Property and installation of all BMPs is complete. District shall complete removal, delivery, and installation of BMPs at its sole expense.
 3. Days and Hours of Activity. The District shall complete all loading and transport activities between the hours of 8:00 a.m. and 5:00 p.m. on Monday through Friday. Hauling activity is expected to take approximately 4 weeks. Depending on conditions, weather and permitting status, the delivery is anticipated to commence and be completed during the July – August 2016 time period. The materials will be deposited on the Coastal Trail Property in the

quantities and in the locations generally indicated on Attachment A, and as specified by the City's staff at the time of delivery. The materials will be deposited in piles at appropriate intervals in the areas requiring restoration so that the materials can be spread by the City's contractors to a uniform depth.

4. Fueling. No transport equipment shall re-fuel on the Coastal Trail Property. The District shall conduct all re-fueling activities for loading equipment off of the City's property, and will install proper spill response and protection in the re-fueling area.

5. Transport Route. The District shall transport all Dredge Sands to the Coastal Trail Property via the route indicated on Exhibit B. The District shall be responsible for repair of road infrastructure required as a result of transport of the Dredge Sands.

6. Dust Control. The District shall implement the dust control practices specified in the grading permit at all times during the transport of the Dredge Sands to the Coastal Trail Property.

7. Speed Control. Travel speeds shall be limited to fifteen miles per hour (15 mph) during all transport activities, with the exception of transport on Highway 1, where travel speeds shall be limited to the designated speed limit.

8. Wind Conditions. All transport activities shall stop if wind speeds exceed twenty miles per hour (20 mph) in order to reduce wind-borne dust.

9. Delivery of Material. The District shall deliver the Dredge Sands to the specific locations identified in Exhibit A. All Dredge Sands shall be placed in piles no greater than eight (8) feet in height and shall be distributed around the site.

10. Tipping Fee. The District shall pay the City \$10.00 per cubic yard of for materials delivered as a tipping fee.

b. City of Fort Bragg Obligations.

1. Acceptance of Dredge Sands. The City agrees to accept the Dredge Sands and to use the materials for coastal restoration consistent with permits and approvals for the Fort Bragg Coastal Trail Project.

2. Site Access. The City will grant access to the Coastal Trail Property for the purpose of transportation and deposition of materials (Exhibit B).

3. Grading Plan and Final Grading Activities. The City of Fort Bragg (or its contractors) will prepare and implement the final grading plan for the Fort Bragg Coastal Trail. The City of Fort Bragg (or its contractors) will be responsible for all reseeded and final BMP's after final grading of the Dredge Sands on the Fort Bragg Coastal Trail Property.

3. Indemnification. To the maximum extent permitted by law, the District shall, at its own expense, indemnify, defend with counsel acceptable to the City (which acceptance will not be

unreasonably withheld), and hold harmless the City and its officers, officials, employees, agents and volunteers (“Indemnitees”) 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) (collectively, “Liability”) of every nature, whether actual, alleged or threatened, arising out of or in connection with the District’s failure to comply with any of the terms of this Agreement. The District must respond within thirty (30) calendar days to any tender for defense and indemnity by the City, unless the time for responding is extended by an authorized representative of the City in writing.

The District waives any and all rights to express or implied indemnity against the Indemnitees concerning any Liability of the District arising out of or in connection with the obligations identified in Section 2 or the District’s failure to comply with any of the terms of this Agreement.

4. Insurance. Before commencing performance of this Agreement, the District shall furnish the City with original endorsements effecting coverage for Comprehensive General Liability insurance. The endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf, and the endorsements shall be on forms acceptable to the City. At the City's discretion, the City may require complete, certified copies of the required insurance policies, including endorsements affecting the coverage required by this Section. If the City requests, the District shall provide one copy of the policy to the City, and additional copies if requested in writing, certified by an authorized representative of the insurer. Approval of the insurance by the City shall not relieve or decrease any liability of the District.

The insurance shall include, but shall not be limited to, protection against claims arising from death, bodily or personal injury, or damage to property resulting from actions, failures to act, or operations of the insured, or by its employees or agents, or by anyone directly or indirectly employed by the insured. The amount of insurance coverage shall not be less than one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) aggregate.

5. Miscellaneous Provisions.

a. Entire Agreement. This Agreement constitutes the entire agreement between the parties and no modification shall be effective unless and until such modification is evidenced by a writing signed by both Parties to this Agreement. There are no understandings, agreements, conditions, representations, warranties, or promises with respect to this Agreement except those contained in or referred to in this Agreement.

b. Notices. All notices given under this Agreement shall be in writing and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail, postage prepaid, addressed to the Parties as follows:

City: City of Fort Bragg
Attn: City Manager
416 N. Franklin Street
Fort Bragg, CA 95437

District: Noyo Harbor District
Attn: Harbormaster
19101 South Harbor Drive
Fort Bragg, CA 95437

c. Applicable Law. This Agreement shall be interpreted and governed by the laws of the State of California, and any action arising out of this Agreement shall be brought in Mendocino County, California.

d. Construction. Each party has had an equal opportunity to review this Agreement, with the input of legal counsel. Therefore, the usual construction of agreements against the drafting party shall not apply.

e. Dispute Resolution. The Parties agree to make a good faith attempt to resolve any dispute arising out of this Agreement through mediation prior to commencing litigation. The Parties shall mutually agree upon the mediator and shall divide the costs of mediation equally.

f. Successors and Assigns. None of the Parties may transfer or assign its rights or obligations under this Agreement, in part or in whole, without the other Party's prior written consent. The terms and provisions of this Agreement shall extend to and be binding upon and inure to the benefit of the successors and permitted assigns of the Parties.

g. Severability. In the event that any provision herein is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect.

6. Incidental Beneficiaries. This Agreement is for the sole benefit of the Parties and there are no third party beneficiaries of this Agreement. It is expressly understood and agreed that the enforcement of these terms and conditions shall be reserved to the City and the District. Nothing contained in this Agreement shall provide or allow any claim or right of action whatsoever by any third party. It is the intent of the City and the District that any such person or entity, other than the City and the District, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary.

7. Termination. Any Party, at any time during the term of this Agreement, shall have the right to terminate the Agreement in the event of a breach of the obligations identified in Section 2 or upon failure to obtain necessary permits. Such termination shall require thirty (30) days prior written notice to the other Party, during which time the breaching party may attempt to cure the breach. From and after the effective date of termination all rights and obligations the Parties have with respect to one another shall cease, except for those rights and obligations set forth in Sections 3 and 4 and this Section 7.

Executed by an authorized representative of each Party as of the day and year first above written:

CITY OF FORT BRAGG

By: _____
Linda Ruffing, City Manager

NOYO HARBOR DISTRICT

By: Justin Pyorre
Its: Justin Pyorre, Harbormaster

ATTEST

June Lemos, City Clerk

APPROVED AS TO FORM

Samantha W. Zutler, City Attorney

EXHIBIT A
GENERAL DEPOSITION LOCATION
 Red line-Sand disposition areas

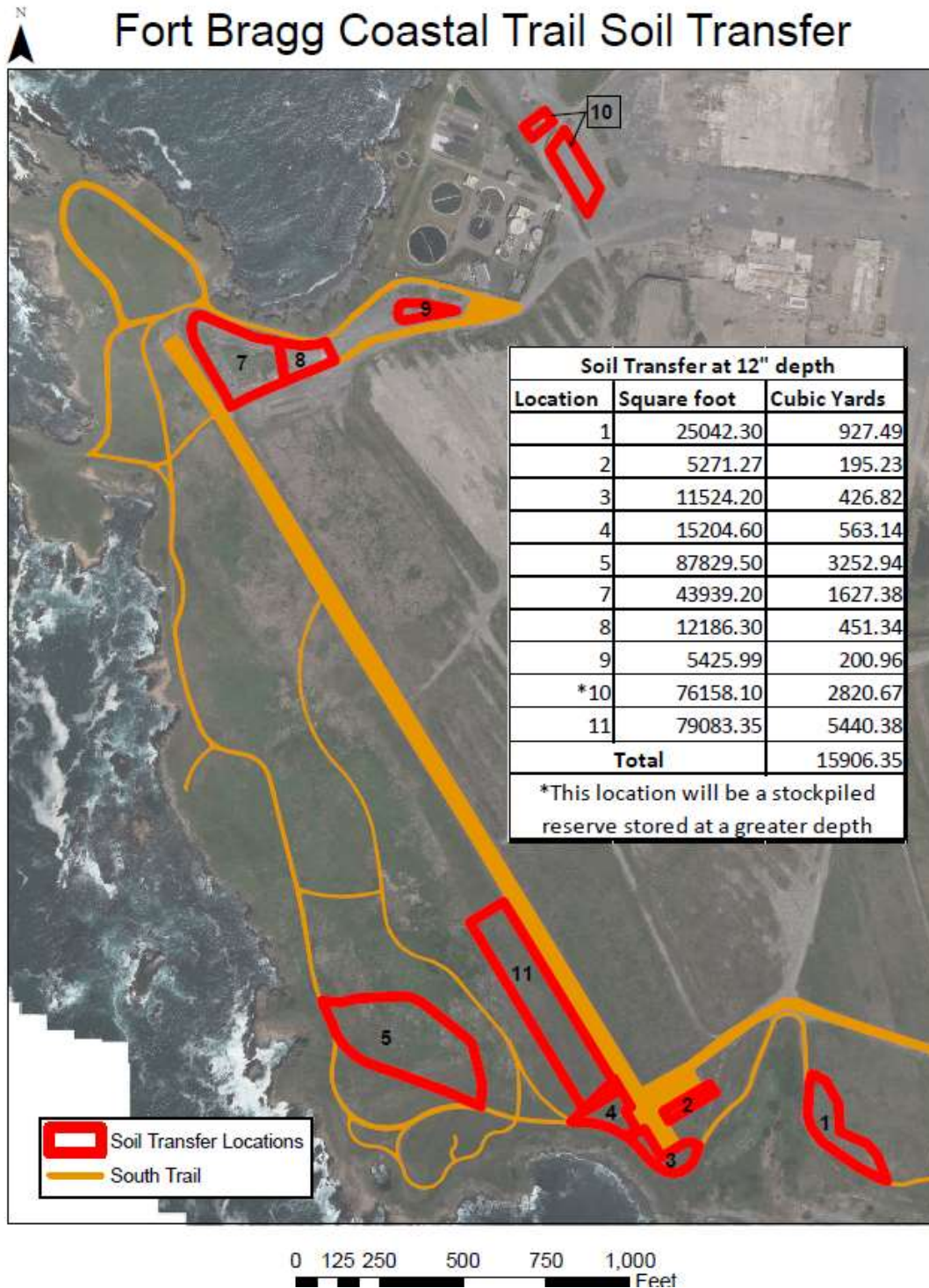


EXHIBIT B: TRANSPORT ROUTE

