



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

## Meeting Agenda City Council

**THE FORT BRAGG CITY COUNCIL MEETS CONCURRENTLY  
AS THE FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT  
NO. 1 AND THE FORT BRAGG REDEVELOPMENT SUCCESSOR  
AGENCY**

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Monday, November 22, 2021

6:00 PM

Via Video Conference

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**AMENDED**

### CALL TO ORDER

### PLEDGE OF ALLEGIANCE

### ROLL CALL

### PLEASE TAKE NOTICE

*Due to state and county health orders and to minimize the spread of COVID-19, City Councilmembers and staff will be participating in this meeting via video conference. The Governor's executive Orders N-25-20, N-29-20, and N-15-21 suspend certain requirements of the Brown Act and allow the meeting to be held virtually.*

*The meeting will be live-streamed on the City's website at <https://city.fortbragg.com/> and on Channel 3. Public Comment regarding matters on the agenda may be made by joining the Zoom video conference and using the Raise Hand feature when the Mayor or Acting Mayor calls for public comment. Any written public comments received after agenda publication will be forwarded to the Councilmembers as soon as possible after receipt and will be available for inspection at City Hall, 416 N. Franklin Street, Fort Bragg, California. All comments will become a permanent part of the agenda packet on the day after the meeting or as soon thereafter as possible, except those written comments that are in an unrecognized file type or too large to be uploaded to the City's agenda software application. Public comments may be submitted to City Clerk June Lemos at [jlemos@fortbragg.com](mailto:jlemos@fortbragg.com).*

### ZOOM WEBINAR INVITATION

*You are invited to a Zoom webinar.*

*When: Nov 22, 2021 06:00 PM Pacific Time (US and Canada)*

*Topic: City Council Meeting*

*Please click the link below to join the webinar:*

*<https://us06web.zoom.us/j/87424699398>*

*Or Telephone:*

*US: +1 253 215 8782 or +1 346 248 7799 (\*6 mute/unmute; \*9 raise hand)*

*Webinar ID: 874 2469 9398*

**TO SPEAK DURING PUBLIC COMMENT PORTIONS OF THE AGENDA VIA ZOOM, PLEASE JOIN THE MEETING AND USE THE RAISE HAND FEATURE WHEN THE MAYOR OR ACTING MAYOR CALLS FOR PUBLIC COMMENT ON THE ITEM YOU WISH TO ADDRESS.**

### AGENDA REVIEW

## **1. MAYOR'S RECOGNITIONS AND ANNOUNCEMENTS**

## **2. PUBLIC COMMENTS ON: (1) NON-AGENDA, (2) CONSENT CALENDAR & (3) CLOSED SESSION ITEMS**

*MANNER OF ADDRESSING THE CITY COUNCIL: All remarks and questions shall be addressed to the City Council; no discussion or action will be taken pursuant to the Brown Act. No person shall speak without being recognized by the Mayor or Acting Mayor. Public comments are restricted to three (3) minutes per speaker.*

*TIME ALLOTMENT FOR PUBLIC COMMENT ON NON-AGENDA ITEMS: Thirty (30) minutes shall be allotted to receiving public comments. If necessary, the Mayor or Acting Mayor may allot an additional 30 minutes to public comments after Conduct of Business to allow those who have not yet spoken to do so. Any citizen, after being recognized by the Mayor or Acting Mayor, may speak on any topic that may be a proper subject for discussion before the City Council for such period of time as the Mayor or Acting Mayor may determine is appropriate under the circumstances of the particular meeting, including number of persons wishing to speak or the complexity of a particular topic. Time limitations shall be set without regard to a speaker's point of view or the content of the speech, as long as the speaker's comments are not disruptive of the meeting.*

*BROWN ACT REQUIREMENTS: The Brown Act does not allow action or discussion on items not on the agenda (subject to narrow exceptions). This will limit the Council's response to questions and requests made during this comment period.*

## **3. STAFF COMMENTS**

## **4. MATTERS FROM COUNCILMEMBERS**

## **5. CONSENT CALENDAR**

*All items under the Consent Calendar will be acted upon in one motion unless a Councilmember requests that an individual item be taken up under Conduct of Business.*

- 5A. [21-585](#)** Adopt City Council Resolution Authorizing City Manager to Execute Budget Amendment No. 2022-11 to Appropriate Funds to Incorporate Alley Pavement Conditions Evaluation into the Annual Pavement Management Program Update Transferring Funds From Fund 250 to the Streets Maintenance Department Professional Services (Account 110-4520-0319) for a Total Contract Amount Not to Exceed \$11,200.00

**Attachments:** [RESO PMP to Add Alleys BA No.#](#)

[Att 1 - RESO Ex A - Amendment 2022-11](#)

[Att 2 - MCOG-NCE Contract Amendment](#)

[Att 3 - MCOG Work Program Element 10 FY20-21](#)

- 5B. [21-588](#)** Adopt City Council Resolution Continuing the Temporary Waiver of the City of Fort Bragg General Plan Maintenance Fee

**Attachments:** [RESO General Plan Maintenance Fee Waiver](#)

- 5C. [21-589](#)** Approve Scope of Work for Request for Proposals for Professional Services to Conduct Analysis Regarding the City's General Plan Maintenance Fee

**Attachments:** [RFP - General Plan Maintenance Fee Study](#)

- 5D.** [21-591](#) Adopt City Council Resolution Authorizing Application Submittal to United States Environmental Protection Agency for Targeted Brownfield Assessment Funds
- Attachments:** [RESO EPA Grant Application](#)  
[Att 1 - EPA Brownfield Program](#)
- 5E.** [21-593](#) Adopt City Council Resolution Making the Legally Required Findings to Continue to Authorize the Conduct of Remote "Telephonic" Meetings During the State of Emergency
- Attachments:** [RESO Authorize Continued Remote Meetings](#)
- 5F.** [21-594](#) Adopt City Council Resolution Confirming the Continued Existence of a Local Emergency in the City of Fort Bragg
- Attachments:** [RESO Declaring Continuing Local Emergency](#)
- 5G.** [21-602](#) Adopt City Council Resolution Approving the Four Applications for Funding and Execution of Agreements and Any Amendments Thereto from the United States Department of Agriculture's Community Facility Grants Program
- Attachments:** [RESO Agriculture Grant Program](#)
- 5H.** [21-603](#) Adopt City Council Resolution Approving an Agreement with Regional Government Services (RGS) to Conduct a Classification and Compensation Study and Authorizing the City Manager to Execute Contract (Total Amount Not to Exceed \$34,900; Account No. 110-4130-0319) and Approving Budget Amendment No. 2022-13
- Attachments:** [RESO RGS Class & Comp Study](#)  
[RESO Ex A - Budget Amendment 2022-13](#)  
[RGS Class & Comp Study Contract](#)
- 5I.** [21-606](#) Adopt Joint City Council/Municipal Improvement District Resolution Approving Budget Amendment 2022-12 to the Fiscal Year 2021-2022 Budget
- Attachments:** [RESO Budget Amendment 2022-12](#)  
[Exhibit A Budget Amendment 2022-12](#)
- 5J.** [21-590](#) Approve Minutes of November 8, 2021
- Attachments:** [CCM2021-11-08](#)
- 5K.** [21-612](#) Approve City Council Letter in Opposition to Mendocino Railway U.S. Department of Transportation Railroad Rehabilitation & Improvement Financing Loan
- Attachments:** [11-22-2021 Skunk Train](#)  
[Public Comment 5K](#)
- 5L.** [21-610](#) Adopt City Council Resolution Approving Professional Services Agreement for the Preparation of a Preliminary Engineering Report (35%) to Establish

Municipal Broadband Utility Serving Fort Bragg and Authorizing City Manager To Execute Contract (Amount Not to Exceed \$38,000; Account No. 110-4130-0319)

**Attachments:** [RESO Broadband PER](#)

[Att 1 - Scope of Work](#)

[Public Comment 5L](#)

## **6. DISCLOSURE OF EX PARTE COMMUNICATIONS ON AGENDA ITEMS**

## **7. PUBLIC HEARING**

*When a Public Hearing has been underway for a period of 60 minutes, the Council must vote on whether to continue with the hearing or to continue the hearing to another meeting.*

## **8. CONDUCT OF BUSINESS**

- 8A.** [21-595](#) Receive Report and Consider Adoption of City Council Resolution Approving a 10-year Solid Waste Franchise Agreement with Redwood Waste Solutions, Inc. (dba C&S Waste Solutions) and Authorizing the City Manager to Execute and Implement the Agreement

**Attachments:** [1222021 Approve SW Franchise Agreement w Redwood](#)

[Att. 1 - RESO Redwood SW Franchise](#)

[Att. 2 - Solid Waste Franchise Agr - FINAL](#)

[Att. 3 - Exhibits - Fort Bragg Franchise - FINAL](#)

[Att. 4 - CEQA Exemption memo](#)

[Att. 5 - CEQA Checklist](#)

[Public Comment 8A](#)

## **9. CLOSED SESSION**

- 9A.** [21-607](#) CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION: Significant exposure to litigation pursuant to Paragraph (2) of Subdivision (d) of California Government Code Section 54956.9: One (1) Potential Case: Claim from Jacob Patterson, Intentional or Negligent Interference with Prospective Economic Relations; Intentional Interference with Contractual Relations; Inducing Breach of Contract; Defamation; False Light, Invasion of Privacy; Intentional or Negligent Infliction of Emotional Distress; Disability Discrimination; Retaliation; Failure to Prevent Harassment, Discrimination, or Retaliation; and Violation of Civil Rights, including Failure to Train Subordinate City Staff
- 9B.** [21-604](#) PUBLIC EMPLOYMENT: Pursuant to Government Code 54957(b). Title: City Manager
- 9C.** [21-611](#) CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION; Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9 of the Government Code: (one case)



**ADJOURNMENT**

*The adjournment time for all Council meetings is no later than 10:00 p.m. If the Council is still in session at 10:00 p.m., the Council may continue the meeting upon majority vote.*

**NEXT REGULAR CITY COUNCIL MEETING:  
6:00 P.M., MONDAY, DECEMBER 13, 2021**

STATE OF CALIFORNIA        )  
  )ss.  
COUNTY OF MENDOCINO    )

I declare, under penalty of perjury, that I am employed by the City of Fort Bragg and that I caused this Amended agenda to be posted in the City Hall notice case on November 19, 2021.

\_\_\_\_\_  
June Lemos, CMC  
City Clerk

**NOTICE TO THE PUBLIC:**

**DISTRIBUTION OF ADDITIONAL INFORMATION FOLLOWING AGENDA PACKET DISTRIBUTION:**

- *Materials related to an item on this Agenda submitted to the Council/District/Agency after distribution of the agenda packet are available for public inspection upon making reasonable arrangements with the City Clerk for viewing same during normal business hours.*
- *Such documents are also available on the City of Fort Bragg's website at <https://city.fortbragg.com> subject to staff's ability to post the documents before the meeting.*

**ADA NOTICE AND HEARING IMPAIRED PROVISIONS:**

*It is the policy of the City of Fort Bragg to offer its public programs, services and meetings in a manner that is readily accessible to everyone, including those with disabilities. Upon request, this agenda will be made available in appropriate alternative formats to persons with disabilities.*

*If you need assistance to ensure your full participation, please contact the City Clerk at (707) 961-2823. Notification 48 hours in advance of any need for assistance will enable the City to make reasonable arrangements to ensure accessibility.*

*This notice is in compliance with the Americans with Disabilities Act (28 CFR, 35.102-35.104 ADA Title II).*



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
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## Text File

File Number: 21-585

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**Agenda Date:** 11/22/2021

**Version:** 1

**Status:** Consent Agenda

**In Control:** City Council

**File Type:** Resolution

**Agenda Number:** 5A.

Adopt City Council Resolution Authorizing City Manager to Execute Budget Amendment No. 2022-11 to Appropriate Funds to Incorporate Alley Pavement Conditions Evaluation into the Annual Pavement Management Program Update Transferring Funds From Fund 250 to the Streets Maintenance Department Professional Services (Account 110-4520-0319) for a Total Contract Amount Not to Exceed \$11,200.00

Mendocino Council of Governments (MCOG) updates the Pavement Management Program (PMP) Report approximately every three years. The PMP is a report that analyzes the pavement conditions of existing City streets and uses a software to assess the adequacy of projected revenues to meet the maintenance needs for City streets. The PMP has historically only included streets and not alleys. The last time an inventory of alleyway pavement was completed was 2011. City staff then used two different reports to determine the most critical pavement needs and program projects (the PMP and the Alley Master Plan). This is particularly challenging since the PMP excludes the alleys which are the portions of pavement in the worst condition. Incorporating the alleys into the City's PMP will provide a one-stop resource for street paving decision making. The costs associated with adding alleyways exceeds the existing funding budgeted by MCOG for this project. MCOG has hired Nichols Consulting Engineers, Chtd. (NCE) to prepare the revised PMP. MCOG will continue to implement and manage the contract directly with NCE and collect the additional funds from the City after they have been invoiced.

**RESOLUTION NO. \_\_\_\_ - 2021**

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL**

**APPROVING BUDGET AMENDMENT NO. 2022-11 TO APPROPRIATE FUNDS TO INCORPORATE ALLEY PAVEMENT CONDITIONS EVALUATION INTO THE ANNUAL PAVEMENT MANAGEMENT PROGRAM UPDATE TRANSFERRING FUNDS FROM FUND 250 TO THE STREETS MAINTENANCE DEPARTMENT PROFESSIONAL SERVICES (ACCOUNT 110-4520-0319) FOR A TOTAL CONTRACT AMOUNT NOT TO EXCEED \$11,200.00**

**WHEREAS**, under the annual Transportation Planning Program, Annual Work Program (OWP) Element 10, Mendocino Council of Governments (MCOG) allocates funding for and manages the consultants who perform a triennial update to the County's, City of Ukiah's, City of Willits', and City of Fort Bragg's Pavement Management Program (PMP) to provide a systematic method for determining roadway pavement maintenance, rehabilitation and reconstruction needs; and

**WHEREAS**, Development of Pavement Management Systems was initially funded in the FY 1995/96 Work with Triennial updates funded in subsequent work program years; and

**WHEREAS**, the most current version of the City's PMP was published in August of 2017; and

**WHEREAS**, the PMP is a report that analyzes the pavement conditions of City Streets and uses software to map and assess the adequacy of projected revenues to meet the maintenance needs for the City's streets; and

**WHEREAS**, MCOG has hired Nichols Consulting Engineers, Chtd. (NCE) to prepare this year's PMP; and

**WHEREAS**, the PMP has historically only included streets and not alleys; and

**WHEREAS**, City Council approved resolution 937-80 on June 23, 1980 designating alleys as City Streets; and

**WHEREAS**, the 2011 Alley Master Plan is the most recent inventory of the pavement conditions on City alleys; and

**WHEREAS**, having one tool which includes all pavement assets incorporated into a single study will streamline staff's analysis and decision making for selecting the most cost effective programming for maintaining the street infrastructure; and

**WHEREAS**, based on all the evidence presented, the City Council finds as follows:

1. The foregoing recitals are true and correct and are made a part of this Resolution.
2. Adding Alleys to the Pavement Management Program will streamline processes for selecting and programming pavement projects.
3. Sufficient funds to cover the additional costs associated with this budget amendment are available in Fund 250.
4. MCOG and its consultant NCE, agrees to complete the additional work in the amount of the Budget Amendment.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Fort Bragg does hereby approve Budget Amendment No. 2022-11 attached hereto as Exhibit A for the increased costs associated with adding alleys as part of the Pavement Management Program and authorizes the City Manager to execute the same (Amount Not to Exceed \$11,200.00; transfer from Fund 250).

**The above and foregoing Resolution was introduced by Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 22<sup>nd</sup> day of November, 2021, by the following vote:**

**AYES:  
NOES:  
ABSENT:  
ABSTAIN:  
RECUSED:**

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**BERNIE NORVELL**  
Mayor

**ATTEST:**

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**June Lemos, CMC**  
City Clerk



# MENDOCINO COUNCIL OF GOVERNMENTS

## AMENDMENT and EXTENSION of PROFESSIONAL SERVICES AGREEMENT

### Pavement Management Program Update and GIS Linkage Update in Mendocino County

This first **Amendment** of the Professional Services Agreement between the Mendocino Council of Governments, hereinafter referred to as "**MCOG**" and **NCE**, hereinafter referred to as "**Consultant**," effective March 19, 2021, is now entered into effective August 13, 2021, by and between **MCOG** and **Consultant**.

#### WHEREAS:

- The Professional Services Agreement ("Agreement") expires on September 30, 2021;
- MCOG requires additional services beyond the agreed scope of work; and
- The Agreement allows for additional services by mutual written Amendment;

**MCOG** and **Consultant** agree to the following amendments:

#### 1. WORK TO BE PERFORMED

**Consultant** agrees to provide additional services, tasks and products detailed in the Scope of Work dated June 24, 2021 between **MCOG** and **Consultant**, added to Exhibit B and incorporated herein by reference:

##### City of Fort Bragg Alleys:

- Alley Inventory Set-up
- Conduct Walking Survey
- Data Input
- GIS Update

Except as noted herein, all **Consultant** services are to be performed under the same terms and conditions as identified in the original Agreement.

#### 2. PAYMENT FOR SERVICES

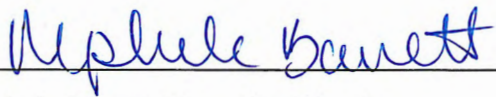
Compensation for additional services provided shall be added to the Agreement in the amount of \$11,200, increasing the not-to-exceed total from **\$137,382** to **\$148,582**.

#### 6. TERM OF AGREEMENT

The term of this Agreement shall be extended from September 30 to December 31, 2021.

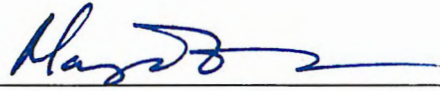
ALL OTHER TERMS AND CONDITIONS of the original Agreement shall remain in full force and effect unless amended in writing by both **MCOG** and **Consultant**.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute this Agreement Amendment in duplicate.



Nephele Barrett, Executive Director  
Mendocino Council of Governments

Date: 8-23-21



Margot Yapp, P.E., President  
Nichols Consulting Engineers, Chtd. (NCE)

Date: 8/23/2021



## Scope of Work

The following tasks describe in detail NCE's work approach:

### Task A. Alley Inventory Set-up

The City of Fort Bragg (City) has prepared a city-wide Alley Master Plan in 2011. There are approximately 100 alleys or alley segments within the city limit, where all are located in the central portion of Fort Bragg east of the Mill Site, south of Pudding Creek, north of Noyo Harbor, and west of Sanderson Way. The Alley Master Plan has introduced alley designations with a systemic approach. For instance, alleys located north of Oak Street are northerly or "N" alleys, versus "S" alleys that are located south of Oak Street. NCE would use the same designations in generating the alley database in StreetSaver® for better consistency.

If necessary, NCE will recommend any sectionalization (either combining or splitting sections) to better represent the City maintenance practices. Factors to be considered when re-sectionalizing include:

- Alley geometry
- Age of pavement
- Geographical boundaries
- Pavement performance
- Maintenance practices

### DELIVERABLES:

- Updated StreetSaver® database with alley database added

### Task B. Conduct Walking Survey

NCE will next perform walking pavement condition surveys on approximately 100 alleys. The distress collection protocols will be in accordance with MTC's "Pavement Condition Index Distress Identification Manual for Flexible Pavements," 4th edition, June 2016. The walking survey will be performed with one-person crew for alleys. The major advantage of this inspection method is that it is highly accurate, since cracks and all other pavement distresses are measured, and recorded. A minimum of one sample unit per section will be inspected. Approximately one sample unit will be inspected for each 1,000 lineal feet of roadway. Any variation from the established procedures will be to accommodate unique local conditions (e.g., gap-graded texture of rubberized asphalt concrete overlays, chip seals over portland cement concrete pavements, bleeding, edge cracking, etc.). These conditions typically exhibit unique distresses that may not be reflected in any distress manual, so special exceptions will need to be made. Any areas which are not typical of the entire section will be inspected and recorded as a special sample unit.

Our scope of work and condition inspections do not address issues including, but not limited to; traffic, safety and road hazards, geometric issues, road shoulders, sidewalks, curb and gutters, drainage issues, or short-term maintenance that should be performed.

### Quality Control

Quality control checks are critical when a large amount of data needs to be collected and processed. As part of NCE's goal to provide a superior quality product for our clients, we incorporate a QC component

into all our projects. For this project, we have proposed the inclusion of a QC Manager, Dr. James Signore. He will be responsible for:

- Calibrating all data collection activities
- Reviewing field activities, including spot checks on the field crews
- Reviewing field procedures and making changes, as needed
- Comparing the field data collected with on-site conditions
- Reviewing all data entry functions, including random spot checks
- Reviewing reports generated and analyses performed to ensure a quality product

NCE will prepare a QC Plan that will include the following components:

- Description of condition survey procedures (distress types, severities). All procedures, changes, or modifications should be well documented in the QCP so that future updates will be consistent.
- Accuracy required for data collection or acceptability criteria.
- Description of how data will be checked for accuracy

A draft QC Plan will be submitted to City of Fort Bragg for approval, and no field work will commence until a final plan has been accepted. Our QC Plan meets MTC's requirements for all 100+ jurisdictions in the Bay Area.

#### **DELIVERABLES:**

- Quality Control plan
- Inspection schedule
- Updated StreetSaver® database with pavement distress data
- Spreadsheet containing distress data

### **Task C. Data Input**

#### **Task C-1 PCI Calculation**

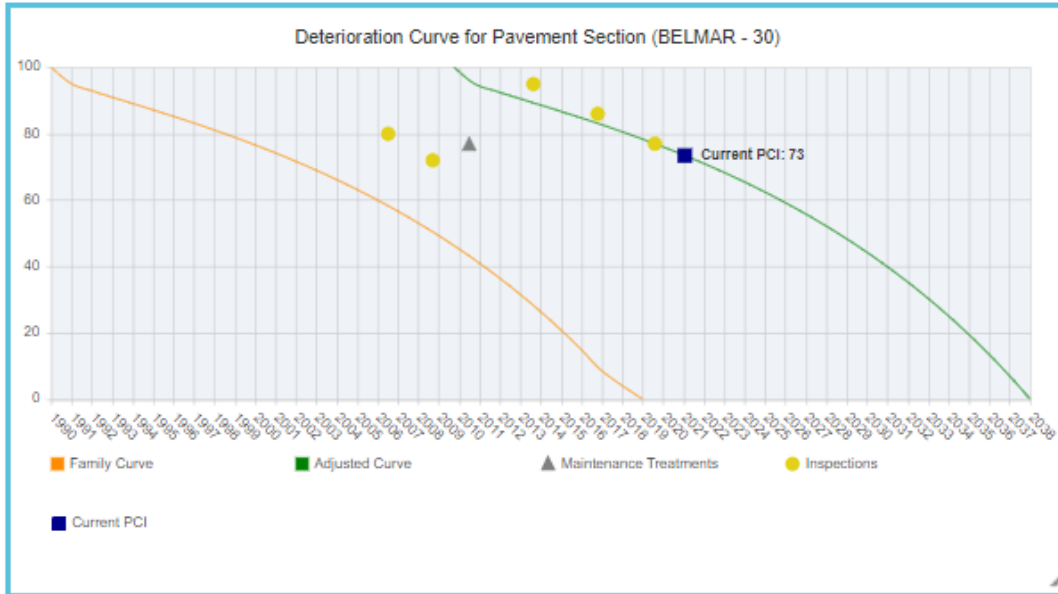
All data collected from the condition surveys will then be uploaded into the database. This task will be performed at NCE's office to provide quality control of all data entered into the system. NCE will then perform the PCI calculations, and correct any errors found.

#### **DELIVERABLES:**

- Updated StreetSaver® database with PCIs calculated
- Street Inventory Report

#### **Task C-2 Maintenance and Rehabilitation History Update**

All historical M&R records, if any, will also be entered into StreetSaver®. Populating the database with recent M&R historical data is extremely useful for determining future treatments and predicting the performance of the various pavement sections.



M&R activities include overlays, reconstructions and any surface seals. All M&R historical records must include the following information:

- Alley name and limits or approximate geographical location
- Date and type of treatment
- Cost of treatment (optional)

**DELIVERABLES:**

- All data collected shall be submitted (Excel format) for city/county staff to review prior to updating the StreetSaver® database
- M&R history report

**Task C-3 Maintenance and Rehabilitation Strategies**

NCE will next review M&R strategies with City staff. This will include the recommendation and selection of appropriate treatments and the determination of treatment unit costs. This will also be an appropriate time to review the use of new/sustainable treatments or materials, such as portland cement concrete bonded overlays, rubberized asphalt, rubberized cape seals, microsurfacing, rejuvenators, cold-in-place recycling, full-depth reclamation (see figure), warm mix asphalt, etc.



NCE’s experience in pavement engineering and design, as well as local conditions, allows our staff to be able to provide the City with solutions that are innovative, sustainable, practical, and workable. For example, we recently worked with Chula Vista to develop strategies for implementing “cool pavements”. Dr. James Signore will share his knowledge from research on new pavement materials and designs and apply them

to Mendocino County/City roads as appropriate. He has developed maintenance and design guidelines for rural roads in Sonoma County.

Development of the M&R decision tree is a critical step in any pavement management update as it has a direct and significant impact on the final work plan that is developed, as well as the budgeting consequences. NCE's experience in pavement engineering and design, as well as local conditions, allows our staff to be able to provide member agencies of Mendocino County with solutions that are practical and workable.

Since paving construction costs have increased dramatically in the last ten years, NCE strongly recommends that this be performed prior to any budget analyses.

The unit costs will have a huge impact on funding projections or needs assessments. Therefore, NCE will review any recent bid tabs, together with those from neighboring cities, as appropriate. Also, unit prices will be fully loaded rates, and will include not just contractors' prices, but also design, inspection and testing costs.

#### **DELIVERABLES:**

- Maintenance and rehabilitation decision trees
- Updated unit costs

#### **Task D. GIS Update**

NCE will add the alley inventory to the City's GIS street inventory shapefile and will link the added alleys with the StreetSaver® updated database. NCE will ensure that a full linkage is created between the alley and street inventory with the final GIS shapefile. Once fully linked, the built-in queries in StreetSaver® can be used to easily generate various maps such as:

- Current PCI Map
- Future PCI by road section
- Maintenance Treatment History
- Historical PCI Condition
- Surface Type and Functional Class Maps
- Impacts of different budget scenarios
- Sections Selected for Treatment

#### **DELIVERABLE:**

- GIS full linkage with the StreetSaver® street inventory
- Updated GIS Shapefile

**Budget**

Detailed below is NCE's detailed cost breakdown by task for this project.

**EXHIBIT 10-H1 COST PROPOSAL**  
**ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS**  
 (DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed      X Prime Consultant      Subconsultant      2nd Tier Subconsultant  
 Consultant      NCE

Project No.      Pavement Management Program Update & GIS Linkage in Mendocino County (2020/21)      Contract No.      TBD      Date      6/24/2021

**DIRECT LABOR**

Classification/Title	Name	Hours	Actual Hourly Rate	Total
Project Manager	Shahram Misaghi	1	\$ 50.50	\$50.50
Principle	Margot Yapp	0	\$ 105.90	\$0.00
QA/QC Manager	James Signore	1	\$ 72.34	\$72.34
Project Engineer	Debaroti Ghosh/Sharlan Dunn	40	\$ 40.00	\$1,600.00
Senior Technician	Marvin Mann	10	\$ 23.59	\$235.90
Technician	Jacob Rajnowski	0	\$ 22.28	\$0.00
Clerical	Lydia Alderete	1	\$ 20.00	\$20.00

**LABOR COSTS**

a) Subtotal Direct Labor Costs      \$1,978.74  
 b) Anticipated Salary Increases (see page 2 for calculation)      \$0.00  
**c) TOTAL DIRECT LABOR COSTS [(a) + (b)]      \$1,978.74**

**INDIRECT COSTS**

d) Fringe Benefits (Rate: 93.79% ) e) Total Fringe Benefits [(c) x (d)]      \$1,855.86  
 f) Overhead (Rate: 139.79% ) g) Overhead [(c) x (f)]      \$2,766.08  
 h) General and Administrative (Rate: 0.00% ) i) Gen & Admin [(c) x (h)]      \$0.00  
**j) TOTAL INDIRECT COSTS [(e) + (g) + (i)]      \$4,621.94**

**FIXED FEE      8.00%      k) TOTAL FIXED FEE [(c) + (j)] x (q)      \$528.05**

**l) CONSULTANT'S OTHER DIRECT COSTS (ODC) – ITEMIZE (Add additional pages if necessary)**

Description of Item	Quantity	Unit	Unit Cost	Total
NCE Vehicle	2	day	\$ 85.00	\$ 170
Supplies / Expenses / Reproduction	1	LS	\$ 129	\$ 129
StreetSaver® GIS Integration	1	user	\$ 3,500	\$ 3,500
Meals and incidentals	2	day	\$ 46	\$ 92
Lodging	2	day	\$ 90	\$ 180
<b>l) TOTAL OTHER DIRECT COSTS</b>				<b>4,071</b>

**m) SUBCONSULTANTS' COSTS (Add additional pages if necessary)      \$**

**n) TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS [(l)+(m)]      \$4,071.26**

**TOTAL COST [(c) + (j) + (k) + (n)]      \$11,200.00**

NOTES:

1. Key personnel must be marked with an asterisk (\*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (\*\*). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
2. The cost proposal format shall not be amended. Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans.
3. Anticipated salary increases calculation (page 2) must accompany.

**EXHIBIT 10-H1 COST PROPOSAL** Page 2 of 3  
**ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS**  
 (CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

**1. Calculate Average Hourly Rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)**

Direct Labor <u>Subtotal</u> per Cost Proposal	Total Hours per Cost Proposal	=	Avg Hourly Rate	5 Year Contract Duration
\$1,978.74	53		\$37.33	Year 1 Avg Hourly Rate

**2. Calculate hourly rate for all years (Increase the Average Hourly Rate for a year by proposed escalation %)**

	Avg Hourly Rate		Proposed Escalation			
Year 1	\$37.33	+	3.5%	=	\$38.64	Year 2 Avg Hourly Rate
Year 2	\$38.64	+	3.5%	=	\$39.99	Year 3 Avg Hourly Rate
Year 3	\$39.99	+	3.5%	=	\$41.39	Year 4 Avg Hourly Rate
Year 4	\$41.39	+	3.5%	=	\$42.84	Year 5 Avg Hourly Rate
Year 5	\$42.84	+	3.5%	=	\$44.34	Year 6 Avg Hourly Rate
Year 6	\$44.34	+	3.5%	=	\$45.89	Year 7 Avg Hourly Rate

**3. Calculate estimated hours per year (Multiply estimate % each year by total hours)**

	Estimated % Completed Each Year		Total Hours per Cost Proposal		Total Hours per Year	
Year 1	100.00%	*	53.0	=	53.0	Estimated Hours Year 1
Year 2	0.00%	*	53.0	=	0.0	Estimated Hours Year 2
Year 3	0.00%	*	53.0	=	0.0	Estimated Hours Year 3
Year 4	0.00%	*	53.0	=	0.0	Estimated Hours Year 4
Year 5	0.00%	*	53.0	=	0.0	Estimated Hours Year 5
Year 6	0.00%	*	53.0	=	0.0	Estimated Hours Year 6
Total	100%		Total	=	53.0	

**4. Calculate Total Costs including Escalation (Multiply Average Hourly Rate by the number of hours)**

	Avg Hourly Rate (calculated above)		Estimated hours (calculated above)		Cost per Year	
Year 1	\$37.33	*	53.0	=	\$1,978.74	Estimated Hours Year 1
Year 2	\$38.64	*	0.0	=	\$0.00	Estimated Hours Year 2
Year 3	\$39.99	*	0.0	=	\$0.00	Estimated Hours Year 3
Year 4	\$41.39	*	0.0	=	\$0.00	Estimated Hours Year 4
Year 5	\$42.84	*	0.0	=	\$0.00	Estimated Hours Year 5
Year 6	\$44.34	*	0.0	=	\$0.00	Estimated Hours Year 6
	Total Direct Labor Cost with Escalation			=	\$1,978.74	
	Direct Labor Subtotal before Escalation			=	\$1,978.74	
	Estimated total of Direct Labor Salary Increase			=	<b>\$0.00</b>	Transfer to Page 1

NOTES:

1. This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year.
2. An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable. (i.e. \$250,000 x 2% x 5 yrs = \$25,000 is not an acceptable methodology)
3. This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.
4. Calculations for anticipated salary escalation must be provided.

**Certification of Direct Costs:**

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

- 1 Generally Accepted Accounting Principles (GAAP)
- 2 Terms and conditions of the contract
- 3 Title 23 United States Code Section 112 - Letting of Contracts
- 4 48 Code of Federal Regulations Part 31 - Contract Cost Principles and Procedures
- 5 23 Code of Federal Regulations Part 172 - Procurement, Management, and Administration of Engineering and Design Related Service
- 6 48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

**Prime Consultant or Subconsultant Certifying:**

Name: Darren J. Leitzke Title \*: Director of Finance  
Signature : *Darren J. Leitzke* Date of Certification (mm/dd/yyyy): 3/10/2021  
Email: [dleitzke@ncenet.com](mailto:dleitzke@ncenet.com) Phone Number: (775) 329 4955  
Address: 501 Canal Blvd, Ste I, Pt. Richmond, CA 94804

\*An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:



**WORK ELEMENT (10): MCOG – PAVEMENT MANAGEMENT PROGRAM (PMP)  
TRIENNIAL UPDATE**

**PURPOSE:**

To perform a triennial update of the County’s, City of Ukiah’s, City of Willits, and City of Fort Bragg’s Pavement Management Program (PMP) to provide a systematic method for determining roadway pavement maintenance, rehabilitation and reconstruction needs.

**PREVIOUS WORK:**

Development of Pavement Management Systems was initially funded in the FY 1995/96 Work Program. Triennial updates have been funded in subsequent work programs, most recently in FY 2016/17. *The triennial schedule has at times been delayed one year, due to funding constraints.*

**TASKS:**

1. Develop and distribute Request for Proposals; conduct consultant selection process. (MCOG staff).
2. Hold kick-off meeting to refine scope of work and schedule. (MCOG Staff, Consultant, County DOT, City of Ukiah, City of Willits, City of Fort Bragg)
3. Conduct field survey work on paved roads in the County and Cities of Ukiah, Willits, Fort Bragg, and Point Arena (Consultant).
4. Input field data into Pavement Management Programs for County DOT, and City of Ukiah, City of Willits, City of Fort Bragg, and City of Point Arena (Consultant).
5. Ensure GIS capability during update process. (Consultant)
6. Prepare pavement condition reports for the maintained mileage within each of the jurisdictions (Consultant).

**PRODUCTS:**

Request for Proposals, Updated Pavement Condition Reports for the County Maintained Road System and for the cities of Ukiah, Fort Bragg, Willits, and Point Arena Road Systems.

**FUNDING AND AGENCY RESPONSIBILITIES**

<b>Responsible Agency</b>	<b>Approx. Person Days</b>	<b>Budget</b>	<b>Fiscal Year</b>	<b>Funding Source</b>
MCOG	44	\$10,000	2020/21	State PPM
Consultant	59	\$59,056	2019/20	State PPM
	7	\$6,508	2018/19	State PPM
	40	\$39,976	2020/21	State PPM
	34	\$34,460	2020/21	Local LTF
<b>TOTAL:</b>	<b>184</b>	<b>\$150,000</b>	\$6,508 - 18/19	State PPM
			\$59,056 - 19/20	State PPM
			\$115,540 - 20/21	State PPM
			\$34,460 - 20/21	Local LTF

**ESTIMATED SCHEDULE**

<b>Tasks</b>	<b>Jul</b>	<b>Aug</b>	<b>Sep</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>Jun</b>
<b>1-2</b>	x	x	x									
<b>3-6</b>				x	x	x	x	x	x	x	x	



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

## Text File

File Number: 21-588

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**Agenda Date:** 11/22/2021

**Version:** 1

**Status:** Consent Agenda

**In Control:** City Council

**File Type:** Resolution

**Agenda Number:** 5B.

Adopt City Council Resolution Continuing the Temporary Waiver of the City of Fort Bragg General Plan Maintenance Fee

On October 13, 2020, the City Council approved a waiver of the City's General Plan Maintenance Fee through June 30, 2021, in order to complete a study, document and propose revisions to the General Plan Maintenance Fee. On June 14, 2021 City Council extended the waiver through December 31, 2021. Additional time is needed to complete the study to justify an appropriate level for the fee.

The purpose of the General Plan Maintenance fee is to cover the costs reasonably necessary to prepare and revise the plans and policies that the City is required to adopt. The City has historically and plans to continue to utilize these funds for the development and environmental review of amendments to the Coastal General Plan, the Coastal Land Use and Development Code, the Inland General Plan, and the Inland Land Use and Development Code.

New or revised fees associated with recovering the costs of preparing and revising these plans and policies are subject to judicial challenge within 120 days of the effective date of the fee. In order to discourage and avoid such a challenge, staff believes it is prudent to conduct a study which establishes the estimated reasonable costs necessary to prepare and revise the City's General Plans and Policies. As a result, the revised General Plan Maintenance Fee of 5% of the calculated building permit fee applied only to new construction was not included in the proposed Fee Updates considered by City Council at its September 28, 2020 regular meeting. Temporarily waiving the General Plan Maintenance Fee avoids over- or undercharging the fee while staff establishes the estimated reasonable costs.

**RESOLUTION NO. \_\_\_\_-2021**

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL TEMPORARILY  
WAIVING THE GENERAL PLAN MAINTENANCE FEE**

**WHEREAS**, the City of Fort Bragg adopted a General Plan Maintenance Fee on November 8, 2004 to be effective January 7, 2005 equal to 1.5 percent of the total construction permit valuation; and

**WHEREAS**, the Mendocino County Building Department currently provides, and at the time the City adopted a General Plan Maintenance Fee provided, the plan check, building permitting and building inspection services for the City under a contract which allows the County to retain all building permit and plan check fees as a credit against the costs of providing services; and

**WHEREAS**, Fort Bragg staff have been unable to determine what method and information was used to determine the estimated reasonable cost necessary to prepare and revise the plans and policies when the General Plan Maintenance Fee was adopted on November 8, 2004; and

**WHEREAS**, adoption by the City of Bragg of the General Plan Maintenance Fee followed Assembly Bill 2936, signed into law on September 26, 2002 by the California State Governor and effective January 1, 2003 which authorized the establishment of fees, not to exceed the estimated reasonable cost necessary to prepare and revise the plans and policies that a local agency is required to adopt before it can make any necessary findings; and

**WHEREAS**, AB 2936 was amended and is set forth in California Government Code Section 66014; and

**WHEREAS**, California Government Code Section 66014(c) provides that any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion authorizing the charge of a fee subject to the code section shall be brought pursuant to Section 66022; and

**WHEREAS**, California Government Code Section 66022, limits judicial action or proceedings to attack, review, set aside, void, or annul the ordinance, resolution, or motion authorizing the charge of a fee as defined in sections 66013, **66014** and 66016 by a local agency to be commenced within 120 days of the effective date of the increase (emphasis added); and

**WHEREAS**, the Fort Bragg General Plan Maintenance Fee, when compared to many other jurisdictions, is proportionally higher compared to the total costs of a construction building permit; and

**WHEREAS**, to discourage and potentially avoid a judicial action or proceeding to attack, review, set aside, void, or annul the resolution, or motion authorizing the charge of General Plan Maintenance Fees, City staff finds it prudent to professionally review and document the basis for a revised General Plan Maintenance Fee so that the fee does not exceed the estimated reasonable cost necessary to prepare and revise the plans and

policies that a local agency is required to adopt before it can make any necessary findings;  
and

**WHEREAS**, the Fort Bragg City Council, at its September 28, 2020 regular City Council meeting, directed staff to draft a resolution to temporarily waive the City's General Plan Maintenance Fee in order to provide time to complete a review and documented study establishing the estimated reasonable cost necessary to prepare and revise the plans and policies that a local agency is required to adopt before it can make any necessary findings; and

**WHEREAS**, the timeframe of the waiver was extended to December 31, 2021, and

**WHEREAS**, additional time is needed to complete a review and documented study establishing the estimated reasonable cost necessary to prepare and revise the plans and policies that a local agency is required to adopt before it can make any necessary findings; and

**WHEREAS**, the temporary waiver of the General Plan Maintenance Fee is exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to Title 14, the California Code of Regulations ("CEQA Guidelines"), Section 15273(a)(1) which provides an exception for modifications to fees for the purpose of meeting operating expenses. The General Plan Maintenance Fee was established to offset the cost to prepare and revise the plans and policies that Fort Bragg is required to adopt before it can make necessary findings; and

**WHEREAS**, based on all the evidence presented, the City Council finds as follows:

1. A more complete review and study of the reasonable costs to prepare and revise the plans and policies that a local agency is required to adopt before it can make any necessary findings will ensure that the Fort Bragg General Plan Maintenance Fee and any other appropriate fee charged is consistent with the requirements of California Government Code Section 66014;

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Fort Bragg does hereby approve a temporary waiver of General Plan Maintenance Fee until June 30, 2022.

**The above and foregoing Resolution was introduced by Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 22nd day of November, 2021, by the following vote:**

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

**RECUSED:**

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**BERNIE NORVELL**  
**Mayor**

**ATTEST:**

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**June Lemos, CMC**  
**City Clerk**



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

## Text File

File Number: 21-589

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**Agenda Date:** 11/22/2021

**Version:** 1

**Status:** Consent Agenda

**In Control:** City Council

**File Type:** Scope of Work

**Agenda Number:** 5C.

Approve Scope of Work for Request for Proposals for Professional Services to Conduct Analysis Regarding the City's General Plan Maintenance Fee

On November 8, 2004, the City of Fort Bragg adopted a General Plan Maintenance Fees equal to 1.5% of the total construction permit valuation. In 2019, City staff reported to Council that staff was unable to establish what method and information was used to determine the estimated reasonable cost necessary to prepare and revise the plans and policies of the General Plan Maintenance Fee. In response, City Council directed staff to draft a resolution to temporarily waive the City's General Plan Maintenance Fee in order to provide time to complete a review and documented study establishing the estimated and reasonable cost necessary to prepare and revise the plans and policies that a local agency is required to adopt before it can make necessary findings and determinations.

The attached RFP seeks proposals from qualified professional consulting firms to conduct an analysis of the City's General Plan Maintenance Fee. Scope of Work can be found on page two.





## **CITY OF FORT BRAGG**

### **REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES TO PREPARE GENERAL PLAN MAINTENANCE FEE STUDY**

The City of Fort Bragg is seeking proposals from qualified professional consulting services interested in contracting with the City of Fort Bragg to conduct an analysis regarding the City's General Plan Maintenance Fee.

#### **AGENCY DESCRIPTION**

The City of Fort Bragg is located approximately 165 miles north of San Francisco and 188 miles west of Sacramento, with a population of about 7,500. Fort Bragg is a general law City, with a five-member City Council and operates under the Council-Manager form of government. The Council appoints the City Manager, who appoints other City Officials and is charged with overseeing the City's daily operations.

The City provides a wide range of services to its residents including public protection through the Police Department, the construction and maintenance of streets and infrastructure, water service, community development, financial management and administrative services. Special Districts and Joint Powers Authorities (JPAs) under the jurisdiction of the City provide emergency services, fire protection, wastewater treatment, and redevelopment services throughout the City. The City employs approximately 60 employees consisting of 4 part-time and 56 regular full-time employees. During the busy tourist season, the City traditionally hires four temporary employees for parking enforcement and to help maintain city streets and parks.

#### **PROJECT BACKGROUND**

On November 8, 2004, the City of Fort Bragg adopted a General Plan Maintenance Fee equal to 1.5% of the total construction permit valuation. In 2019, City staff reported to Council that staff was unable to establish what method and information was used to determine the estimated reasonable cost necessary to prepare and revise the plans and policies of the General Plan Maintenance Fee. In response, City Council directed staff to draft a resolution to temporarily waive the City's General Plan Maintenance Fee in order to provide time to complete a review and documented study that a local agency is required to adopt before it can make necessary findings and determinations.

#### **GOALS AND OBJECTIVES**

The City is seeking to re-establish a General Plan Maintenance Fee during the upcoming FY 2022-23 Budget process. Ideally, the proposed study would be completed by March 1, 2022.

The overarching objective of a General Plan Maintenance Fee Study is to establish the estimated and reasonable costs to prepare and revise the Inland Land Use & Development Code, Inland General Plan, Local Coastal program, and other related documents and ordinances of the City's Municipal Code.

## SCOPE OF WORK

The General Plan Maintenance Fee Study should include, but not be limited to the following:

- An analysis of the history, trend and use of the current General Plan Maintenance Fee;
- Documentation of policy setting/requirements for a General Plan Maintenance Fee as found in State law (GC 66014, AB 2936, Prop 26, and others);
- An analysis of how developers, property owners, and fee payers derive benefit from a maintained and updated Citywide planning program;
- An analysis of the proposed General Plan Maintenance Fee, including documenting the nexus findings around the recommended fee, the maximum cost recovery achievable from the General Plan Maintenance Fee, and the percentage necessary for full cost recovery of staff/consultant hours needed to conduct Citywide planning policy work; and
- A comparison of other California cities to document the level and use of General Plan Maintenance Fees and related policies.

## **PROPOSAL SUBMITTAL REQUIREMENTS**

1. Proposers should send a complete digital proposal, collated into one PDF document, two (2) printed copies of the complete proposal and cost bid so that it is received by the City no later than **2:00 p.m. on January 4, 2022** to:  
City of Fort Bragg  
Attention: June Lemos, CMC, City Clerk  
416 North Franklin Street  
Fort Bragg, CA 95437  
[jlemos@fortbragg.com](mailto:jlemos@fortbragg.com)
2. Format: Printed proposal should be 8 ½ x 11 inches, printed two-sided on recycled and recyclable paper with removable bindings, bound in a single document and organized in sections following the order specified under Contents.
3. Contents: Proposal shall contain the following information:
  - A. Firm Description  
Provide a description of your firm and list relevant information about capabilities, size, rate of services, and length of time in existence.
  - B. Relevant Experience  
Describe relevant experience, including list of all agencies your firm has completed similar projects for in the last five years.
  - C. Key Personnel Qualifications  
Identify key personnel who would work on the project as assigned, their respective roles, and a synopsis of relevant experience.
  - D. References  
List of public agencies or clients for whom similar work has been performed, with the name, title, and phone number of a contact person. The City may request a copy of a similar report prepared previously by the firm for another agency.
  - E. Scope of Work  
Provide an explanation of tasks associated with the project, including how you propose to complete each task.

- F. Study Design and Approach Work Plan  
A detailed work plan and schedule is required for this project. Consultant Work Plan must include, but not be limited to the following:
1. The City's responsibilities
  2. Consultant responsibilities
  3. Project milestones
  4. Target dates
  5. Critical decision points
  6. Project evaluation
  7. Other resources needs
  8. Any assumptions or constraints identified by the consultant
- G. Budget and Schedule of Charges  
Provide a "Not to Exceed" amount and a list of Personnel Rates, Equipment Charges, Travel Reimbursement Costs, and other fees. The proposal must contain a detailed line item budget showing the total cost of proposed services for each component listed in Item E (Scope of Work) by phase and a total for the project.
- Fee schedules and other proposed costs included with the submitted Proposal shall remain effective for 90 days beyond the submitted date. Proposals without the required cost information will not be considered.
- H. Work Schedule  
Provide a time schedule for completion of work.
- I. Insurance  
The individual or firm receiving the contract shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant, their agents, representatives, employees or subcontracts as set forth in Section 5.0 of Exhibit A which is attached hereto and incorporated by reference herein. Any requests for reduction in the insurance amount shall be included in the proposal. The consultant shall bear all costs associated with the required insurance.
- J. Consultant Agreement  
The City's standard Professional Services Agreement is attached as Exhibit A. Please identify if your firm would have any issues with the provisions of the City's standard consulting services agreement. All requests for amendments to language in the agreement **must** be included in the proposal.

### **EVALUATION CRITERIA**

Proposals will be evaluated on the basis of the following criteria:

- Capabilities and resources of the firm.
- Qualifications and experience of key individuals.
- Experience of the firm.
- Schedule for completion of work.
- Cost of services.

The above selection criteria are provided to assist proposers and are not meant to limit other considerations that may become apparent during the course of the selection process. Proposals will be reviewed and evaluated by the City staff and a recommendation for award of contract will be presented to the Fort Bragg City Council.

**OTHER CONSIDERATIONS**

The City of Fort Bragg reserves the right to reject any and all proposals. This Request for Proposals does not commit the City to award contract, pay any costs incurred in the preparation of proposals, or to procure or contract for supplies or services.

The City of Fort Bragg reserves the right to negotiate with any qualified respondents or to cancel, in part or in its entirety, this Request for Proposals, if it is in the best interest of the City to do so. The City may require the selected consultant to participate in negotiations, and submit such price, technical or other revisions of the proposal that may result from negotiations.

**RFP SCHEDULE**

RFP Release	November 23, 2021
Deadline for Written Questions	December 17, 2021
Proposals Due	January 4, 2022 (2:00 p.m.)
Interviews	TBD
Selection	January 10, 2022

**QUESTIONS**

Questions should be directed to:

Sarah McCormick  
City of Fort Bragg  
416 North Franklin Street  
Fort Bragg, CA 95437  
Email: [smccormick@fortbragg.com](mailto:smccormick@fortbragg.com)

**ATTACHMENTS**

Exhibit A – City’s Standard Professional Services Agreement



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

## Text File

File Number: 21-591

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**Agenda Date:** 11/22/2021

**Version:** 1

**Status:** Consent Agenda

**In Control:** City Council

**File Type:** Resolution

**Agenda Number:** 5D.

Adopt City Council Resolution Authorizing Application Submittal to United States Environmental Protection Agency for Targeted Brownfield Assessment Funds

The United States Environmental Protection Agency (EPA) was created in 1970 and tasked with environmental protection matters. Through technical grants and "seed" grant funding, EPA helps communities clear contaminated sites for future redevelopment. A Targeted Brownfield Assessment (TBA) is a technical service provided by EPA that can be used to evaluate various cleanup alternatives, costs and reuse planning. The attached resolution is authorizing staff to submit a TBA request to better understand feasible cleanup alternatives related to Operable Unit E - an approximately 37 acre area, specifically, the area including ponds 5 through 8, and the north pond area. Community priorities for redevelopment of this site include removing the dam and beach berm, daylighting Maple and Alder Creeks, and restoring tidal estuary and wetlands.

**RESOLUTION NO. \_\_\_\_-2021**

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL  
AUTHORIZING APPLICATION SUBMITTAL TO UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY FOR TARGETED BROWNFIELD ASSESSMENT GRANT FUNDS**

**WHEREAS**, United States Environmental Protection Agency's (EPA) mission is to protect human health and the environment, and every year awards more than \$4 billion in funding for assistance agreements to state and local governments, tribes, universities, nonprofit entities and other entities; and

**WHEREAS**, EPA's Targeted Brownfield Assessment (TBA) Program provides contractor assistance to help identify cleanup options, and estimate associated cleanup costs at brownfield properties; and

**WHEREAS**, the former mill site contains mill ponds with associated wetlands that meet the definition of a Brownfield site – real property whose reuse is complicated by real or perceived contamination; and

**WHEREAS**, the final phase of the mill site remediation is forthcoming, and community vision for reuse includes daylighting Maple and Alder Creeks, removal of dam and beach berm, and restoration of wetlands in the area referred to as Operable Unit E; and

**WHEREAS**, the City is seeking expertise to better understand potential project options and associated costs to restore Operable Unit E in line with community priorities; and

**WHEREAS**, the long term well-being of our region is dependent upon a healthy ocean and natural landscape;

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Fort Bragg does hereby resolve that a TBA fund request be submitted to EPA for assistance in finding a sound environmental solution to the remediation of Operable Unit E.

**The above and foregoing Resolution was introduced by Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 22<sup>nd</sup> day of November, 2021, by the following vote:**

**AYES:  
NOES:  
ABSENT:  
ABSTAIN:  
RECUSED:**

---

**BERNIE NORVELL**  
**Mayor**

**ATTEST:**

---

**June Lemos, CMC**  
**City Clerk**



# How EPA's Brownfields Program Can Work For You

## Pacific Southwest, Region 9

Serving: Arizona, California, Hawaii, Nevada, Pacific Islands, Tribal Nations

### What is a Brownfield site?

Brownfield sites are properties that are not in use or have not been redeveloped due to possible contamination. Examples of contamination sources include industrial activities, gas stations, dry cleaners, pesticide use, asbestos, lead-based paint, mining operations and fuel storage tanks. Brownfield sites may be privately or publicly owned.

EPA's Brownfields Program is a voluntary, non-enforcement program that provides key support early in property redevelopment. Through technical assistance and "seed" grant funding, EPA helps communities clear contaminated sites for future development, such as affordable housing, commercial buildings, transit oriented development and open space. EPA's Brownfields Program works to make a visible difference in communities, especially those that are underserved, overburdened and economically distressed.

This guide explains grants and technical support offered by EPA's Brownfields Program and highlights project successes. Successful brownfield redevelopment projects often leverage several EPA resources, as well as other public and private resources. See our Project Spotlight on the Jacobs Center in San Diego (right).

### EPA Resources

#### Brownfields Grants

- » Assessment Grants
- » Cleanup Grants
- » Revolving Loan Funds
- » Area-Wide Planning Grants
- » Environmental Workforce Development and Job Training

#### Technical Support

- » Targeted Brownfields Assessment
- » Brownfields Technical Assistance
- » State and Tribal Support



San Diego Trolley's Euclid Avenue Station sits adjacent to the future Trolley Park Terraces housing development.

### Project Spotlight:

Jacobs Center, San Diego, CA

The Jacobs Center for Neighborhood Innovation is successfully leveraging multiple EPA and non-EPA resources to develop 50-acres in the underserved Diamond/Encanto neighborhoods in San Diego, CA. The development will offer a mix of commercial space and affordable and market-rate housing. After years of extensive community outreach, a 52-unit affordable housing development, Trolley Park Terraces, will provide affordable rental housing adjacent to the transit station. This first phase of redevelopment will create over 150 construction jobs.



Local, state, and EPA partners participate in community ground breaking event for Trolley Park Terraces.

The project is funded through a variety of public and private sources including several EPA resources: \$50,000 in technical support to identify sustainable cleanup options; \$600,000 in cleanup funding; \$200,000 in brownfields planning funding to ensure a resident-driven planning process; and \$25,000 in technical support to improve the walkability of the project area.

Visit the EPA Brownfields website at [www.epa.gov/brownfields](http://www.epa.gov/brownfields)



# Brownfields Grants

## Grants

EPA provides \$55–\$70 million each year in Brownfields Grant funding to communities across the country. The five types of grant funding are summarized in this guide:

- Assessment Grants
- Cleanup Grants
- Revolving Loan Funds
- Area-Wide Planning Grants
- Environmental Workforce Development and Job Training

*Brownfields Environmental Assessments evaluate the historic use of a property, the likelihood of contamination and, if appropriate, the types and extent of contamination through testing. EPA's Assessment grant will also fund community outreach and cleanup planning.*



Transit-oriented development is planned along Honolulu's rail transit corridor.



EPA provides funding for 15 environmental assessments at five rail stops from Kapolei to Ala Moana Center in Honolulu.



EPA funding supported the City of Mesa's Light Rail Corridor extension, which adds at least four new stations and 5,000 new riders.

## Assessment Grants

EPA provides funding to assess brownfield sites. This work includes conducting inventories of potential brownfield sites, research on prior site use, soil sampling for contaminants, cleanup planning and community involvement. Funding amounts range from \$200,000 to \$500,000 per grant, and recipients may direct the funding toward large, individual sites or many, smaller sites across a community. Publicly and privately owned sites may be assessed under this grant. Government entities and tribes are eligible to apply. Example projects are highlighted below.

### Honolulu Rail Transit Project, Honolulu, HI

The Honolulu Rail Transit Project will provide high-capacity elevated urban rail service to the City and County of Honolulu on the island of Oahu in Hawaii. A historic agreement in 2012 between the City of Honolulu and the Federal Transit Administration secured \$1.55 billion in federal funding for Honolulu's rail transit system. EPA joined in the effort by providing a \$400,000 Brownfields Assessment Grant to support transit-oriented development at station locations through the inventory and assessment of brownfield sites. EPA funding will also support community outreach and cleanup planning.

### Light Rail Corridor, Mesa, AZ

The City of Mesa received two Community-Wide Assessment Grants totaling \$800,000 to support a 5.8 mile extension of the city's light rail line down Main Street. The city will use EPA grant funding to conduct record searches at over 100 properties and soil sampling at 15 sites. The city leveraged tens of thousands of dollars in funding for related community outreach and public engagement efforts.

## Cleanup Grants

EPA's Brownfields Cleanup Grant funding is used to conduct planning and cleanups at brownfield sites. Funding amounts range from \$200,000 to \$600,000 for eligible sites. Government entities, tribes and nonprofits are eligible to apply. Applicants must own the property proposed for cleanup. Example projects are highlighted below.

### Warehouse Artist Lofts, Sacramento, CA

The Capitol Area Development Authority (CADA) received a \$200,000 Cleanup Grant and \$450,000 in EPA Revolving Loan Funding to clean up a site for mixed-use, mixed-income, transit oriented development. The project sparked additional efforts to revitalize the former warehouse district along the Historic R Street Corridor in downtown Sacramento. The 116 housing units and 13,000 square feet of commercial spaces are marketed to the Sacramento artist community to support an arts and culture district. The project includes performance space, community gardens and local art.

### Rumrill Sports Complex, San Pablo, CA

The City of San Pablo received a \$400,000 Brownfields Assessment Grant and a \$600,000 Cleanup Grant from EPA. Grant funding was used to assess and cleanup the former Burlington Northern and Santa Fe Railroad maintenance yard. The city leveraged local and state funding to redevelop the site into soccer fields, a picnic area, a playground, and space for a local, healthy food vendor. The new complex is located in an environmentally overburdened, underserved community that historically had little access to open spaces. One local resident trained through EPA's Environmental Workforce Development and Job Training Program was hired to work on the site cleanup and installation of the new sports fields. This project is the anchor for street improvements and redevelopment on Rumrill Boulevard.

### Fort Lowell Historic Park, Tucson, AZ

The City of Tucson received a \$200,000 Cleanup Grant to address contamination concerns at the 5+ acre Fort Lowell Historic Park. Cleanup included the removal of over 1,300 tons of soil, two septic systems, four groundwater wells, two underground storage tanks, and a significant amount of asbestos. The project helped the city preserve historic resources and enhance the park.

*Cleaning up and reinvesting in brownfield properties protects the environment, reduces blight, and takes development pressures off greenspaces and working lands.*

CADA removed 5,000 cubic yards of contaminated soil to a depth of eight feet to safely build apartments on a former brownfield site in Sacramento.



The Warehouse Artist Lofts development is revitalizing the Historic R Street Corridor in Sacramento, CA.



The Rumrill Sports Complex boasts three youth soccer fields, playground, picnic area and a locally operated healthy food vendor.



Contaminated soil is removed at the 4.5 acre site that is now the Rumrill Sports Complex.



Historic preservation work at Fort Lowell uncovered 73 archeological features from periods spanning 1,000 years.



## Revolving Loan Funds

Under EPA's Revolving Loan Fund program EPA provides grants to eligible entities to issue low-interest loans and sub-grants for cleanup activities at brownfield sites. Government agencies, nonprofits and private developers can receive this cleanup assistance. Repaid loans and interest “revolve” back to the grantee, and those funds are loaned or granted again. Available funding ranges are \$700,000 to \$1 million per grantee, and government entities and tribes are eligible to apply. Successful grantees may apply for supplemental funding. Example projects are highlighted below.

### California Statewide RLF

Since 2006, the California Department of Toxic Substances Control (DTSC) received \$6.9 million in EPA Revolving Loan Funds to provide sub-grants and low-interest loans for site cleanup. To date, DTSC has awarded 22 sub-grants and six loans under this program. They have funded site cleanups statewide that have been developed into affordable housing, open space and commercial development.

### GreenCity Lofts, Emeryville, CA

The City of Emeryville received EPA Revolving Loan Fund Grants in 1999 and 2009. Loans primarily went to developers for mixed-income housing and commercial development projects. The city also borrowed funds for public projects. The success of the program was built on the flexible loan terms and the program's tie into site assessments completed with EPA and state funding. The City of Emeryville successfully leveraged multiple resources including direct EPA Cleanup Grants to the city.

### Historic Mill Town of Samoa, CA

The historic town of Samoa, located in the northern peninsula of Humboldt Bay in northern California, is the focus of a lead-contaminated soil cleanup in an area of more than 250 acres. A developer with a vision to restore Samoa and create a vibrant historic community purchased the entire town in 2000. Since 2007, the County of Humboldt has managed an EPA Revolving Loan Fund Grant totaling \$2.16 million. The County loaned a developer funding to cleanup lead-contaminated soils and lead-based paint in 100 homes. This project will ultimately preserve historic structures, including the Samoa Cookhouse, and create affordable housing.



A former petroleum-contaminated site, the Rockwood-Colton Park in Los Angeles has solar lighting and other sustainable features.



Developers of Emeryville's GreenCity Lofts used a low-interest revolving loan to clean up the site for this mixed-income multifamily development.



Lead-based paint that peeled off old homes in the historic mill town of Samoa created a health hazard by contaminating soil in the surrounding area.



DTSC's \$1.6 million loan to the Martin Building Company resulted in the creation of 196 new units, over 300 jobs, and \$1.2 million in annual sales and property taxes. This LEED-Gold certified building is located in San Francisco.

## Area-Wide Planning Grants

EPA's Area-Wide Planning Grants support brownfields redevelopment planning at the neighborhood-level. Grant activities include economic analyses to identify reuse options that can be supported by local market conditions, infrastructure needs assessments, coordination with existing planning efforts and community involvement. Brownfields assessment and cleanup activities are not funded with these grants. EPA awards grants up to \$200,000 to government entities, tribes and nonprofits. Example projects are highlighted below.

### Del Rio Neighborhood, Phoenix, AZ

This grant focused on the Del Rio neighborhood located in the center of Phoenix along the Rio Salado. The mixed residential-industrial Del Rio neighborhood, located in the center of Phoenix along the Rio Salado ("Salt River"), is the focus of this grant. The EPA-funded Area Wide Plan called for improved coordination with light rail development, economic research assessments for community-serving businesses and public participation. The neighborhood benefited from the increased community engagement and a land reuse plan created under the grant. Grant-related outcomes include the extension of the Valley Metro Light Rail through the neighborhood; the expansion of an Audubon Society nature center along the Rio Salado; and the repurposing of one of the brownfield sites by the Raza Development Fund into mixed-use housing and commercial development.

## Environmental Workforce Development & Job Training Grants

EPA provides funding for environmental job training in underserved, overburdened communities disproportionately affected by brownfields and environmental contaminants. Funding of up to \$200,000 is awarded to eligible government entities, tribes and nonprofits.

Current grantees include the Los Angeles County Conservation Corps in Southern California and Cypress Mandela Training Center in Northern California. In addition to receiving training in hazardous materials cleanup and management, students learn how to install residential and commercial solar panels. Both programs serve unemployed and underemployed adults.

Under the Navajo Nation's EPA-funded program, 36 tribal members completed environmental job training through the Navajo Nation's partnership with Northern Arizona University. The training focused on hazardous materials cleanup and management. Students took additional radiological training to gain the skills necessary to work on the cleanup of former uranium mines on the Navajo Nation.



During the development of the Area-Wide Plan for the Del Rio community, extensive community outreach is conducted.



A diverse group of stakeholders gather at the Nina Mason Pulliam Rio Salado Audubon Center, which is within the target area for the Del Rio Area-Wide Planning Grant.



Graduates from Cypress Mandela earn state and federal certifications in environmental management.



Navajo Nation students complete HAZWOPER training at Northern Arizona University.



# Brownfields Technical Support

## Technical Support

EPA provides four types of technical support to communities across the country:

- Targeted Brownfields Assessment
- Brownfields Technical Assistance
- State and Tribal Support

*"EPA's Brownfields Program is one of the most effective ways EPA makes a visible difference in communities. This program results in on-the-ground benefits — environmental, economic and social."*

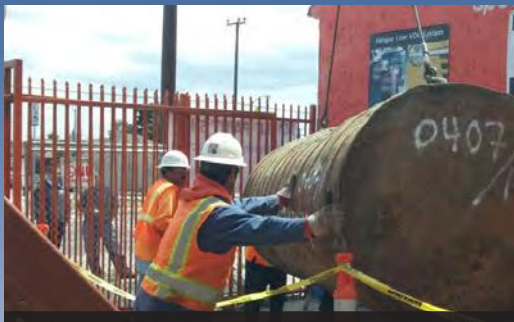
*- Enrique Manzanilla, EPA Superfund Division Director*



India Basin Waterfront's proposed park provides open space and bay access in an underserved community.



Abatement and demolition at the Beeline Dragway, Scottsdale, AZ.



Workers remove and recycle two underground storage tanks and piping from the Iglesia de Dios Isrealita site.

## Targeted Brownfields Assessment

EPA provides contractor assistance to research historic property uses, conduct environmental sampling and identify cleanup options and cost estimates. By submitting a short, on-line application, public entities, nonprofits and tribes can access up to \$100,000 worth of technical assistance for eligible sites. At no cost to the applicant, EPA contractors evaluate whether a property is contaminated and provide follow-up recommendations. EPA prioritizes sites in underserved areas that are ready for redevelopment and accepts applications on a rolling basis. For more information, please see our [brochure](#) and [application](#).

### India Basin Waterfront, San Francisco, CA

EPA conducted an assessment of a contaminated property prior to purchase by the San Francisco Recreation and Parks Department. The site is located in an underserved, economically distressed neighborhood with little access to open space. Additional EPA funding, as well as state and local resources, will enable the city to redevelop the property into a park connecting a network of 13 miles of trails, parks and Bay access.

### Salt River Pima-Maricopa Indian Community Beeline Dragway and Gravel Pit, Scottsdale, AZ

EPA conducted two assessments to determine the extent of contamination at the Dragway and gravel pit used in the 1970s and 80's. Asbestos and chromium contamination was found at the sites, and the properties have been plagued by illegal dumping since the drag racing and gravel extraction activities ceased. The Tribe will remediate the property using their EPA "128(a)" Tribal Brownfield Response grant. The sites will be redeveloped into open space and revegetated with native species and will be used for cultural events, including powwows and other tribal ceremonies.

### Iglesia de Dios Isrealita, Los Angeles, CA

EPA conducted an assessment to determine whether contamination on the property is related to past auto repair operations. The owner plans to convert the property to a food pantry or a soup kitchen in this socially and economically underserved area.

# Brownfields Technical Assistance

## Technical Assistance to Brownfields Communities

Communities can access brownfields technical assistance through *EPA-funded providers*. These organizations assist communities understand site risks and health impacts, brownfield cleanup financing, green cleanup technologies, state and tribal response programs, and how to incorporate equitable development, sustainability, climate adaptation and environmental justice considerations in redevelopment. One-on-one consultation, webinars, workshops and grant writing tips are available. Under the EPA-funded program, Kansas State University hosts "*Technical Assistance for Brownfields*," a web-based toolkit for brownfields redevelopment, including tools for successful grant proposal writing.

## Contract Support

EPA provides technical assistance to communities for discrete projects that feed into longer-term revitalization projects and serve as examples for other communities. Projects can receive up to \$35,000 in contract support. Focus areas include: redevelopment planning, adapting to climate change, land revitalization tools, "green" street-scaping, improving stormwater management and preventing illegal dumping.

Recent projects in California include an assessment of urban garden feasibility in Fresno; a market analysis of green businesses in Chico; recommendations for climate change resiliency features for a new bayshore park in San Francisco; and an economic analysis of sustainable redevelopment elements for a new housing complex in the City of National City.

## Spotlight on the City of National City, CA

EPA assisted the City of National City develop a sustainable reuse plan for the 14-acre Paradise Creek Apartment Homes project. EPA consultants assessed the reuse of building materials, coastal climate issues, green building approaches, energy saving opportunities and green infrastructure for each project phase. Project recommendations included an economic benefit analysis, including a return on investment analysis for sustainable activities; financial strategies, including utilizing emissions and carbon markets, environmental investment funds, and creating local incentives; and a cost comparison of sustainable development versus traditional development practices.

At the foundation of this project is the incentivized relocation of industrial uses out of a residential neighborhood. EPA's assessment also included an amortization formula and schedule prioritizing the most polluting and underutilized uses first, which helped the City identify incentive strategies for relocation and closures of non-conforming uses in the neighborhood.



Paradise Creek Apartment Homes are the first sustainably redesigned affordable homes in West-side neighborhood in the City of National City.



Community members celebrate the groundbreaking of the Paradise Creek project.



Chico is working to redevelop this key brownfield site as part of a larger effort to support green companies in "The Wedge" business area.



The Blue Moon Community Garden illustrates the conversion of a brownfield into urban agriculture in Tucson, AZ.



## State and Tribal Support

EPA provides funding each year to states, tribes and territories for their Brownfields and Emergency Response programs. This funding, termed "128(a)" funding, can help leverage EPA Brownfields Grants to communities. Descriptions of specific programs follow below. In addition, the non-profit Center for Creative Land Recycling maintains a list of state brownfields resources on its website.

**California:** The California Department of Toxic Substances Control (DTSC) conducts marketing and outreach, develops and updates tools for its Brownfields response program, and assists with redevelopment projects in California's communities. Key program tools are the Targeted Site Investigation Program, which provides free environmental investigation services through a competitive application process, and the EnviroStor database, which compiles information on brownfield sites across the state. DTSC operates a Revolving Loan Fund initiated through the EPA program discussed above.

**Nevada:** The Nevada Division of Environmental Protection (NDEP) assists government, tribal and nonprofit entities with site assessments and cleanups and helps explore options for redevelopment, including applying for brownfields grants and identifying other sources of funding. NDEP operates a Revolving Loan Fund initiated through the EPA program discussed above.

**Arizona:** The Arizona Department of Environmental Quality (ADEQ) focuses on sustainability, voluntary cleanups, business operations and permitting to successfully manage and continually enhance the State Response Program. ADEQ helps cities, counties, nonprofits and tribes with brownfield assessments, cleanups and redevelopment.

**Hawaii:** The Hawaii Department of Health (HDOH) and Hazard Evaluation and Emergency Response (HEER) Office provides technical assistance to state, city and county agencies applying for EPA Brownfields Grants. HDOH also provides community outreach and training in brownfields contaminant risks, protection and redevelopment. HDOH operates a Revolving Loan Fund initiated through the EPA program discussed above.

Tribes and Territories in EPA's Pacific Southwest have EPA-funded Brownfields and Emergency Response Programs that inventory brownfields sites, develop waste management and cleanup programs, and conduct other activities, including emergency response and public outreach.

The California Department of Toxic Substances Control (DTSC) conducts environmental site assessments to safely facilitate the redevelopment of brownfields sites into schools, housing, retail and open space projects. DTSC also assists brownfields stakeholders by providing crucial environmental due diligence packages to support real estate transactions. Since 2003, \$2.5 million in EPA "128(a)" assistance has funded over 90 environmental assessments in California communities. In addition to this state-wide funding, DTSC received a \$400,000 EPA Brownfields Assessment Grant in 2015 to conduct environmental site assessments in underserved communities along the I-710 Freeway in Southern California.



The State Hotel in Carlin, NV was assessed under an EPA grant, and asbestos abatement and building demolition will be funded through Nevada's 128(a) grant. The city plans to reuse the site as a community garden.

## For more information

Visit the EPA Brownfields website at [www.epa.gov/brownfields](http://www.epa.gov/brownfields) or contact Region 9 Brownfields Coordinator Noemi Emeric-Ford at (213) 244-1821 or [emeric-ford.noemi@epa.gov](mailto:emeric-ford.noemi@epa.gov)

### Pacific Southwest, Region 9

Serving: Arizona, California, Hawaii, Nevada, Pacific Islands, Tribal Nations

March 2016



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

## Text File

File Number: 21-593

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**Agenda Date:** 11/22/2021

**Version:** 1

**Status:** Consent Agenda

**In Control:** City Council

**File Type:** Resolution

**Agenda Number:** 5E.

Adopt City Council Resolution Making the Legally Required Findings to Continue to Authorize the Conduct of Remote "Telephonic" Meetings During the State of Emergency



**RESOLUTION NO. \_\_\_\_-2021**

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL  
MAKING THE LEGALLY REQUIRED FINDINGS TO CONTINUE TO  
AUTHORIZE THE CONDUCT OF REMOTE “TELEPHONIC”  
MEETINGS DURING THE STATE OF EMERGENCY**

**WHEREAS**, on March 4, 2020, pursuant to California Gov. Code Section 8625, the Governor declared a state of emergency; and

**WHEREAS**, on September 17, 2021, Governor Newsom signed AB 361, which bill went into immediate effect as urgency legislation; and

**WHEREAS**, AB 361 added subsection (e) to Gov. Code Section 54953 to authorize legislative bodies to conduct remote meetings provided the legislative body makes specified findings; and

**WHEREAS**, as of November 1, 2021, the COVID-19 pandemic has killed more than 72,140 Californians; and

**WHEREAS**, social distancing measures decrease the chance of spread of COVID-19; and

**WHEREAS**, this legislative body previously adopted a resolution to authorize this legislative body to conduct remote “telephonic” meetings; and

**WHEREAS**, Government Code 54953(e)(3) authorizes this legislative body to continue to conduct remote “telephonic” meetings provided that it has timely made the findings specified therein;

**NOW, THEREFORE, IT IS RESOLVED** by the City Council of the City of Fort Bragg as follows:

1. This legislative body declares that it has reconsidered the circumstances of the state of emergency declared by the Governor and at least one of the following is true: (a) the state of emergency continues to directly impact the ability of the members of this legislative body to meet safely in person; and/or (2) state or local officials continue to impose or recommend measures to promote social distancing.

**The above and foregoing Resolution was introduced by Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 22<sup>nd</sup> day of November, 2021, by the following vote:**

**AYES:  
NOES:  
ABSENT:  
ABSTAIN:  
RECUSED:**

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**BERNIE NORVELL**  
Mayor

**ATTEST:**

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**June Lemos, CMC**  
City Clerk



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

## Text File

File Number: 21-594

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**Agenda Date:** 11/22/2021

**Version:** 1

**Status:** Consent Agenda

**In Control:** City Council

**File Type:** Resolution

**Agenda Number:** 5F.

Adopt City Council Resolution Confirming the Continued Existence of a Local Emergency in the City of Fort Bragg

At a special meeting on March 24, 2020, the Fort Bragg City Council ratified the City Manager's Proclamation declaring a local emergency due to COVID-19 in its Resolution No. 4242-2020. Since that date, the Council has adopted 36 resolutions reconfirming the existence of a local emergency. The City is required to reconfirm the existence of a local emergency every 21 days pursuant to Fort Bragg Municipal Code Section 2.24.040.

**RESOLUTION NO. \_\_\_\_-2021**

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL  
CONFIRMING THE CONTINUED EXISTENCE OF A LOCAL  
EMERGENCY IN THE CITY OF FORT BRAGG**

**WHEREAS**, California Government Code section 8630 empowers the Fort Bragg City Council to proclaim the existence of a local emergency when the City is threatened or likely to be threatened by the conditions of extreme peril to the safety of persons and property that are or are likely to be beyond the control of the services, personnel, equipment, and facilities of this City; and

**WHEREAS**, California Government Code section 8558(c) states that a “local emergency” means the duly proclaimed existence of conditions of disaster or extreme peril to the safety of persons and property within the territorial limits of a city; and

**WHEREAS**, COVID-19, a novel coronavirus causing infectious disease, was first detected in China in December 2019 and has spread across the world and to the United States. Symptoms of COVID-19 include fever, cough, and shortness of breath; outcomes have ranged from mild to severe illness, and, in some cases, death. The Center for Disease Control and Prevention (CDC) has indicated the virus is a tremendous public health threat; and

**WHEREAS**, on March 13, 2020, the President of the United States issued a proclamation declaring the COVID-19 outbreak in the United States as a national emergency, beginning March 1, 2020; and

**WHEREAS**, the Governor of the State of California and the Public Health Officer of the County of Mendocino have both issued Shelter-in-Place orders to combat the spread of COVID-19; and

**WHEREAS**, on March 17, 2020 the City Manager, as the City’s Director of Emergency Services, issued Proclamation No. CM-2020-01 declaring a local emergency as authorized by Government Code section 8630 and Fort Bragg Municipal Code section 2.24.040(B); and

**WHEREAS**, at a special meeting on March 24, 2020, the City Council of the City of Fort Bragg adopted Resolution No. 4242-2020, ratifying the City Manager’s Proclamation declaring the existence of a local emergency; and

**WHEREAS**, at a special meeting on April 6, 2020, the City Council of the City of Fort Bragg adopted Resolution No. 4245-2020 by which it continued the local emergency; and

**WHEREAS**, at a special meeting on April 20, 2020, the City Council of the City of Fort Bragg adopted Resolution No. 4247-2020 by which it continued the local emergency; and

**WHEREAS**, at a regular meeting on May 11, 2020, the City Council of the City of Fort Bragg adopted Resolution No. 4250-2020 by which it continued the local emergency; and

**WHEREAS**, at a regular meeting on May 26, 2020, the City Council of the City of Fort Bragg adopted Resolution No. 4253-2020 by which it continued the local emergency; and

**WHEREAS**, at a regular meeting on June 8, 2020, the City Council of the City of Fort Bragg adopted Resolution No. 4266-2020 by which it continued the local emergency; and

**WHEREAS**, at a regular meeting on June 22, 2020, the City Council of the City of Fort Bragg adopted Resolution No. 4270-2020 by which it continued the local emergency; and

**WHEREAS**, at a regular meeting on July 13, 2020, the City Council of the City of Fort Bragg adopted Resolution No. 4284-2020 by which it continued the local emergency; and

**WHEREAS**, at a regular meeting on July 27, 2020, the City Council of the City of Fort Bragg adopted Resolution No. 4289-2020 by which it continued the local emergency; and

**WHEREAS**, at a regular meeting on August 10, 2020, the City Council of the City of Fort Bragg adopted Resolution No. 4294-2020 by which it continued the local emergency; and

**WHEREAS**, at a special meeting on August 31, 2020, the City Council of the City of Fort Bragg adopted Resolution No. 4300-2020 by which it continued the local emergency; and

**WHEREAS**, at a special meeting on September 21, 2020, the City Council of the City of Fort Bragg adopted Resolution 4304-2020 by which it continued the local emergency; and

**WHEREAS**, at a regular meeting on October 13, 2020, the City Council of the City of Fort Bragg adopted Resolution 4317-2020 by which it continued the local emergency; and

**WHEREAS**, at a regular meeting on October 26, 2020, the City Council of the City of Fort Bragg adopted Resolution 4319-2020 by which it continued the local emergency; and

**WHEREAS**, at a regular meeting on November 9, 2020, the City Council of the City of Fort Bragg adopted Resolution 4323-2020 by which it continued the local emergency; and

**WHEREAS**, at a regular meeting on November 23, 2020, the City Council of the City of Fort Bragg adopted Resolution 4329-2020 by which it continued the local emergency; and

**WHEREAS**, at a regular meeting on December 14, 2020, the City Council of the City of Fort Bragg adopted Resolution 4333-2020 by which it continued the local emergency; and

**WHEREAS**, at a special meeting on December 22, 2020, the City Council of the City of Fort Bragg adopted Resolution 4340-2020 by which it continued the local emergency; and

**WHEREAS**, at a regular meeting on January 11, 2021, the City Council of the City of Fort Bragg adopted Resolution 4343-2021 by which it continued the local emergency; and

**WHEREAS**, at a regular meeting on January 25, 2021, the City Council of the City of Fort Bragg adopted Resolution 4347-2021 by which it continued the local emergency; and

**WHEREAS**, at a regular meeting on February 8, 2021, the City Council of the City of Fort Bragg adopted Resolution 4351-2021 by which it continued the local emergency; and

**WHEREAS**, at a regular meeting on February 22, 2021, the City Council of the City of Fort Bragg adopted Resolution 4358-2021 by which it continued the local emergency; and

**WHEREAS**, at a regular meeting on March 8, 2021, the City Council of the City of Fort Bragg adopted Resolution 4363-2021 by which it continued the local emergency; and

**WHEREAS**, at a regular meeting on March 22, 2021, the City Council of the City of Fort Bragg adopted Resolution 4366-2021 by which it continued the local emergency; and

**WHEREAS**, at a regular meeting on April 12, 2021, the City Council of the City of Fort Bragg adopted Resolution 4376-2021 by which it continued the local emergency; and

**WHEREAS**, at a regular meeting on April 26, 2021, the City Council of the City of Fort Bragg adopted Resolution 4381-2021 by which it continued the local emergency; and

**WHEREAS**, at a regular meeting on May 10, 2021, the City Council of the City of Fort Bragg adopted Resolution 4385-2021 by which it continued the local emergency; and

**WHEREAS**, at a regular meeting on May 24, 2021, the City Council of the City of Fort Bragg adopted Resolution 4391-2021 by which it continued the local emergency; and

**WHEREAS**, at a regular meeting on June 14, 2021, the City Council of the City of Fort Bragg adopted Resolution 4396-2021 by which it continued the local emergency; and

**WHEREAS**, at a regular meeting on June 28, 2021, the City Council of the City of Fort Bragg adopted Resolution 4405-2021 by which it continued the local emergency; and

**WHEREAS**, at a regular meeting on July 12, 2021, the City Council of the City of Fort Bragg adopted Resolution 4418-2021 by which it continued the local emergency; and

**WHEREAS**, at a regular meeting on July 26, 2021, the City Council of the City of Fort Bragg adopted Resolution 4422-2021 by which it continued the local emergency; and

**WHEREAS**, at a regular meeting on August 9, 2021, the City Council of the City of Fort Bragg adopted Resolution 4427-2021 by which it continued the local emergency; and

**WHEREAS**, at a special meeting on August 30, 2021, the City Council of the City of Fort Bragg adopted Resolution 4434-2021 by which it continued the local emergency; and

**WHEREAS**, at a special meeting on September 20, 2021, the City Council of the City of Fort Bragg adopted Resolution 4447-2021 by which it continued the local emergency; and

**WHEREAS**, at a regular meeting on October 12, 2021, the City Council of the City of Fort Bragg adopted Resolution 4451-2021 by which it continued the local emergency; and

**WHEREAS**, at a regular meeting on October 25, 2021, the City Council of the City of Fort Bragg adopted Resolution 4460-2021 by which it continued the local emergency; and

**WHEREAS**, at a regular meeting on November 8, 2021, the City Council of the City of Fort Bragg adopted Resolution 4463-2021 by which it continued the local emergency;

**NOW, THEREFORE, BE IT RESOLVED AND PROCLAIMED** by the City Council of the City of Fort Bragg that for reasons set forth herein, said local emergency shall be deemed to continue to exist until the City Council of the City of Fort Bragg, State of California, proclaims its termination; and

**BE IT FURTHER RESOLVED** that the City Council of the City of Fort Bragg will review the need for continuing the local emergency at least once every 21 days until the City Council terminates the local emergency; and

**BE IT FURTHER RESOLVED** that this resolution confirming the continued existence of a local emergency shall be forwarded to the Director of the Governor's Office of Emergency Services and the Governor of the State of California, as well as the Mendocino County Office of Emergency Services.

**The above and foregoing Resolution was introduced by Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_, and passed and adopted at a**

regular meeting of the City Council of the City of Fort Bragg held on the 22<sup>nd</sup> day of November, 2021 by the following vote:

**AYES:**  
**NOES:**  
**ABSENT:**  
**ABSTAIN:**  
**RECUSED:**

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**BERNIE NORVELL**  
**Mayor**

**ATTEST:**

---

**June Lemos, CMC**  
**City Clerk**





# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

## Text File

File Number: 21-602

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**Agenda Date:** 11/22/2021

**Version:** 1

**Status:** Consent Agenda

**In Control:** City Council

**File Type:** Resolution

**Agenda Number:** 5G.

Adopt City Council Resolution Approving the Four Applications for Funding and Execution of Agreements and Any Amendments Thereto from the United States Department of Agriculture's Community Facility Grants Program

The United States Department of Agriculture (USDA) administers a grant program that provides funding through the Community Facility Grant Program to develop essential community facilities that provide necessary services to the local community. One of the priorities identified in the FY 2021/22 budget as shown in the Vehicle Replacement Plan for the Public Works Department is to replace three police fleet vehicles. In addition, the purchase of a TruNarc Touch-free Narcotics Identifier for the Police Department which are all eligible purchases under the USDA Community Facilities Grant Program. It is required that the Grantee (City of Fort Bragg) match 45% of the purchase costs of which \$147,000 have been identified for the three police vehicles in the budget for FY 2021/22. The TruNarc device priced at \$35,000 if awarded will be purchased using reimbursable matching funds from the Police Asset Seizure Forfeiture account. The much needed three police vehicles and TruNarc device will be useful and essential assets for the Fort Bragg Police Department and are anticipated to be purchased this fiscal year, if awarded.

**RESOLUTION NO. \_\_\_\_-2021**

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING APPLICATION FOR FUNDING AND EXECUTION OF A GRANT AGREEMENT AND ANY AMENDMENTS THERETO FROM THE UNITED STATES DEPARTMENT OF AGRICULTURE'S COMMUNITY FACILITY GRANT PROGRAM**

**WHEREAS**, the United States Department of Agriculture (USDA) administers a grant program that provides funding to develop essential community facilities, which are facilities that provide an essential service to the local community for the orderly development of the community; and

**WHEREAS**, the Fort Bragg City Council approved City of Fort Bragg Budget for FY 2020/2021 on June 14, 2021 which included the replacement of three police vehicles as identified on the Vehicle Replacement Plan; and

**WHEREAS**, the budget for three police vehicles was identified in the Vehicle Replacement Plan budget for FY 2021/2022 at a cost of \$147,000; and

**WHEREAS**, the rising cost of materials and services has increased vehicle cost requiring a budget amendment to increase the budget to \$162,637; and

**WHEREAS**, the USDA grant requires 45% matching funds if awarded; and

**WHEREAS**, a TruNarc narcotic identifying device is also eligible for this grant requiring 45% match of which the Police Department's Asset Seizing account funds may be initially used for the purchase and will be reimbursed by the County's District Attorney; and

**WHEREAS**, the above referenced purchases are eligible under the USDA Community Facility Grants Program; and

**WHEREAS**, based on all the evidence presented, the City Council finds as follows:

1. This will provide usable tools for members of the Fort Bragg Police Department.
2. This will increase the efficiency of the work being performed when using these and increase the safety to the Police staff when using these purchases.
3. This will satisfy a priority identified in the City of Fort Bragg's Budget for FY 2021/2022 to replace three police vehicles.
4. The purchase of a TruNarc device will offer police staff field based, safe, advanced and reliable narcotic identification.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Fort Bragg does hereby approve United States Department of Agriculture's Community Facility Grant Program applications for the purchase of three fully equipped police vehicles (match amount not to exceed \$162,637) and a TruNarc Narcotics Identifier (match amount not to exceed \$35,000).

**BE IT FURTHER RESOLVED** that the City Manager is hereby authorized to execute USDA agreements and any amendments thereto in connection with the Community Facility Grants Program.

**The above and foregoing Resolution was introduced by Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 22<sup>nd</sup> day of November, 2021, by the following vote:**

**AYES:  
NOES:  
ABSENT:  
ABSTAIN:  
RECUSED:**

---

**BERNIE NORVELL  
Mayor**

**ATTEST:**

---

**June Lemos, CMC  
City Clerk**



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

## Text File

File Number: 21-603

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**Agenda Date:** 11/22/2021

**Version:** 1

**Status:** Consent Agenda

**In Control:** City Council

**File Type:** Resolution

**Agenda Number:** 5H.

Adopt City Council Resolution Approving an Agreement with Regional Government Services (RGS) to Conduct a Classification and Compensation Study and Authorizing the City Manager to Execute Contract (Total Amount Not to Exceed \$34,900; Account No. 110-4130-0319) and Approving Budget Amendment No. 2022-13

**RESOLUTION NO. \_\_\_\_ - 2021**

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING A CONTRACT WITH REGIONAL GOVERNMENT SERVICES (RGS) TO CONDUCT A CLASSIFICATION AND COMPENSATION STUDY AND AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACT (TOTAL AMOUNT NOT TO EXCEED \$34,900.00; ACCOUNT NO. 110-4130-0319) AND APPROVING BUDGET AMENDMENT NO. 2022-13**

**WHEREAS**, on June 14, 2021, the Fort Bragg City Council and the Fort Bragg Municipal Improvement District No. 1 District Board adopted the Fiscal Year (FY) 2021-22 Budget; and

**WHEREAS**, the City Council approved \$20,000 as part of the Mid-Term Budget Update on March 22, 2021 to conduct a Salary Survey of non-law enforcement City positions, excluding the City Manager; and

**WHEREAS**, those funds were not spent during the FY 2020-21; and

**WHEREAS**, the City Council approved Budget Amendment 2022-04 on August 9, 2021 re-appropriating the original \$20,000 budget for the Salary Survey; and

**WHEREAS**, the City Council approved a Scope of Work for a Request for Proposals (RFP) for a Classification and Compensation Study (Salary Survey) on August 9, 2021, which was issued on August 10, 2021; and

**WHEREAS**, the City received four responses to its RFP with the proposed costs ranging from not to exceed \$25,000 to \$64,020; and

**WHEREAS**, City staff determined that Regional Government Services (RGS) provided the best value balancing the cost of services, experience and the level of services provided; and

**WHEREAS**, RGS's original proposal included costs not to exceed \$42,300; and

**WHEREAS**, staff negotiated certain reductions in consulting services so that the proposed contract for services for City Council's approval is not to exceed \$34,900; and

**WHEREAS**, based on all the evidence presented, the City Council finds as follows:

1. The foregoing recitals are true and correct and are made a part of this Resolution.
2. The RGS revised proposal, meets the requirements and objectives of the Classification and Compensation Study.
3. Sufficient funds are available in the General Fund.
4. RGS has sufficient experience and expertise conducting Classification and Compensation Studies to be qualified to complete the contract.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Fort Bragg does hereby approve the contract with Regional Governmental Services (RGS) to conduct a Classification and Compensation Study and authorizes the City Manager to execute the same (Amount Not to Exceed \$34,900; Account No. 110-4130-0319).

**BE IT FURTHER RESOLVED** that the City Council of the City of Fort Bragg does hereby amend the previously adopted FY 2021-22 Budget to incorporate the changes enumerated in Exhibit A approving Budget Amendment No. 2022-13 to appropriate additional funds in the amount of \$14,900 in the General Fund Account No. 110-4130-0319.

The above and foregoing Resolution was introduced by Councilmember \_\_\_\_, seconded by Councilmember \_\_\_\_\_, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 22nd day of November, 2021, by the following vote:

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**
- RECUSED:**

---

**BERNIE NORVELL**  
Mayor

**ATTEST:**

---

**June Lemos, CMC**  
City Clerk



**CITY OF FORT BRAGG  
PROFESSIONAL SERVICES AGREEMENT  
WITH  
REGIONAL GOVERNMENT SERVICES**

THIS AGREEMENT is made and entered into this \_\_\_ day of November, 2021 (“Effective Date”), by and between the CITY OF FORT BRAGG, a municipal corporation, 416 N. Franklin Street, Fort Bragg, California 95437 (“City”), and REGIONAL GOVERNMENT SERVICES, a California Joint Powers Authority, PO Box 1350, Carmel Valley, CA 93924 (“Consultant”).

**WITNESSETH:**

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to perform a citywide classification and compensation study, as more fully described herein; and

B. WHEREAS, City and Consultant desire to contract for the specific services described in Exhibit “A” (the “Project”) and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

C. WHEREAS, no official or employee of City has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

D. WHEREAS, the legislative body of the City on November 22, 2021 by Resolution No. [REDACTED] authorized execution of this Agreement on behalf of the City in accordance with Chapter 3.20 of the City Municipal Code and/or other applicable law;

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

**1.0. SERVICES PROVIDED BY CONSULTANT**

1.1. Scope of Work. Consultant shall provide the professional services described in the Consultant’s Proposal (“Proposal”), attached hereto as **Exhibit A** and incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant’s performance of this Agreement. Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. City officers and employees shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this section.

1.3. Performance to Satisfaction of City. Consultant agrees to perform all the work to the complete satisfaction of the City as hereinafter specified. Evaluations of the work will be done by the City Manager or his or her designee. If the quality of work is not satisfactory, City in its



discretion has the right to:

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;
- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

1.5. Non-discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender, sexual orientation, or disability except as permitted pursuant to Section 12940 of the Government Code. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, a notice setting forth provisions of this non-discrimination clause.

Consultant shall, in all solicitations and advertisements for employees placed by, or on behalf of Consultant, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender, sexual orientation, or disability. Consultant shall cause the paragraphs contained in this Section to be inserted in all subcontracts for any work covered by the Agreement, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

1.6. Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense. All insurance requirements contained in this Agreement are independently applicable to any and all subcontractors that Consultant may engage during the term of this

Agreement.

1.8. Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

## **2.0. COMPENSATION AND BILLING**

2.1. Compensation. Consultant's total compensation shall not exceed **Thirty-four Thousand Nine Hundred Dollars (\$34,900.00)**.

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of work specified in the Consultant's Proposal or which is inconsistent with or in violation of the provisions of this Agreement unless the City or the Project Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable. Should the City request in writing additional services that increase the hereinabove described "Scope of Work," an additional fee based upon the Consultant's standard hourly rates shall be paid to the Consultant for such additional services. The City Manager may approve contract change orders not exceeding a total of 10% of the approved contract or up to the contingency amount whichever amount is less for any one project.

2.3. Method of Billing. Consultant may submit invoices to the City for approval on a progress basis, but not more often than monthly. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times for a period of three (3) years from the date of final payment.

## **3.0. TIME OF PERFORMANCE**

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the issuance of Notice to Proceed. Said services shall be performed in strict compliance with the schedule set forth in the Scope of Work attached hereto as **Exhibit A**. Consultant will complete the services in accordance with this Agreement by **June 30, 2022**. The Time of Completion may only be modified by a written amendment of the Agreement signed by both the City and the Consultant and in accordance with its terms.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of

performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party. If a delay beyond the control of the Consultant is encountered, a time extension may be mutually agreed upon in writing by the City and the Consultant. The Consultant shall present documentation satisfactory to the City to substantiate any request for a time extension.

#### **4.0. TERM AND TERMINATION**

4.1. Term. This Agreement shall commence on the Effective Date and expire on **September 30, 2022** unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, and City or Consultant may terminate the Agreement by providing at least ten (10) days prior written notice to the other. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City. If the City suspends, terminates or abandons a portion of this Agreement, such suspension, termination or abandonment shall not make void or invalidate the remainder of this Agreement.

If the Consultant defaults in the performance of any of the terms or conditions of this Agreement, it shall have ten (10) days after service upon it of written notice of such default in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

The City shall have the right, notwithstanding any other provisions of this Agreement, to terminate this Agreement, at its option and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement, immediately upon service of written notice of termination on the Consultant, if the latter should:

- a. Be adjudged a bankrupt;
- b. Become insolvent or have a receiver of its assets or property appointed because of insolvency;
- c. Make a general assignment for the benefit of creditors;
- d. Default in the performance of any obligation or payment of any indebtedness under this Agreement;
- e. Suffer any judgment against it to remain unsatisfied or unbonded of record for thirty (30) days or longer; or
- f. Institute or suffer to be instituted any procedures for reorganization or rearrangement of its affairs.

4.3. Compensation. In the event of termination, City shall pay Consultant for

reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination within thirty-five (35) days after service of the notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant. City shall not be liable for any claim of lost profits.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

## **5.0. INSURANCE**

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages. City acknowledges that as a public agency Consultant can, pursuant to California Government Code Section 990, satisfy the insurance requirements set forth herein with a combination of self-insurance and self-insured pool insurance.

- (a) Broad-form commercial general liability, in a form at least as broad as ISO form #CG 20 01 04 13, including premises-operations, products/ completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) aggregate, combined single limits. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit. If Consultant maintains higher limits than the specified minimum limits, City requires and shall be entitled to coverage for the high limits maintained by the Consultant.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, each incident for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California and Employers Liability Insurance with a minimum limit of \$1,000,000 per accident for any employee or employees of Consultant. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officials, officers, agents, employees, and volunteers for losses arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

Before execution of this Agreement by the City, the Consultant shall file with the City Clerk the following signed certification:

I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers' Compensation or to undertake self-insurance before commencing any of the work.

The Consultant shall also comply with Section 3800 of the Labor Code by securing, paying for and maintaining in full force and effect for the duration of this Agreement, complete Workers' Compensation Insurance, and shall furnish a Certificate of Insurance to the City Clerk before execution of this Agreement by the City. The City, its officers and employees shall not be responsible for any claims in law or equity occasioned by failure of the consultant to comply with this section.

- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than Two Million Dollars (\$2,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

Neither the City nor any of its elected or appointed officials, officers, agents, employees, or volunteers makes any representation that the types of insurance and the limits specified to be carried by Consultant under this Agreement are adequate to protect Consultant. If Consultant believes that any such insurance coverage is insufficient, Consultant shall provide, at its own expense, such additional insurance as Consultant deems adequate.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Fort Bragg and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant."
- (b) Notice: "Consultant shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, Consultant shall forthwith obtain and submit proof of substitute insurance. Should Consultant fail to immediately procure other insurance, as specified, to substitute for any canceled policy, the City may procure such insurance at Consultant's sole cost and expense."
- (c) Other insurance: "The Consultant's insurance coverage shall be primary insurance as respects the City of Fort Bragg, its officers, officials, agents,

employees, and volunteers. Any other insurance maintained by the City of Fort Bragg shall be excess and not contributing with the insurance provided by this policy."

- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Fort Bragg, its officers, officials, agents, employees, and volunteers.
- (e) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self-Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be disclosed in advance to City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance. Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement. The certificates of insurance and endorsements shall be attached hereto as **Exhibit B** and incorporated herein by this reference.

5.5. Non-limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

## **6.0. GENERAL PROVISIONS**

6.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The City Manager or his or her designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. The Project Manager designated to work directly with Consultant in the performance of this Agreement will be Tabatha Miller, City Manager. It shall be the Consultant's responsibility to assure that the Project Manager is kept informed of the progress of the performance of the services and the Consultant shall refer any decision, which must be made by City, to the Project Manager. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Project Manager.



Consultant designates Patty Howard, HR Lead Advisor, as its Project Manager, who shall represent it and be its agent in all consultations with City during the term of this Agreement and who shall not be changed by Consultant without the express written approval by the City. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or if mailed, shall be addressed as set forth below and placed in a sealed envelope, postage prepaid, and deposited in the United States Postal Service. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 72 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:  
Patty Howard  
Regional Government Services  
PO Box 1350  
Carmel Valley, CA 93924  
Tel: 640-587-7300 ext 94

IF TO CITY:  
City Clerk  
City of Fort Bragg  
416 N. Franklin St.  
Fort Bragg, CA 95437  
Tel: 707-961-2823  
Fax: 707-961-2802

6.5. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.6. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Mendocino County, California. Consultant agrees to submit to the personal jurisdiction of such court in the event of such action.

6.7. Assignment. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.8. Indemnification and Hold Harmless. If Consultant is not a design professional performing "design professional" services under this Agreement, as that term is defined in Civil Code Section 2782.8, Consultant agrees to defend, indemnify, hold free and harmless the City, its elected and appointed officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, demands, actions, suits or other legal proceedings brought against the City, its elected and appointed officials, officers, agents and employees to the extent arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for

hereunder shall apply whenever, to the extent any claim, action, complaint or suit asserts liability against the City, its elected and appointed officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

6.9. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.10. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.11. Cooperation. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

6.12. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, preliminary notes, working documents, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of



performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City, but shall be made available to the City within ten (10) days of request or within ten (10) days of termination. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, preliminary notes and working documents, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City. Consultant or Consultant's agents shall execute such documents as may be necessary from time to time to confirm City's ownership of the copyright in such documents.

6.13. Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.14. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.15. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

6.16. Prohibited Employment. Consultant will not employ any regular employee of City while this Agreement is in effect.

6.17. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be

deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, the conflict shall be resolved by giving precedence in the following order, if applicable: This Agreement, the City's Request for Proposals, the Consultant's Proposal.

6.18. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.19. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.20. Headings. Paragraph and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.21. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.22. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.23. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.24. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.25. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.26. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY

CONSULTANT

By: \_\_\_\_\_  
Tabatha Miller  
Its: City Manager

By: \_\_\_\_\_  
Patty Howard  
Its: HR Lead Advisor

ATTEST:

By: \_\_\_\_\_  
June Lemos, CMC  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Keith F. Collins  
City Attorney

# REGIONAL GOVERNMENT SERVICES

## CLASSIFICATION AND COMPENSATION PROPOSAL

### STUDY DESIGN APPROACH AND WORK PLAN

RGS will take the following steps to complete the classification and compensation studies. The RGS Lead Advisor and Project Advisors will be available for phone and e-mail consultation and video conference/phone meetings throughout the project.

### REQUEST AND REVIEW KEY ORGANIZATIONAL BACKGROUND MATERIAL

Once the contract is executed, RGS will request and review key background material and documents from the City to understand the City's current classification and compensation plans, organizational structure, policies, procedures, challenges, and practices related to classification and compensation systems and administration. Typical materials requested include:

- Organizational Charts.
- Existing classification specifications.
- Current salary schedules.
- Previous related classification and compensations studies, both external and internal.
- Budget documents and related business case arguments for classification-related programmatic or organizational improvement requests.
- Agreements for terms and conditions of employment, employee contracts.
- Applicable policies and procedures.
- An employee contact sheet identifying employee name, class title, current assignment (department-section-unit) supervisor, contact information for employee and supervisor (e-mail and phone), current assessment as exempt or non-exempt, any acting or temporary promotion assignments.
- Recruitment and turnover information showing challenges and impediments to hiring and any other documents relevant to the study.

### VIRTUAL KICK-OFF MEETING WITH CITY MANAGEMENT

RGS will virtually meet with the City's point(s) of contact to explain the methodology, objectives, deliverables, and data collection methods to be used during the study. RGS will be available to help plan, facilitate, and participate in a communication plan or orientation meetings to communicate the study timeline, milestones, and process and answer questions about the study or the electronic survey tool. RGS will look to the City for assistance in scheduling employee orientation meetings to provide information regarding the study process and the electronic survey tool.

# CLASSIFICATION AND COMPENSATION PROPOSAL

## CLASSIFICATION STUDY

In order to determine the current state of the City's classification plan, RGS will analyze the standard allocation factors for the City's current job classification descriptions. These factors include:

- Authority and Autonomy in Decision Making.
- Scope and Complexity of the work.
- Types and Frequency of Contacts.
- Supervision Exercised and Received.
- Knowledge, Skills, and Ability required both at entry and learned after entry.
- Minimum Education and Experience required for successful performance.

RGS will utilize a whole-job analysis approach to compare jobs with one another on the basis of an overall evaluation of difficulty or performance. This approach takes into account the entire position, including those factors mentioned above, as well as the magnitude of work and the accountability for results. This method will help analyze and assess the relevance and hierarchical consistency of classifications within the whole class plan and in relation to the external market and internal equity.

During the study, RGS will conduct a job task analysis of each position, working with employees, managers, directors, and subject matter experts, as necessary, to acquire the information we will use in ensuring the proper classification of each position.

## Position Description Questionnaires (PDQ)

### *Participant Orientation and Survey Tool Deployment*

The project begins with virtual employee orientation meetings to introduce the PDQ, followed by the deployment of the PDQ survey tool. To collect incumbent job information, RGS will utilize a secure web-based survey tool for this study. RGS will distribute a link to the electronic PDQ using e-mail. These PDQs are designed to allow each employee to fully describe their positions' purpose, duties, and responsibilities in the easiest and quickest way possible. The PDQ survey tool will also capture other job-related information, including knowledge, skills, abilities, frequency, and nature of contacts, physical requirement, authority, autonomy of decision-making, consequences of error, environmental working conditions, education, and supervisory and managerial responsibilities.

After the orientation, employees are provided written instructions and a link to the PDQ. Employees may save and exit for later return while completing the survey and print a PDF of their completed survey. Supervisors receive an e-mail link to review, comment, and electronically sign completed surveys.

# CLASSIFICATION AND COMPENSATION PROPOSAL

For classifications that remain in the classification plan, but there are no incumbents at the time of the study, the classification's supervisor will be asked to complete the PDQ.

During the survey process, RGS professionals are available for remote support to employees and to answer questions related to the survey or to resolve technical difficulties with the survey tool.

## ***Review Completed PDQs – Evaluate Job Classification Structure***

RGS's advisors will review PDQ data collected, evaluating all classification factors of the position, the class series, the job family, and the internal relationships within the classification plan. RGS advisors will review the structure of each classification and the placement, levels, and parity of classifications within and across the City's classification plan.

## ***Conduct Data Clarification Interviews***

Based on a thorough review of all employees' PDQ surveys, RGS advisors will conduct individual or group interviews to clarify and secure additional information. For classifications in which there is no incumbent, the classification's supervisor will be interviewed. Interviews may be conducted via telephone, video conference, or onsite as appropriate. Fully experienced RGS Advisors will conduct employee interviews.

## **Develop Classification Recommendations**

RGS will review, compile, and analyze all information collected through job analysis, the PDQ survey tool, participant interviews, and organizational materials obtained from the City. Using this information, RGS will develop recommendations for the City's classification plan, including the reclassification, update, creation, and, where warranted, the elimination of classifications. RGS will also recommend suitable classification for each employee. Lastly, RGS will recommend implementation and maintenance strategies to ensure the plan and descriptions align with current business and operational needs.

## **Job Classification Descriptions**

RGS will prepare draft classification descriptions for one (1) classification series as determined by the City. These descriptions will be finalized based upon the City's edits. Each classification will accurately reflect the following information:

- Job Title
- General description and purpose of classification
- Supervision exercised and received
- Distinguishing characteristics in relation to other classifications performing similar work within the same job family or across the class plan
- An illustrative list of essential duty statements in order of importance

# CLASSIFICATION AND COMPENSATION PROPOSAL

- Knowledge, Skills, Abilities, and other attributes necessary to perform the essential duties
- Minimum qualifications required at entry to successfully perform the essential functions, including education, experience, training, certifications, licenses, etc.
- A statement of the physicality necessary to effectively perform the essential duties
- Appropriate FLSA designation, if requested by the City.

In addition, RGS will provide class hierarchy templates (i.e., Director, Manager, Supervisor, Advanced Journey, Journey, Entry) to facilitate the City's staff updating the remainder of the classification plan.

## COMPENSATION STUDY

### Establishment of Compensation Study Components

The total compensation study will begin with the establishment of the compensation study elements. These include the list of comparable agencies to be surveyed, the various benefit components, and the benchmark classifications that will be included in the study.

#### *Comparable Agencies*

The list could potentially include agencies utilized in any previous studies. It will be beneficial to review any such lists and consider other agencies using the following factors:

- Organizational Type and Services Provided: Entities on the list will be reviewed as to the type of organization, types of services provided, and how closely they align with the District.
- Population Served, Demographics: This will provide insight into the level and types of services required and the staffing levels and funding needed to provide those services.
- Agencies Employing Citizens and the Labor Market Climate: RGS will review this in combination with the information gained above to obtain an indication of applicant pools, the proximity of applicants to potential employers, and the likelihood of attracting sufficient qualified applicants from within the immediate market.
- Personnel, Operational, and Capital Plan Budgets: RGS will review the size of a potential comparator's budgets and current staffing allocations to gain insight into the available resources to provide services.
- Cost of Living: This factor, which includes the cost of housing, goods, and services, helps further analyze the available labor market, such as mean housing prices and median household incomes.

# CLASSIFICATION AND COMPENSATION PROPOSAL

## *Compensation Components*

The compensation components utilized in the study should assist the City in determining the total cost of the classifications within the agency and be those that affect the agency's ability to attract and retain qualified individuals. RGS would recommend the City consider using the following compensation components for the total compensation study. Base rate of hourly pay

- Contributions by BOTH employee and employer to the following programs:
  - Pension system
  - Health insurance premium, family coverage level
  - Dental insurance premium, family coverage level
  - Vision insurance premium, family coverage level
- Vacation leave
- Sick Leave
- Holiday Leave (including floating holidays)
- Management/Administrative leave
- Longevity pay
- Certification pay
- Education incentive

Using the comparison agencies and the compensation elements listed above, RGS will identify comparable classifications within each agency and collect and compile the compensation data. Comparable classifications will be identified on a “whole job” basis, taking duties, reporting structure, and requirements into consideration, not by title alone.

## *Benchmark Classifications*

Utilizing the outcome of the classification study, RGS will recommend the benchmark classifications to be included in the compensation study.

## **Compensation Study Process**

### *Collection of Data*

Using the comparison agencies and the compensation components identified, RGS will identify comparable classifications within each agency and collect and compile the compensation data. Comparable classifications will be identified on a “whole job” basis, taking duties, reporting structure, and requirements into consideration, and not by title alone.



# CLASSIFICATION AND COMPENSATION PROPOSAL

## *Recommend Placement of Classifications within the Salary Schedule*

Based on the following classification factors, RGS will recommend the internal alignment of benchmark and non-benchmark classifications.

- Data collected during the compensation study
- Authority and Autonomy in Decision Making
- Scope and Complexity of the work
- Types and Frequency of Contacts
- Supervision Exercised and Received
- Knowledge, Skills, and Ability required both at entry and learned after entry
- Minimum Education and Experience required for successful performance

## *Calculation of the Cost for Implementing the Compensation Study*

RGS will calculate the cost of implementations of the compensation study. We will also recommend strategies for the placement of classifications that fall below the recommended minimum salary ranges and for a staggered implementation plan if required.

## **CLASSIFICATION AND COMPENSATION STUDY REPORT**

RGS will compile and incorporate information gathered in the collaborative review process and finalize the report. The final report will include, at a minimum, the following:

- Executive Summary – including process followed and methodology used.
- Classification Study
  - Findings related to job titles, job PDQs, and employee interviews.
  - Recommendations for the modification of the classification plan that reflect the needs of the City, identify where there is a disparity in duties performed and the classification specification, and insight into areas of note related to span of control, reporting relationships, and career ladders.
  - Recommendations for job titles or classes that are obsolete or might benefit from the modernization of title and nomenclature, new classes and titles, and position reclassifications.
  - Strategies for the implementation and maintenance of the classification plan along with tools.
- Compensation Study
  - A list of comparison agencies surveyed as part of the compensation study.
  - A list of classifications surveyed.

# CLASSIFICATION AND COMPENSATION PROPOSAL

- Statistics for each benchmark classification’s base rate of pay identifying the percentage above or below the median of market comparators
- Statistics for each classification’s total compensation identifying the percentage above or below the median of market comparators
- The average base rate of pay of comparable agencies will be compared to the internal alignment recommended base rate of pay
- The average total compensation of comparable agencies and internal alignment recommendation will be compared.
- Assessment of benefits
- Complete compensation survey data
- Strategies for implementing the study recommendations, including the cost of implementation.

## BUDGET AND SCHEDULE OF CHARGES

At RGS, we bill only actual hours attributable to the project at the rate of the actual Advisor or technician. Work will commence upon notification by the City of the project award. Work is performed as agreed and subsequently billed each month based on hours actually worked. RGS Advisors are skilled at prioritizing projects and working within the budget of partner agencies. Mileage, if applicable, will be calculated/invoiced using the current IRS rate.

In calculating the costs for the project, RGS has considered the most efficient and cost-effective methods while continuously utilizing Human Resources’ best practices. The total project for the classification and compensation studies would **not exceed \$34,900**. Estimated project costs include:

Classification and Compensation Study Phases	Estimated Cost
1. Review the City’s documents and meetings with staff.	\$2,300
2. Class Study – Design PDQ, interview employees, analyze data, recommend internal alignment, prepare job descriptions for one complete class series, create template job descriptions.	\$17,200
3. Compensation Study – Establish comparable agency list, benefit components, benchmark classifications. Collect and compile data, creation of salary schedule, cost analysis of recommended classification placement.	\$9,800
4. Prepare compensation data worksheets and classification and compensation study report.	\$4,100
5. Presentations of findings and recommendations to Classification & Compensation Committee, City Council, and other designated groups.	\$1,500
<b>TOTAL ESTIMATED COST NOT TO EXCEED:</b>	<b>\$34,900</b>

# CLASSIFICATION AND COMPENSATION PROPOSAL

The hourly rate for work performed will be billed at the following hourly rates based on the Advisor(s) assigned to the project.

Title	Hourly Rate
Chief Operating Officer	\$135 to \$220
Deputy Chief Operating Officer	\$130 to \$195
Senior/Lead Advisor	\$125 to \$190
Advisor	\$115 to \$160
Project Advisor	\$105 to \$125
Project Coordinator	\$85 to \$120
Technical Specialist	\$75 to \$115

## WORK SCHEDULE

The following is a tentative project timeline that may be modified with mutual agreement between the City and RGS. Staff availability and responsiveness will be critical in meeting the study timeline as presented. In addition, the success of the data collection process will be dependent on how forthcoming the comparator agencies are with the requested information. Meetings with the City's points of contact can be scheduled as required. Progress reports will be provided throughout the project. RGS strives to manage the timeline to ensure deadlines are met.

Please be advised that there are holidays during the proposed timeline, which have been taken into account. This timeline has not identified the timing for meet and confer processes the City may require. Based on the City Council's schedule, the following timeline includes a tentative start date during the first week of December 2021.

# CLASSIFICATION AND COMPENSATION PROPOSAL

CLASSIFICATION STUDY	TENTATIVE DATES	RESPONSIBLE PARTY
1. Request and review the City's documents.	Week of December 6, 2021	City/RGS
2. Kick-Off Meeting with the City's points of contact to discuss the project.	Week of December 13, 2021	City/RGS
3. Orientation meeting with employees to provide information on study and directions about online PDQ.	Week of January 3 – January 10, 2022	City/RGS
4. Issue online PDQs to employees.	Week of January 17, 2022	RGS
5. Employee completed PDQs to Managers/Directors for review.	Week of January 31, 2022	City
6. Manager/Director review completed and all PDQs submitted to RGS for analysis.	Week of February 14, 2022	City
7. Status meeting regarding PDQ submittals	Week of February 14, 2022	City/RGS
8. Employees/Managers/Directors interviews.	Weeks of February 28-March 7, 2022	City/RGS
9. Analysis and development of recommendations.	Weeks of March 14 – March 21, 2022	City
10. Status meeting to discuss findings and draft recommendations for classification plan.	Week of March 28, 2022	City/RGS
11. Draft single class series job descriptions, templates reflecting the class hierarchy, and recommended benchmark class list for compensation study submitted to the City for review.	Week of April 4, 2022	City
12. City returns draft classification descriptions and benchmark class list to RGS with edits.	Week of April 11, 2021	City

As the accuracy of the compensation study depends on finding the correct classification matches from the comparable agencies to those of the City, the bulk of the compensation study cannot begin until the classification study has been completed. However, certain preliminary phases of the compensation study (i.e., review of compensation documents, establishing comparable agencies, and benefit components) will be conducted concurrently with the classification study to meet the overall project timeline.

# CLASSIFICATION AND COMPENSATION PROPOSAL

COMPENSATION STUDY	TENTATIVE DATES	RESPONSIBLE PARTY
1. Review of all City compensation-related documents.	Week of April 4, 2022	RGS
2. Begin collection of specific salary and benefits data for benchmark classes.	Week of April 18, 2022	RGS
3. Review and analysis of compensation survey data.	Weeks of April 25- May 9, 2022	RGS
4. Status meeting to discuss findings and draft recommendations for the compensation plan.	Week of May 9, 2022	City/RGS
5. Draft classification and compensation report to City for review.	Week of May 23, 2022	RGS
6. Feedback from City regarding the draft report.	Week of May 3, 2022, 2022	City
7. Final classification and compensation report to the City.	Week May 10, 2022	RGS
8. Presentations of study findings and recommendations, and classification and compensation plans.	TBD	RGS

The RGS team appreciates the opportunity to be of service to the City of Fort Bragg!

**Exhibit B**

**CERTIFICATES OF INSURANCE AND ENDORSEMENTS**



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

## Text File

File Number: 21-606

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**Agenda Date:** 11/22/2021

**Version:** 1

**Status:** Consent Agenda

**In Control:** City Council

**File Type:** Resolution

**Agenda Number:** 5I.

Adopt Joint City Council/Municipal Improvement District Resolution Approving Budget  
Amendment 2022-12 to the Fiscal Year 2021-2022 Budget

**RESOLUTION NO. \_\_\_\_-2021**

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL**

**and**

**RESOLUTION NO. ID \_\_\_\_-2021**

**RESOLUTION OF THE FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT BOARD**

**ADOPTING BUDGET AMENDMENT 2022-12  
AMENDING FY 2021-22 BUDGET**

**WHEREAS**, on June 14, 2021, the Fort Bragg City Council and the Fort Bragg Municipal Improvement District No. 1 District Board adopted the Fiscal Year (FY) 2021-22 Budget; and

**WHEREAS**, the City Manager has identified additional expenditure and revenue adjustments to the FY 2021-22 budget as adopted by the City Council on June 14, 2021; and

**WHEREAS**, the adjustments and updates are identified in Exhibit A attached hereto; and

**WHEREAS**, there is sufficient revenue and adequate fund balance to fund the allocations; and

**WHEREAS**, based on all the evidence presented, the City Council/District Board finds as follows:

1. Certain adjustments to the FY 2021-22 Budget are necessary as shown in Exhibit A.
2. There are sufficient funds to fund the allocations.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Fort Bragg/District Board of the Fort Bragg Municipal Improvement District No. 1 does hereby amend the previously adopted FY 2021-22 Budget to incorporate the changes enumerated in Exhibit A.

**The above and foregoing Resolution was introduced by Council/Board Member \_\_\_\_\_, seconded by Council/Board Member \_\_\_\_\_, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg/District Board of the Fort Bragg Municipal Improvement District No. 1 held on the 22nd day of November, 2021, by the following vote:**



**AYES:  
NOES:  
ABSENT:  
ABSTAIN:  
RECUSED:**

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**Bernie Norvell  
Mayor/Chair**

**ATTEST:**

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**June Lemos, CMC  
City/District Clerk**

**BUDGET AMENDMENT**

**Exhibit A**

Budget Adjustment #: **2022-12**

Budget FY: **FY 2021/22**

Account Description	Account #			FY 20/21 Current Budget	Increase (+) Budget Amt	Decrease (-) Budget Amt	Revised Total Budget Amt	Description
<b>Expenditures</b>								
Vehicle Replacement Budget Plan- Fleet	522	4550	0742	\$ 372,000	\$ 16,000	\$ -	\$ 388,000	Additional funds to cover vehicle replacement costs for this fiscal year.
CIP- Wastewater treatment	716	7001	0731	\$ 384,581	\$ 20,000		\$ 404,581	Biosolids unit additional international shipping increase costs.
Desalination and Groundwater- Water Emergency	651	6130	0731	\$ 377,533	\$ 372,467		\$ 750,000	Additional funding necessary to carry out additional water emergency related projects as cover additional shipping for desalination pre-filtration, shallow well delivery and related projects and staff time.
CalPERS - UAL Payment Per Policy	110	4190	0387	\$ 150,000	\$ 770,000		\$ 920,000	Council Pension Funding Policy 50% of General Fund Surplus to pay down UAL. Estimated surplus at \$1.54M for FY 20-21.
Legal Fees	110	4130	0311	\$ 150,000	\$ 100,000		\$ 250,000	Additional legal fees, including litigation and acquisition of South Mill Site property.
Wellness Program	110	4190	0319	\$ 45,000	\$ 2,500		\$ 47,500	Wellness physical fitness test program for all staff.
Homeward Bound Funding	110	4200	0619	\$ 20,000	\$ 3,000		\$ 23,000	Homeward Bound Program
Broadband Design & Engineering	110	4130	0319	\$ 38,000	\$ 48,000		\$ 86,000	Detailed design and Engineering for City-wide Municipal Broadband
Caspar Transfer Station & Landfill	110	4915	0319	\$ 80,000	\$ 86,092		\$ 166,092	2019-20 County billing received late
<b>Total Expenditures</b>				<b>\$ 1,617,114</b>	<b>\$ 1,418,059</b>	<b>\$ -</b>	<b>\$ 3,035,173</b>	
<b>Revenue</b>								
Transient Occupancy Tax	110	0000	3137	\$ 2,759,742	\$ 200,000		\$ 2,959,742	Recognize FY 21-22 1st Qtr Revenue Trends.
<b>Total Revenue</b>				<b>\$ 2,759,742</b>	<b>\$ 200,000</b>	<b>\$ -</b>	<b>\$ 2,959,742</b>	

**Reason for Amendment:**

**RESOLUTION # :** XXXX-2021

Budget Adjustment to be presented at City Council meeting on 11-22-2021

**Authorization:**

Requested By:

Sandy Arellano/Tabatha Miller

**Signature:**

*Sandy Arellano*

**Date:**

11/15/21

Approval:

Isaac Whippy

Finance Use:

\_\_\_\_\_

**Attach copies of Resolution or other documentation**



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

## Text File

File Number: 21-590

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**Agenda Date:** 11/22/2021

**Version:** 1

**Status:** Consent Agenda

**In Control:** City Council

**File Type:** Minutes

**Agenda Number:** 5J.

Approve Minutes of November 8, 2021



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

## Meeting Minutes City Council

**THE FORT BRAGG CITY COUNCIL MEETS CONCURRENTLY AS  
THE FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT NO. 1  
AND THE FORT BRAGG REDEVELOPMENT SUCCESSOR  
AGENCY**

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Monday, November 8, 2021

6:00 PM

Via Video Conference

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### CALL TO ORDER

Mayor Norvell called the meeting to order at 6:00 PM, all Councilmembers appearing via video conference.

### PLEDGE OF ALLEGIANCE

### ROLL CALL

**Present:** 5 - Mayor Bernie Norvell, Vice Mayor Jessica Morsell-Haye, Councilmember Tess Albin-Smith, Councilmember Lindy Peters and Councilmember Marcia Rafanan

### AGENDA REVIEW

City Manager Miller requested that the Council delay hearing Item 8C, as the City Attorney is referring it to a colleague to do further research on the resolution, which will be brought back at a future Council meeting. Mayor Norvell removed Item 8C from the agenda.

### 1. MAYOR'S RECOGNITIONS AND ANNOUNCEMENTS

Mayor Norvell announced that Councilmember Peters has been appointed as the City's ambassador to Otsuchi and Vice Mayor Morsell-Haye has been appointed liaison between the City, County and Noyo Harbor District to form an ad hoc committee composed of members of all three entities to strengthen relationships regarding the harbor.

### 2. PUBLIC COMMENTS ON: (1) NON-AGENDA, (2) CONSENT CALENDAR & (3) CLOSED SESSION ITEMS

- (1) Jay McMartin Rosenquist requested an update on the receivership at 575 S. Whipple Street. Jacob Patterson commented on cannabis cultivation.
- (2) Jacob Patterson spoke on Items 5E and 5G.
- (3) N/A.

### 3. STAFF COMMENTS

City Manager Miller noted that the tree lighting and holiday lights parade will take place on December 4. Visit Fort Bragg will host a holiday event in the Central Business District (CBD) on December 11. The City's quarterly newsletter, *The City Buzz*, will go out with this month's utility bill. In honor of Veterans Day this week, Miller recognized the City employees who are also military veterans. She provided an update on transient occupancy tax collections for the

first quarter of FY 2021/22 and showed a sales tax comparison for the first two months of this fiscal year. The City Manager also gave a brief update on the lease revenue bonds, regional transportation plan, and the Halloween Trunk or Treat event. She told the Council that the Guest House Museum lease expires on January 1, 2022 and will be renewed unless the Council directs otherwise. Miller reported that work in the right-of-way is being performed over the next few weeks at the Plateau Project on South Street. She stated that persons on the Coastal Trail observing motorized or electric bicycles operating in an unsafe manner should call the Police Department Dispatch.

#### **4. MATTERS FROM COUNCILMEMBERS**

Councilmember Peters spoke about for-profit businesses operating on the Coastal Trail and recommended signage saying our grant with the Coastal Conservancy does not allow the operation of businesses on the trail. Vice Mayor Morsell-Haye provided an update on the Citizens Commission, which expects to make a presentation to the full Council on November 22. She asked that staff provide an update on the South Whipple Street receivership. Councilmember Albin-Smith requested that musicians and entertainers contact her for the holiday events. She asked that the Council consider sending her to a policymaker conference in Yosemite this year.

#### **5. CONSENT CALENDAR**

Mayor Norvell removed Items 5G and 5I from the Consent Calendar due to a conflict; Item 5E was removed for further discussion.

#### **Approval of the Consent Calendar**

**A motion was made by Councilmember Peters, seconded by Councilmember Albin-Smith, to approve the Consent Calendar with the exception of Items 5E, 5G and 5I. The motion carried by the following vote:**

**Aye:** 5 - Mayor Norvell, Vice Mayor Morsell-Haye, Councilmember Albin-Smith, Councilmember Peters and Councilmember Rafanan

- 5A. [21-562](#)** Adopt by Title Only and Waive the Second Reading of Ordinance 974-2021 Rescinding Interim Ordinance 964-2021 Placing a Moratorium on the Approval of Applications for Formula Businesses

**This Ordinance was adopted on the Consent Calendar.**

Enactment No: ORD 974-2021

- 5B. [21-565](#)** Adopt City Council Resolution Making the Legally Required Findings to Continue to Authorize the Conduct of Remote "Telephonic" Meetings During the State of Emergency

**This Resolution was adopted on the Consent Calendar.**

Enactment No: RES 4462-2021

- 5C. [21-567](#)** Adopt City Council Resolution Confirming the Continued Existence of a Local Emergency in the City of Fort Bragg

**This Resolution was adopted on the Consent Calendar.**

Enactment No: RES 4463-2021

- 5D.** [21-569](#) Adopt City Council Resolution Approving Expenditures of the Joint City/County Caspar Transfer Station Rent Account to Fund a Financial and Environmental Analysis for Potential Coastal Transfer Station Sites

**This Resolution was adopted on the Consent Calendar.**

Enactment No: RES 4464-2021

- 5F.** [21-574](#) Adopt City Council Resolution Approving Professional Services Agreement with ASA Analysis & Communication, Inc. for Design Concepts and Cost Estimates Associated with Development of Municipal Ocean Water Intake/Discharge Infrastructure and Authorizing the City Manager to Execute Contract (Amount Not to Exceed \$90,800; Account No. 334-5060-0630)

**This Resolution was adopted on the Consent Calendar.**

Enactment No: RES 4466-2021

- 5H.** [21-572](#) Approve Minutes of October 25, 2021

**These Minutes were approved on the Consent Calendar.**

### **ITEMS REMOVED FROM CONSENT CALENDAR**

- 5G.** [21-573](#) Approve Scope of Work for the Request for Proposals for Engineering and Design Services for the 2022 Streets Project

Council asked for clarification and discussion about the placement of bollards. Assistant Director of Engineering O'Neal showed a map indicating where temporary bollards would be placed.

Public Comment was received from Jacob Patterson.

**A motion was made by Councilmember Peters, seconded by Vice Mayor Morsell-Haye, that this Scope of Work be approved. The motion carried by the following vote:**

**Aye:** 4 - Vice Mayor Morsell-Haye, Councilmember Albin-Smith, Councilmember Peters and Councilmember Rafanan

**Abstain:** 1 - Mayor Norvell

- 5I.** [21-584](#) Adopt City Council Resolution Authorizing City Manager to Execute Contract Change Order With Akeff Construction Services, Inc. for the Maple Street Storm Drain and Alley Rehabilitation Project (PWP-00116), Increasing the Contract by \$78,490.00 from Streets Project Fund (Account 420-4870-0731) for a Total Contract Amount Not to Exceed \$1,412,544.00

Public Comment: None.

**A motion was made by Councilmember Peters, seconded by Vice Mayor Morsell-Haye, that this Resolution be adopted. The motion carried by the following vote:**

**Aye:** 4 - Vice Mayor Morsell-Haye, Councilmember Albin-Smith, Councilmember Peters and Councilmember Rafanan

**Abstain:** 1 - Mayor Norvell

Enactment No: RES 4467-2021

- 5E. [21-571](#)** Adopt City Council Resolution Approving a Contract with the County of Mendocino for Funding to Operate an Extreme Weather Shelter (EWS) from November 15, 2021 to March 31, 2022

Discussion was held regarding the Emergency Weather Shelter and motels giving out vouchers this year instead of the faith community offering shelter to homeless persons.

Public Comments: None.

**Mayor Norvell recessed the meeting at 6:45 PM; the meeting reconvened at 6:59 PM.**

**A motion was made by Councilmember Peters, seconded by Councilmember Albin-Smith, that this Resolution be adopted. The motion carried by the following vote:**

**Aye:** 5 - Mayor Norvell, Vice Mayor Morsell-Haye, Councilmember Albin-Smith, Councilmember Peters and Councilmember Rafanan

Enactment No: RES 4465-2021

## **6. DISCLOSURE OF EX PARTE COMMUNICATIONS ON AGENDA ITEMS**

None.

## **7. PUBLIC HEARING**

- 7A. [21-563](#)** Conduct Public Hearing, Receive Report, and Consider Adoption of Urgency Ordinance 975-2021 Extending the Temporary 45-Day Moratorium on the Approval of Applications and Permits for Cannabis Dispensaries in the Inland Zoning Areas

**Mayor Norvell opened the public hearing at 7:02 PM.**

City Manager Miller presented the staff report on this agenda item.

Public Comment was received from Angelica Sanchez and Jacob Patterson.

**Mayor Norvell closed the public hearing at 7:08 PM.**

Discussion: The general consensus of Council was to approve the four-month extension of the moratorium, which would be rescinded after the revised cannabis ordinance is adopted.

**A motion was made by Vice Mayor Morsell-Haye, seconded by Councilmember Peters, that this Urgency Ordinance be adopted by title only, waiving the reading of the text. The motion carried by the following vote:**

**Aye:** 5 - Mayor Norvell, Vice Mayor Morsell-Haye, Councilmember Albin-Smith, Councilmember Peters and Councilmember Rafanan

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Enactment No: ORD 975-2021

## **8. CONDUCT OF BUSINESS**

- 8A. [21-564](#)** Receive Report and Provide Direction to Staff on Potential Updates to Section 18.42.057 of the Inland Land Use and Development Code to Address the Siting of Cannabis Dispensaries in Relationship to Residential Neighborhoods

Associate Planner Gurewitz summarized the staff report on this agenda item.

Public Comment was received from Jay Koski, Jacob Patterson, Bill Mann, Andrew Jordan and Jan Brown.

Discussion: The majority of the Council directed that no buffer zone be established between dispensaries and residential areas and asked that staff provide statistics on the density of residences in the CBD.

**This Staff Report was referred to staff with directions to update the current cannabis ordinance as set forth above.**

- 8B. [21-566](#)** Receive Report and Provide Staff with Clarification on the Proposed Zoning for Cannabis Microbusinesses in the City of Fort Bragg

Associate Planner Gurewitz gave the staff report for this agenda item.

Public Comment was received from Brandy Moulton and Jacob Patterson.

Discussion: The majority of the Council directed that microbusinesses be allowed in the CBD, including all components set by the State for nursery, processing, distribution, retail and manufacturing (Type 6 licenses allowed only in commercial zones). The definition of the component terms needs to be discussed further and a mechanism created to determine accessory or subordinate uses, i.e., via square footage or revenue.

**This Staff Report was referred to staff with directions to update the current cannabis ordinance as set forth above.**

- 8C. [21-580](#)** Receive Report and Consider Adoption of City Council Resolution Waiving Water Capacity Fees and Fort Bragg Municipal Improvement District No. 1 Resolution Waiving Wastewater Capacity Fees for Restaurants, Cafes and Coffee Shop Businesses in the Central Business District

**This agenda item was continued to a future City Council meeting.**

## **9. CLOSED SESSION**

### **ADJOURNMENT**

**Mayor Norvell adjourned the meeting at 9:30 PM.**

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BERNIE NORVELL, MAYOR



\_\_\_\_\_  
June Lemos, CMC, City Clerk

IMAGED (\_\_\_\_\_)



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

## Text File

File Number: 21-612

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**Agenda Date:** 11/22/2021

**Version:** 1

**Status:** Consent Agenda

**In Control:** City Council

**File Type:** Council Letter

**Agenda Number:** 5K.

Approve City Council Letter in Opposition to Mendocino Railway U.S. Department of Transportation Railroad Rehabilitation & Improvement Financing Loan



## CITY OF FORT BRAGG

*Incorporated August 5, 1889*

416 N. Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

November 22, 2021

### **VIA EMAIL AND U.S. MAIL**

The Honorable Carlos Monje  
Under Secretary  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

Re: Mendocino Railway RRIF Loan Application

Dear Under Secretary Monje:

Although we have not received a copy of the application materials, it recently came to our attention that the Mendocino Railway has an outstanding application for a Railroad Rehabilitation & Improvement Financing loan (RRIF). The City of Fort Bragg (City) does not support Mendocino Railway's application and does not believe that its application is forthright or that granting the loan is in the best interest of our town.

The City of Fort Bragg is a small coastal community of 7,300 residents perched on the bluff tops overlooking the Pacific Ocean in northern Mendocino County. For well over a century, the town was dominated by the timber industry and the Timber Mill which was located on approximately 425 acres of ocean front property. For most of its existence, the Timber Mill was the primary employer in town and at its peak operations employed 2,000 local individuals. Closure of the Timber Mill by Georgia-Pacific, LLC (GP) in 2002 was devastating to the community in terms of the loss of good paying blue collar jobs with benefits. The possible silver lining was redevelopment of that Mill Site coastal property and an opportunity to diversify the local economy. This of course could only happen after the necessary clean up and remediation of the brownfield site left by the mill and early train operations on the site.

Located approximately 165 miles north of San Francisco and 185 miles west of Sacramento, Fort Bragg, while quite small, is the largest city on the coast between San Francisco and Eureka. The remoteness of Fort Bragg is one of its greatest assets. The

natural landscape is beautiful. The air is clean, the ocean wild, and traffic is a non-issue. From grants and donations, the City acquired 104 acres of parkland along the bluff tops of the former Mill Site and completed construction of a multiuse trail in 2018. The Coastal Trail created public access to 3.5 miles of scenic coastline and is value added for local residents and visitors alike. The City donated 11.5 acres of that coastal property to the [Noyo Center for Marine Science](#)<sup>1</sup>. The Noyo Center is designing a marine science facility for that property devoted to innovative scientific research, hands-on education, and collaboration. The facility is part of transforming the former industrial Mill Site so that Fort Bragg is something other than a former mill town.

The City has also developed a “Blue Economy” movement which is about sustainable use of the ocean resources for economic growth, improved livelihoods and jobs, and healthy marine ecosystems. The Blue Economy offers a path for considering economic development and ocean health as compatible positions; emerging when economic activity is in balance with the long-term capacity of ocean ecosystems to remain resilient and healthy. This is an innovative sector that encompasses a broad range of activities from traditional ocean sectors to new businesses focused on ocean resiliency, and includes activities related to climate change, fisheries, renewable energy, tourism and transportation.

The City was in discussions with Georgia Pacific to purchase a portion of the Mill Site, as the home base for its Blue Economy, including ocean water intake/discharge infrastructure to support aquariums and research at the Noyo Center’s Ocean Science Facility and a “Blue Economy Innovation Cluster.” City Council has also been in active conversations with the Tribal Council of Sherwood Valley Band of Pomo to partner in future reuse of the former Mill Site. The City was poised to lay the foundations for housing, good paying jobs, and to perform the final remediation of Operable Unit E – specifically, the ponds and open space located in the center of the site. This project included removing the dam and beach berm, returning the tidal estuary, restoring wetlands and daylighting Maple and Alder Creeks in the process.

Prior to discussions about acquiring the southern Mill Site property, the City and Georgia Pacific had conversed regarding Georgia Pacific donating the parcels on and surrounding Pudding Creek. The City had pulled together a group of entities interested in removing the remaining dam and restoring the creek so that the property could be used as a public open space or park with trails. The group included the City of Fort Bragg, The Nature Conservancy (TNC), Trout Unlimited, California Department of Fish and Wildlife (CDFW), National Oceanic and Atmospheric Administration (NOAA) and California State Parks. By owning this property, Mendocino Railway can limit access to this scenic area to those who purchase tickets on its excursion train.

As you likely know, Mendocino Railway owns a scenic excursion train sentimentally known as the “[Skunk Train](#)”<sup>2</sup> that operates from a train station located in the City of Fort

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<sup>1</sup> <https://noyocenter.org/about/>

<sup>2</sup> <https://www.skunktrain.com/>

Bragg. Since the 1980s, the Skunk Train has operated primarily as an excursion train between Fort Bragg and Willits. The Skunk Train's mascot is a cartoon skunk dressed in a conductor's outfit and the train station carries a line of merchandise marketed for tourists to the City. In 2016, the tunnel between Fort Bragg and Willits collapsed and has been closed since. Excursion trips now originate from Fort Bragg and head east for several miles then return by putting the train in reverse and back tracking the same route. A similar "there and back again" route occurs on the Willits leg, where the train heads west stopping in North Spur before the collapsed tunnel and then returns to the Willits station.

The short excursion is popular with visitors, as are the railbikes that allow tourists to pedal the tracks themselves along the scenic Pudding Creek or along the Noyo River through the Redwoods. For many years, the City of Fort Bragg has supported the Skunk Train operation and recognized the Skunk Train's contribution to our local economy provided by the excursion train trips that attract tourists to our community. This support included submitting BUILD grant applications, for three years in a row, on behalf of the Skunk Train in hopes of repairing the tunnel and reinstating the excursion trips all the way to Willits.

However, the Fort Bragg City Council does not support Mendocino Railway's current RRIF loan application as it perpetuates the falsehood that the railway is a common carrier public utility, which allows it to strategically claim exemption from local and state regulations and use powers such as eminent domain to diversify its holdings well beyond railroad operations. On August 11, 2021, Mendocino Railway filed an Eminent Domain Complaint in Mendocino Superior Court against Georgia-Pacific LLC (Case No. 21CV00595). The action was brought to condemn 210 acres of coastal property, the former Timber Mill Site, and approximately 62 acres of property running along both the north and south banks of Pudding Creek. Both properties are located within Fort Bragg City limits.

This is in addition to the approximately 77 acres of coastal property on the northern portion of the Mill Site that it acquired from Georgia-Pacific in June of 2019. That property is contiguous to the Skunk Train's Fort Bragg Train Station, Round House and other operational facilities.<sup>3</sup> The Mendocino County Assessor's Office lists the value of the transaction at \$1.5 million. The existing Fort Bragg Train Station, Round House and other operational facilities sit on little more than 4 acres of land.

The 77 acres remain undeveloped, except for a 70,000 square foot drying shed, the only remaining structure from the Mill Site. In Mendocino Railway's 2021 eminent domain complaint, the public interest and necessity was stated as "required in furtherance of Plaintiff's current ongoing and future rail operations and all uses necessary and

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<sup>3</sup> Mendocino County Assessor's Office lists the three parcels purchased by Mendocino Railway from Georgia Pacific on June 20, 2021 at a total acreage of 172 and a value of \$18.8 million. The Mendocino Railway reported the acreage at approximately 77 and the discrepancy is due to the refusal of Mendocino Railway to submit a lot line adjustment for the purchase of a portion of parcel # (APN) 008-020-17-00.

convenient thereto.”<sup>4</sup> The northern portion of the Mill Site acquired in 2019 increased the land available to Mendocino Railway for rail operations by a factor of 19 times raising the question why the excursion train would need the additional 272 acres (an increase 87 times the current facilities) acquired by the condemnation action for current ongoing and future rail operations?

On November 19, 2021, the City was informed by Georgia-Pacific that it had settled the eminent domain lawsuit brought by Mendocino Railway by agreeing to the condemnation. As a result of condemnation, Mendocino Railway was able to acquire prime ocean front and creek side property.

The City believes that Mendocino Railway wants to develop the coastal and creek side property with little or no local or state regulatory oversight. The Mendocino Railway’s Fall 2021 newsletter, Volume 1, Issue I, “The Little Stinker,” also delivered on November 19, 2021, describes its plans for the 77 acres on the northern portion of the Mill Site.

“[T]he Skunk Train is excited to unveil its land use plan for the Fort Bragg Mill Site. This is a once-in-a-generation project, completely reimagining one of the California Coast’s most striking stretches of oceanfront land. The vision and scope of the New Mill Site is staggering, incorporating tiered housing, an oceanfront hotel, sprawling open space preserves, the central Railroad Square, an oceanfront rail expansion, a flagship restaurant, commercial space, and an educational historic park.”

By sprinkling tourist train rides into the development plans, the Railway appears to be ready to claim that its actions fall under that of a common carrier for transportation. As a common carrier, Mendocino Railway asserts that it is not subject to local and state regulations.<sup>5</sup> In its demurrer to Georgia-Pacific’s affirmative defenses to the eminent domain action for the 272 acres, Mendocino Railway asserts it “is a federally regulated railroad and, as such CEQA [California Environmental Quality Act] is preempted and CEQA is not applicable.”<sup>6</sup> The 272 acres, just acquired by condemnation, is subject to additional remedial action for the Operable Unit E under the California EPA’s Department of Toxic Substances Control’s (DTSC) Remediation Order HAS-RAO-06-07-150. If the Mendocino Railway does not consider the 272 acres subject to California environmental law, who is responsible for the final clean up?

Development without local zoning or environmental regulation is not in the best interests of the City. Georgia-Pacific reported spending more than \$50 million and almost 20 years

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<sup>4</sup> *Mendocino Railway v. Georgia –Pacific LLC*, Mendocino County Superior Court Case No. 21CV00595.

<sup>5</sup> Letter dated April 9, 2020 from Paul J. Beard II, counsel for Mendocino Railway: “As we believe the federal preemption of Mendocino Railway’s rail-related work on its properties is supported by black-letter law, we ask that the Coastal Commission confirm that it agrees with the analysis and conclusions contained in this letter.” Letter dated November 2, 2020 from CA Coastal Commission to Paul Beard II: “Finally, even if MR’s holdings were determined to be subject to STB jurisdiction, we believe that certain portions of the proposed development would also be subject to the federal consistency review by the Commission. Your letter has not changed our position on these matters.”

<sup>6</sup> *Mendocino Railway v. Georgia –Pacific LLC*, Mendocino County Superior Court Case No. 21CV00595.

on cleanup of the former Mill Site, which is not yet complete. It is unimaginable that Mendocino Railway intends to use this coastal property for current ongoing and future rail operations. The City of Fort Bragg is 1,869 acres or just 2.9 square miles. That would mean that nearly 15% (272+4 acres) of the land in the City will be converted to railway operations. What could it possibly haul from Willits to Fort Bragg to make this viable? If this is true, the City's treasured Coastal Trail would be bordered by a freight railroad. The best and most valuable use of this property is not as railroad operations.

As pointed out in the letter from the Friends of the Eel River, a plan to haul rock from the Eel River canyon to ship from Fort Bragg is not viable. The Noyo Harbor, which supports a small fishing industry, is not a deep water port and cannot accommodate barges or ships of any substantial size. For example, the Coast Guard's small boat station located in the Harbor is limited to boats up to 47 feet, despite the fact that it services 120 miles of northern California coast. Even if the Noyo Harbor could accommodate freight ships, the harbor is not accessible from Mendocino Railway's property, which means the freight would need to be unloaded from the train and transferred by truck to the harbor then reloaded onto ships. This seems impractical at best.

That said, Mendocino Railway could acquire, through purchase or condemnation, the already developed property between to extend the train tracks to the harbor. A final ludicrous option is for Mendocino Railway to build an entirely new port off of the property acquired from Georgia-Pacific, but this would require access over, under or through the City's beloved Coastal Trail that runs the length of the coastal bluffs. Of course any of these scenarios could only be possible if the development is not subject to local regulation, California environmental law or the state's Coastal Act.

On October 28, 2021, the City filed a complaint for declaratory and injunctive relief against Mendocino Railway, in Mendocino County Superior Court (Case No. 21CV00850) seeking a declaration that the railway is not a public utility and does not qualify as a federally regulated common carrier providing transportation. The local three-mile Skunk Train excursion service is not transportation or a public utility. The proposed repair of the collapsed tunnel, rebuilding of the North Coast Railroad Authority (NCRA) line and active freight and passenger service is simply a ruse to hold onto the designation as a common carrier so that Mendocino Railway can develop the 350 acres in Fort Bragg without having to comply with state and local regulation.

The railway's application and its efforts to obtain rights to the NCRA line are not for true rail operations but a way to hold onto the powers afforded a federally regulated railway that is connected and part of the national railway system. In conclusion, the Fort Bragg City Council does not support Mendocino Railway's Railroad Rehabilitation & Improvement Financing loan and encourages the Department of Transportation to review the application materials closely and consider the input from other agencies and organizations.

Respectfully,

Bernie Norvell  
Mayor

Jessica Morsell-Haye  
Vice Mayor

Teresa K. Albin-Smith  
Councilmember

Lindy Peters  
Councilmember

Marcia Rafanan  
Councilmember





# FRIENDS OF THE EEL RIVER

*Working for the recovery of our Wild & Scenic River, its fisheries and communities.*

Wednesday, November 17, 2021

The Honorable Carlos Monje  
Undersecretary  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

## **Re: Mendocino Railway RRIF loan application**

Dear Under Secretary Monje,

Friends of the Eel River (FOER) advocates for the protection and restoration of Northwestern California's Eel River watershed and its critical but imperiled fisheries. For reasons we explain below, FOER is alarmed to learn that Mendocino Railway (aka California Western Railway, aka the Skunk Train) may be under consideration for a federal loan under the Railroad Rehabilitation & Improvement Financing (RRIF) program.

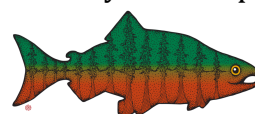
Mendocino Railway's 2021 loan application has not yet been made accessible to the public, so our comments here are necessarily preliminary, but are based on the company's previous applications for RRIF funding, as well as court records, public agency records, and press reports. Given what we do know, it is difficult for us to understand how Mendocino Railway, a company that has only ever operated excursion trains on a section of tracks isolated from the national rail network, might qualify for public funds intended for the rehabilitation and improvement of actual railroads.

Mendocino Railway owns a rail line from Willits to Ft Bragg, CA over the steep, rugged Coast Range. A collapsed tunnel on the line restricts the excursion trains and railbikes that Mendocino Railway does operate to going out to the tunnel and back to their point of origin. Mendocino Railway raised private funds to clear the tunnel after a previous collapse, but the tunnel failed again. If Mendocino Railway's current application follows the lines of its previous applications, the company seeks funding to repair the collapsed tunnel. Our understanding is that such operating costs are not eligible for RRIF funding.

Mendocino Railway claims it will become an operating freight railroad, but there is nothing to suggest the line from Willits to Ft Bragg will become economically viable to operate as a freight line in the foreseeable future. The rail line Mendocino Railway uses was constructed for the former Georgia-Pacific mill at Ft Bragg. That mill is gone. The timber industry has restructured around more flexible road networks.

Nor is there any reasonable basis to credit Mendocino Railway's claim that it could profitably operate a rail line hauling rock out of the Eel River canyon to ship from Ft Bragg.

**HUMBOLDT OFFICE**  
707.798.6345 • foer@eelriver.org  
PO Box 4945, Arcata, CA 95518



It is difficult to exaggerate how tiny the Ft Bragg harbor is. There is very little evidence of demand for rail transportation in the region around Willits and Ft Bragg, and none at all on the scale necessary to cover the costs of rebuilding and maintaining the necessary infrastructure.

The North Coast Railroad Authority (NCRA) line, through which the Mendocino Railway line might connect to the national rail system at Willits, has been inoperable north of Windsor, CA for more than two decades. As the NCRA noted in their letter to your office of November 3, their estimate of the cost of repairs needed to put the rail line from Willits south back into operation was at least \$600 million. These challenges are orders of magnitude greater than the problems Mendocino Railway cannot overcome on its own line.

FOER's greatest concern with Mendocino Railway's RRIF application is that any public assistance to the company will help support an Offer of Financial Assistance, which Mendocino Railway has informed the Surface Transportation Board it is preparing for "all or a portion" of the North Coast Railroad Authority (NCRA) rail line from Willits north to Humboldt Bay.

Because a RRIF loan would improve Mendocino Railway's ability to seize and operate a railroad on the line the NCRA now seeks to railbank for trail use, DOT should carefully consider the potential impacts on sensitive communities, critically important natural areas, threatened and endangered species, clean water, and other public trust values that would be significantly impaired by the reconstruction and operation of a freight rail line in one of North America's most unstable landscapes.

As noted, Mendocino Railway may use RRIF funds in support of its efforts to claim "all or a portion of" the NCRA line. Therefore, DOT should analyze the several possible scenarios at hand, each of which promises significant impacts. Even reopening the relatively small portion of the NCRA line from Dos Rios to Willits, as Mendocino Railway has suggested it intends to do to ship rock out of Ft Bragg, would entail impacts on the mainstem Eel River and Outlet Creek.

In addition to Chinook salmon and steelhead, Outlet Creek is home to a critically imperiled population of the southernmost naturally spawning coho salmon on the planet. Coho, steelhead and Chinook in the Eel River are all listed as Threatened under the federal Endangered Species Act. Reconstruction and operation of freight rail line down Outlet Creek and the mainstem Eel River canyon would certainly cause take, impair the recovery, and not improbably result in jeopardy, to surviving Eel River salmon and steelhead. Thus, DOT should consult with the National Marine Fisheries Service regarding potential impacts to ESA listed Eel River fisheries before approving any grant of federal funds that may facilitate Mendocino Railway's proposed actions.

One of the most important of the public values Mendocino Railway threatens with its proposal to seize the NCRA line for private gain is the ability of Humboldt County citizens to use their public right of way as public trails. Completion of the critical Humboldt Bay Trail South project, which will finally allow safe bicycle access between Eureka and Arcata,

depends on completion of the NCRA's proposed railbanking. Both the railbanking effort and the trail project are now threatened by Mendocino Railway's effort to acquire the NCRA line for its own purposes. Mendocino Railway dismisses these concerns in its filing with the Surface Transportation Board. The Department should not.

Thus, we urge DOT to ensure that prior to any loan approval, the Department carefully and fully consider the range and extent of the impacts on the environment, fish and wildlife, and human communities that could result from Mendocino Railway's actions. Certainly, the details of Mendocino Railway's proposed action must be fully disclosed and analyzed under the National Environmental Policy Act (NEPA), but it will also be essential to consider the probable impacts to salmon and steelhead listed under the federal ESA, to clean water, to public health and a range of other public trust values. As well, the Department should analyze the climate impacts of Mendocino Railway's current and proposed operations, including of course the carbon footprint of its excursion train customers, the bulk of whom must necessarily drive long distances for a short train ride out of Willits or Ft Bragg.

It is important the Department ask hard questions about the financial and legal soundness of Mendocino Railway's professed plans. While the city of Ft Bragg sponsored Mendocino Railway's unsuccessful 2020 RRIF grant application, it has now withdrawn its support for the company's efforts to secure public funds. The locus of Mendocino Railway's falling out with the city of Ft Bragg appears to be a parcel which both the city and the company sought to acquire. When it was unsuccessful in arranging a purchase, Mendocino Railway attempted to acquire the property by eminent domain. The city has now filed litigation challenging Mendocino Railway's claim to be, as an operating railroad, a public utility entitled to use eminent domain.

As well, there is the nagging question of the toxic waste site at Mendocino Railway's Ft Bragg property, the former Georgia Pacific mill. The California Department of Toxic Substance Control's EnviroStor website<sup>1</sup> reports that

California Western Railroad completed a Resource Conservation and Recovery Act (RCRA) Facility Investigation (RFI) of the maintenance facility in Fort Bragg in 2013. Based on the results of the RFI, additional work is needed to investigate lead, arsenic and petroleum and groundwater. *As of September 2018, this investigation has not been completed because of limited financial resources of California Western Railroad. DTSC expects the investigation to begin in 2019.* (emphasis added)

Clearly, Mendocino Railway has a number of financial, and perhaps legal, problems to overcome.

Thus, it is striking that on August 16 of this year, both Mendocino Railway and an LLC chartered in Sheridan, WY filed notices with the Surface Transportation Board of their intent to file Offers of Financial Assistance in the NCRA's proceeding proposing to railbank its line from Willits to Humboldt Bay to construct the Great Redwood Trail. Such Offers of

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<sup>1</sup> see [https://www.envirostor.dtsc.ca.gov/public/profile\\_report?global\\_id=80001451](https://www.envirostor.dtsc.ca.gov/public/profile_report?global_id=80001451))

Financial Assistance are in their essence federal eminent domain actions that would short circuit the NCRA's proposal to railbank its line. The NCRA line, the costliest line in the country to maintain, would be so expensive to rebuild and operate that a very high volume of freight would be necessary to service the capital investment.

Only coal offers even a fraction of the volume of freight necessary to service the enormous costs of rebuilding the NCRA line through the Eel River canyon. A high traffic coal train would literally poison the Eel River's clean water, bury its critical salmon and steelhead habitat in slides and sediment, and cause generations of lasting harm to vulnerable communities along the line from Napa to Humboldt Bay.

We are concerned that Mendocino Railway is coordinating its efforts with the Sheridan LLC, which we now know to be a front for coal interests associated with the Crow Tribe. The coal such an operation would ship to Asia to be burned would return to us as airborne mercury; as droughts, wildfires and flooding; as increased risk for each human and every ecosystem on Earth. Under no circumstances should taxpayer funds support such a comprehensively counterproductive proposal.

### **Conclusion**

Neither Mendocino Railway nor its proposed work merit public funding. Both are high risk and likely to cause substantial harm if empowered by RRIF funding.

Thank you for your attention to these difficult questions.

Sincerely yours

/s/  
Scott Greacen  
Conservation Director



Humboldt Trails Council  
Post Office Box 7164  
Eureka, CA 95502  
humtrails.org

November 15, 2021

The Honorable Carlos Monje  
Under Secretary  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

Re: Mendocino Railway RRIF Loan Application

Dear Under Secretary Monje,

The Humboldt Trails Council (HTC) is writing to urge the Department of Transportation to decline to issue a RRIF loan to Mendocino Railway (MR). HTC has worked hard to support the development of the Great Redwood Trail (GRT) the last four years, along with Senator McGuire's office and many more ecologically oriented non-profits. We believe that a RRIF loan to MR will derail the GRT in exchange for a financially and ecologically disastrous rail plan that cannot succeed.

The GRT is planned to use the North Coast Railroad Authority (NCRA) corridor that has been dormant for 20 years due to its completely unstable topography. This plan has tremendous support from the counties, cities and towns it will link together. It will bring important economic and personal health development to the North Coast, as well as help reduce carbon emissions.

HTC is well aware that supporting trail development and active transportation is not the top priority for US DOT. However, we believe that there are other compelling reasons for the Department to not grant a RRIF loan to MR. The first and foremost is that MR's freight plan is not financially feasible. In their STB filing on 8/16/21 in response to the NCRA's first move to railbank its corridor from Willits to Humboldt Bay (STB docket AB 1305 X) for the GRT, MR listed their potential shippers and tonnage on the NCRA corridor and their intention to file an OFA. It is clear there is insufficient volume to come close to repaying the costs of repairing and maintaining the destroyed tracks to Dos Rios along the river.

Second is that Mendocino Railway is not a railroad. It operates the Skunk excursion train from Willits west to Fort Bragg, and has not carried passengers and freight in many years. Five years ago, the line was cut by a tunnel closure and it has yet to be repaired. In the meantime, Skunk has operated out and back excursions from both Willits and Fort Bragg. On 10/28/21 the City of Fort Bragg filed suit in Superior Court of California against MR seeking a judicial ruling that MR is NOT a Public Utility, and is only an excursion railway subject to local ordinances and regulations.

The City of Fort Bragg asserts in their suit that in 1988 the California PUC ruled that the previous owner of the Skunk Train was not operating a service that qualified as “transportation”, but only as an excursion train. Furthermore, it appears that MR itself has no freight experience, and due to the continuing safety embargo of the NCRA corridor north of Windsor by the Federal Railroad Administration, MR does not have a freight connection to the national rail system.

Lastly, neither MR itself or its freight plan merit public financing. If MR is empowered by RIFF funding to try and rebuild 40 miles of the NCRA corridor, 100 years of history will repeat itself. There will be more slides and washouts with more sediment and toxics to endanger the Eel River and its Chinook, steelhead and coho populations. Historically, this was known as the most difficult and expensive line in the country to maintain per mile, and it brought down railroads much bigger and more experienced than MR.

In contrast, the intention of the State of California and the Great Redwood Trail is to clean up the damage caused by those hundred years of railroading in the Eel River Canyon. The history of railroad development in our country was a helter-skelter free enterprise scramble fueled by federal laws and tax money that ended in boom-and-bust cycles many times. The country is grateful that the same approach was not applied to the development of the National Highway System. It is important that in the future, federal railroading laws and money be applied to projects that fit the greater picture for our country and are solid. This is not one of them.

Sincerely,

Bruce Silvey  
Humboldt Trails Council

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DEPUTIES  
LINDA SCHILTGEN      ALDO MERCADO  
TAMBRA CURTIS        TASHAWN SANDERS  
LISA PHEATT            ADAM RADTKE  
HOLLY RICKETT        SITA KUTEIRA  
VERNE BALL            JEREMY FONSECA  
IAN TRUEBLOOD        LUKE BOWMAN  
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MICHAEL KING         KRISTIN HORRELL  
KARA ABELSON         IVAN JIMENEZ  
DIANA GOMEZ           SHARMALEE RAJAKUMARAN

November 3, 2021

The Honorable Carlos Monje  
Under Secretary  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

Re: Mendocino Railway RRIF Loan Application

Dear Under Secretary Monje,

North Coast Railroad Authority (NCRA) writes to express its concerns with the application by the Mendocino Railway for a Railroad Rehabilitation & Improvement Financing (RRIF) loan. The existence of the loan application is manifest on the Build America Bureau (BAB) website. We have informally sought documentation describing the nature of the loan sought, but have been told to file a FOIA request. We have done so, but have been advised, among other things, of a backlog, so we have no idea if and when we will receive information. We have further been advised that we should supply our comments as soon as possible. In the circumstances, this letter represents our initial comments. We continue to seek all information specified in our FOIA requests. And in light of the circumstances, it is incumbent on us to urge that the Department of Transportation decline to issue any RRIF loan to Mendocino Railway until and unless our concerns are fully addressed, which we do not believe is possible for the reasons set forth below.

NCRA is an agency within the State of California. NCRA currently owns approximately 220 miles of rail line from Eureka to Cloverdale along California's North Coast. The NCRA line from Cloverdale, California up to the Humboldt Bay is inoperable due to slides and tunnel collapse along the Eel River; erosion and corrosion due to rising sea levels, wave action and salt water in the Humboldt Bay area; and further tunnel collapses, landslides and track washouts south of Willits parallel to the Russian River. NCRA's engineers preliminarily estimate that the

rehabilitation cost necessary to restore service exceeds \$2.3 billion, of which \$600 million is for the portion south of Willits (inclusive of the segment from Cloverdale south owned by Sonoma Marin Area Rail Transit (SMART). (See Verified Statement of David Anderson.)

NCRA has been tasked by the legislature of the State of California with railbanking the corridor currently under NCRA's ownership for the purpose of serving the fiscal and environmental interests of the State in ceasing the environmentally damaging and financially disastrous work of maintaining a railroad through the North Coast. The NCRA Board of Directors accepted this mission by the Board's formal adoption of support for the legislative mandate. (See Cal. Gov. Code §§ 93000 et seq.; NCRA Board of Directors Item E.2, June 14, 2021.) Railbanking necessarily entails termination of common carrier obligations. NCRA is actively seeking to railbank the segment from Eureka to Willits in a proceeding before the Surface Transportation Board (STB), docketed as AB 1305X. Mendocino Railway has filed papers with STB suggesting it may attempt to "eminent domain" NCRA's Eureka to Willits line by means of an "offer of financial assistance." Mendocino Railway has thus interfered with and delayed the relief NCRA is seeking in accordance with its legislative mandate.

NCRA has recently become aware that Mendocino Railway has applied for federal financial assistance to repair its inoperable 40-mile rail line, which runs from the coastal town of Fort Bragg east to Willits. Mendocino Railroad has previously operated that line for rail excursion purposes (Skunk Train), but has not been able to interconnect any freight to the interstate rail network because NCRA's line from Eureka through Willits to Cloverdale, and beyond all the way to Windsor in Sonoma County, was embargoed for safety reasons by the Federal Railroad Administration (FRA). FRA imposed the embargo in 1998 (EO 21), long before the current owners of Mendocino Railway acquired it in 2004.

In order for freight interconnection with the national system to become reality, in addition to massive physical rehabilitation work over inhospitable terrain for non-existent customers, NCRA would need to find a bona fide freight operator, as the prior operator recently obtained STB approval to discontinue its lease with NCRA and then consummated that authority by terminating its lease.

Based on a California Supreme Court ruling against NCRA related to the prior operator's ability to resume freight operations over a portion of the embargoed line, NCRA may not engage in or authorize such service without compliance with the California Environmental Quality Act. (See *Friends of the Eel River v. North Coast Railroad Authority*, (2017) 3 Cal. 5th 677.) At the present time, NCRA is forbidden by consent judgment pursuant to the Supreme Court ruling from engaging any freight operator over any portion of the segment needed to connect Mendocino Railway to the national system without such compliance. Conducting the required CEQA analysis is a costly and time-consuming process. It would be frivolous here since demand for rail service falls far short of anything justifying the rehabilitation costs to provide it, much less the extraordinary costs of maintaining this line in the face of the constant slide and



tunnel collapse problems it historically faces. We doubt that Mendocino Railway has pointed any of this out in its application papers.

Given the fact that Mendocino Railway lacks a connection to the interstate rail network (both because of tunnel collapse and slides, and because of the FRA embargo), it would appear that the only real justification for federal financial assistance for the line is to restore it sufficiently to restart Skunk Train tourist excursion operations between Fort Bragg and Willits, and Mendocino Railway's ancillary rail bike operations. There are at least two problems with this proposed use of funds. First, the funding looks like it is to repair the same kind of damage (e.g., tunnel collapse etc.) to the Mendocino line that NCRA incurs on its own line and which USDOT has previously advised NCRA is just an operating expense, ineligible for RRIF assistance. (See 45 U.S.C. 822(b)(2).) Second, NCRA's understanding is that usage of federal funds for a tourist excursion or rail bike operation would not meet the RRIF program-specific requirements in that such use of funds would not service demand for rail services or intermodal facilities as meant by the RRIF program. (See 45 U.S.C. § 822(c), (f).)<sup>1</sup> The Mendocino line literally cannot provide meaningful freight rail service or passenger transit because it is not connected to the national rail system; it simply fails to meet funding criteria by its failure to connect. See *id.*

NCRA is also very concerned about Mendocino's intent with any federal financial assistance which it receives from US DOT. As noted, NCRA is seeking to abandon and railbank its rail line from Willits north to Eureka, including all branch lines in the Eureka area. NCRA has actually filed a two-year out of service "notice of exemption" (NOE) abandonment proceeding at the Surface Transportation Board (STB), docketed as AB 1305X. Mendocino Railway has recently indicated that it is considering filing an "offer of financial assistance" ("OFA") to acquire some or all of the line proposed for abandonment. Mendocino Railway should explain how it will administer federal loan assistance on Fort Bragg to Willits while at the same time pursuing an OFA against NCRA's property north of Willits. None of that property will supply Mendocino Railway with its missing interconnection with the national freight rail network. Moreover, Mendocino Railway's proposed OFA action is contrary to the policies adopted by the California legislature which instead support protection of the Eel River from further rail use. The terrain along the Eel River is not suitable for rail use, and historically is believed to be the most expensive line in the country to operate. It was closed on its first day and its last by slides, and many rail cars are still trapped along the trackway and in the Eel River itself. In any event,

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<sup>1</sup> Moreover, as it relates to tourist operations, Mendocino Railway's intended construction projects would be subject to California law. NCRA notes that on the basis of the lack of freight activities, inter alia, the City of Fort Bragg has filed a lawsuit against Mendocino Railway seeking a declaration that Mendocino Railway is not a common carrier, and thus is not exempt from local land use controls. (See Complaint, *City of Fort Bragg v. Mendocino Railway, et al.*, *Mendocino County* Sup. Court Case No. 21CV00850.) It is not appropriate for Mendocino Railway to claim federal preemption of state law for purely tourist rail purposes. Those are outside ICC Termination Act regulation.

The Honorable Carlos Monje

November 3, 2021

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we are troubled by any federal financial assistance to Mendocino Railway which facilitates in any way an OFA against NCRA for any property north of Willits. It would appear at this time that any loan to Mendocino Railway might so facilitate that entity in making an OFA, and NCRA therefore opposes any such loan unless and until Mendocino Railway agrees it will not pursue an OFA north of Willits.

Even then, US DOT should know that the long term policy of the State is to favor abandonment and railbanking of the NCRA line from Eureka south to at- least Cloverdale, which is about 57 miles south of Willits. (See Cal. Gov. Code §§ 93000 et seq.) This was made clear through the enactment of legislation in 2019 (SB1029) and 2021 (SB69), which directs NCRA to railbank the inoperable segment through which Mendocino would need to pass to connect to the national rail system. NCRA's Board of Directors has formally supported these legislative enactments. The Mendocino Railway line has not been used for freight rail service for over 20 years and cannot be connected to the interstate rail network at any reasonable cost. It is currently susceptible to a successful adverse abandonment application. Because granting any federal assistance to Mendocino Railway ostensibly for resurrection of freight service would interfere with the State of California's future plans for railbanking the Willits to Cloverdale segment, NCRA opposes any federal financial assistance to Mendocino Railway at this time.

The entire route of the former Northwestern Pacific Railroad, which at one point was essentially all part of NCRA, has had a checkered history, with slides, tunnel collapses, trains washed into the environmentally sensitive Eel River, bankruptcies, and service disruption. We question whether the United States Department of Transportation wishes to promote continuation of that cycle, or whether it is better to find wiser and more environmentally propitious uses for federal rail financial assistance.

NCRA reserves the right to comment further should additional information, including information requested from USDOT, become available. In the meantime, it is not possible to imagine how Mendocino Railway can justify a RRIF loan for the line between Fort Bragg and Willits. The RRIF loan may not lawfully be granted.

Sincerely,



Elizabeth Coleman  
General Counsel, North Coast Railroad Authority

Cc:

Amit Bose, Federal Railroad Administration, Administrator

Morteza Farajian, Build America Bureau, Executive Director

Roger Bohnert, Build America Bureau, Director of Outreach and Project Development

The Honorable Carlos Monje

November 3, 2021

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Will Resch, Project Development Lead

Alex Clegg, Project Development Lead

Alfiya Mirzagalyam, Transportation Specialist

Sam Beydoun, Project Development Lead

# **Attachment 1**

BEFORE THE SURFACE TRANSPORTATION BOARD

North Coast Railroad Authority – )  
Abandonment Exemption – ) AB 1305X  
In Mendocino, Trinity and Humboldt Counties, CA)

Verified Statement of David Anderson, P.E.

I, David Anderson, state that I am a licensed civil engineer in the State of California and CEO/President of ARE Corp (<https://are-corp.com/>), a company which provides rail civil engineering services, including bridge evaluations and line inspections. I have personally served for the past twenty years as the civil engineering consultant for North Coast Railroad Authority (“NCRA”). I have repeatedly examined the NCRA right-of-way from its northern endpoint (Samoa) to interconnection with the national freight rail network. My resume is attached. I have been requested by NCRA to supply my expert opinion on the cost to rehabilitate NCRA’s line from Willits north to Samoa, and the entire former line (the portion south of the Mendocino/Sonoma County line at approximately Cloverdale is now owned by SMART). Since my prior inspections, north of Willits and in the Eel River Canyon, the line has without doubt deteriorated further. I will render my opinion based on conditions I found in my last inspections of the entire sections in this request. Because the line has deteriorated

since last visual inspections, what has been provided should be viewed as a planning level estimate. An accurate rehabilitation estimate would require additional inspection activities, environmental analysis, and preliminary engineering. This line is in areas of significant earth movement, is prone to flooding, and has tunnels that have a mixture of timber sets and steel sets with timber laggings in disrepair and are subject to tunnel fires and possible collapse. The railroad is prone to continuous deterioration and constant rehabilitation needs.

1. Based on the historic data on file and my past inspections in the past twenty (20) years serving as NCRA's professional civil engineer, the following table summarizes rehabilitation needs for any significant use of the rail line, either to transport freight to the Eureka area from Willits, and from Willits south to interconnection with the national freight rail system. The estimate does not include survey which could add an addition 2 to 3 % to the overall construction cost. I reiterate that a current inspection may reveal additional problems which must be addressed.

Table One: Planning Level Rehabilitation

- Track structure needs to be rebuilt from Samoa to Windsor to support sustainable traffic (240 miles)
- Tunnels
  - 5 tunnels south of Willits; 1 has collapsed and 3 need major repair
  - 25 tunnels north of Willits; 5 need complete rebuild and 20 need extensive rehab
- Public Crossings

- 22 public crossings south of Cloverdale that need replacement or rehab and activation.
- 67 public crossings north of Cloverdale that need complete signal replacement and surface replacement or rehab.
- Bridges
  - 34 bridges on the south end from American Canyon (The Interchange) to Ignacio Wye in Novato; 3 need replacement and the majority of the remaining 31 have priority repairs needed.<sup>1</sup>
  - 92 bridges Windsor to Willits; 25 need replacement and the remaining 67 need priority repairs.
  - 76 bridges north of Willits; 2 require replacement, 74 require priority repairs and there are 2 long bridges that would be new bridges that span the gaps where the track embankment has been removed for fish habitat restoration.
- Geotechnical: including mud slides, debris slides, earth flows, rotational slides, retaining wall failures, and embankment erosion:
  - Windsor to Willits; 22 documented conditions that impact 8,400 feet of track.
  - Willits to South Fork; 105 documented conditions that impact 56,230 feet of track.
  - South Fork to Samoa; 40 documented conditions that impact 5,745 feet of track.
- Culverts
  - There are an estimated 960 culverts a majority of which are CMP pipe, concrete boxes, or concrete arches. Roughly 50% are undersized. Many of the CMP pipe culverts are in poor condition.

2. Based on historic data provided by geotechnical engineers, tunnel engineers, and my prior personal inspections, I have prepared the following cost estimates. These are planning level estimates likely to increase if updated with current information.

Table Two: Cost Estimates

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<sup>1</sup> This segment is owned by SMART but exclusively freight.

- Track<sup>2</sup> not including an adjustment of salvage \$975M
- 30 Tunnels
  - South of Willits \$56M
  - North of Willits \$280M
- Public Crossing
  - 22 South of Cloverdale \$4M
  - 23 Cloverdale to Willits \$7M
  - 44 Willits to Samoa \$16M
- Bridges
  - 34 Brazos Junction Branch (South End) \$40M<sup>3</sup>
  - 92 Windsor to Willits \$25M
  - 76 Willits to Samoa \$179M
- Geotechnical
  - 22 areas, Windsor to Willits \$20M
  - 105 areas, Willits to South Fork \$80M
  - 40 areas, South Fork to Samoa \$24M
- Culverts
  - 960 Culverts \$5M

Sub Total Planning Level Estimate = \$1,711,000,000

Contingency at 20% = \$342,200,000

Engineering (Geotechnical, Hydrology, Hydraulic, Civil, Rail, Structures) at 15%  
= \$ 300,000,000

**Total without Environmental = \$2,352,200,000**

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<sup>2</sup> Includes replacement of rail, ties, ballast, and other track materials above the level of subgrade judged necessary for reliable freight operation.

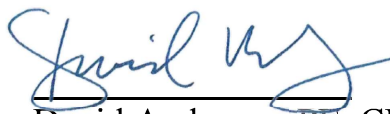
<sup>3</sup> In order to reach the point of interconnection with the freight rail network via SMART, freight traffic must use a freight-only line which I refer to herein as the Brazos Junction Branch. Bridges on that line are in deteriorated condition and require rehabilitation. See note one.



3. Judging from the configuration of the Humboldt Bay as a port, rail service ending in the north would include, as a minimum, service all the way to Samoa at MP 330.5. Based on the information above, rehabilitation from MP 139.5 (Willits) to MP 300.5 (Samoa) encompasses approximately 161 miles, not counting the Korblex/Korbel and Carlotta branches: roughly \$654 million track, tunnels \$280 million, public crossings \$16 million, bridges \$179 million, geotechnical \$104 million, and culverts \$4 million for a total of \$1,237,000,000. Add contingency at 20% and engineering at 15% for a total of \$1,707,000,000.

4. Even if the line were rehabilitated for rail traffic, maintenance costs would remain higher than normal, and reliability low, because of the likelihood that instable geology and flooding events will remove portions of the line from service.

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

A handwritten signature in blue ink, appearing to read "David Anderson", written over a horizontal line.

David Anderson, PE, CEO/President ARE Corp.

Dated: July 25, 2021

## David R. Anderson, PE

### Principal Engineer

#### Education

BS/1968/Civil Engineering/ University of Minnesota

#### Registrations

1990/ PE/ CA #45458  
1979/ PE/ MN #13749  
1994/ PE/ NV #10660  
1994/ PE/ AZ #27771  
2012/ PE/ MO #2012039646  
2020/PE/ NE #E-18154  
2013/ PE/ MI #6201059840  
2017/PE/NH #15202  
2017/PE/NY #38809  
2014/ PE/ KS #24047  
2014/ PE/ AL #34719  
2015/ PE/ TX #119428  
2016/PE/ OK #29153  
2020/PE/ IA #P25989  
2020/PE/ WA #20105102  
2020/PE/ NC #050589

#### Professional Affiliations

American Railway Engineering and Maintenance-of-Way Association (AREMA)

American Short Line and Regional Railroad Association (ASLRRA)

American Council of Engineering Companies (ACEC)

David R. Anderson, PE brings over 40 years of experience in all aspects of railroad engineering, construction, and maintenance. He has worked for both public and private railroad clients assisting them with infrastructure management.

Dave's experience working for railroads spans his entire career. His responsibilities have included railroad assessment, design, inspection, construction, and the development of short- and long-term capital plans. He has worked with several Class I railroads and numerous short lines.

#### RELEVANT EXPERIENCE

North Coast Railroad Authority (NCRA), Lombard to Eureka, CA: Engineer/project manager, responsible for overseeing NCRA's on-call engineer and construction contractors for \$40 million rehabilitation project including 42 bridge structures, 62 miles of track and 57 signals. In addition, address the Authority's engineering issues, and coordinate rehabilitation and operation and maintenance issues with the Operator. Previously, project manager for the on-call engineering team and was responsible for the capital assessment and program management for the entire 316-mile railroad. Two assessments were conducted: the first included the entire line with cursory inspections of 186 bridges to evaluate the feasibility of rehabilitation. The second assessment was conducted on the southern end of the railroad and included detailed inspections of 121 timber, steel, and concrete bridges, as well as roadbed, tunnels, track and highway constant warning devices. Currently providing on-call engineering services in support of Authority initiatives.

Santa Clara Valley Transportation Authority – Berryessa-Freight Rail Relocation, CA. Performed Peer Review of this rail relocation project. Reviewed plans and specifications to provide clarity to the

plans, assure consistency between plans and specs, and review overall constructability. The review included meetings with the VTA and HNTB, walking the length of the project limits, redlining of the plans and specifications, and a report summarizing findings. Interfaced with several agency personnel, consultants, including construction cost estimator, track and roadway design personnel, reviewed drainage reports, bridge designers including staging of shoofly and bridge work, utility locations.

Orange County Transportation Authority, Engineering Plan Check, Orange County, CA. Team leader for this \$300-million project requiring risk analysis, plan review, extensive coordination, and multi-subconsultant oversight. Responsible for quality assurance plans and reviewing other design teams' plans for five grade separation projects in the BNSF/Metrolink Corridor through Placentia, Fullerton and Anaheim. Responsible for providing constructability reviews for the structures, bridges and roadway plans, specifications and estimates as well as adherence to local agency requirements.

Acquisition Assessment, Project Manager, Stonepeak Partners. Managed engineering team that evaluated maintenance facilities, right-of-way, vehicles, track, and structures for a 300-mile railroad to provide an assessment and maintenance/replacement cost estimates for a potential railroad acquisition.



Acquisition Assessment, Project Manager, Jaguar Transportation Group. Part of the engineering team evaluating structures for a potential acquisition of 5 railroads. Performed a field assessment of structures and prepared an analysis of current conditions, proposed repairs and estimated cost.

Acquisition Assessment, Project Manager, RailUSA. Part of the engineering team evaluating structures for a potential acquisition of a 360-mile railroad. Performed a field assessment of structures and prepared an analysis of current conditions, proposed repairs and estimated cost.

Acquisition Assessment, Project Manager, Watco Companies. Assist Engineering staff with the evaluation of two railroad acquisitions. Performed a field assessment of bridges and track and prepared an analysis of current condition and proposed repairs and estimated costs for Watco's management team's consideration.

Expert Witness, Los Angeles County Metropolitan Transportation Authority. As an expert witness for MTA, provide detailed review and recommendations for practical solutions to Blue Line drainage issues.

Genesee Wyoming Railroad Services, Inc. – Bridge Inspection and Consultation Services, AL, GA, FL. Project manager responsible for overseeing the bridge inspection requirements for six railroads in G&W's Southern Region. In addition to the performance of annual inspections, some railroad bridges are due for detailed inspections and/or supplemental, underwater, mechanical/electrical inspections, depending on location and condition, and inspections will be oriented to identifying specific field data in order to complete load ratings.

WATCO Transportation Services – Railroad Bridge Engineering and Inspection Services, AL, AR, ID, IL, IN, KS, LA, MI, MO, MS, MT, NY, OH, OK, OR, TX, WA, WV. As RBE, responsible for overall bridge management working closely with Watco's engineering staff to provide bridge management plan development, conduct required railroad bridge inspections, provide bridge load capacity ratings, perform special and emergency inspections and provide repair recommendations for 28 railroads with more than 100 subdivisions and 2,100 bridges.

Progressive Rail – Bridge Engineer Bridge Inspection, Bridge Rating and Capital Programming, CA, IA, IL, MN, MO, VA, WI – 2009 to Present. Designated Railroad Bridge Engineer, responsible for bridge management including inspection, rating and capital repairs/replacement recommendation for 8 separate railroad properties. Work closely with the owner's representatives to address budget-conscious decisions. and safety measures. Responsible for preparing annual and detailed bridge inspection reports, assessment of new lines being considered for acquisition, maintaining the bridge inventory, preparing load capacity ratings, and an annual recommendation report that serves as a workable repair program.

**CALIFORNIA COASTAL COMMISSION**

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November 5, 2021

**VIA EMAIL AND U.S. MAIL**

The Honorable Carlos Monje  
Under Secretary  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

Re: Mendocino Railway RRIF Loan Application

Dear Under Secretary Monje:

The California Coastal Commission (Commission) recently learned of the Mendocino Railway's application for a Railroad Rehabilitation & Improvement Financing loan. Based on the information currently available to the Commission, we believe that the decision to grant such a loan would be subject to the Commission's review under the Coastal Zone Management Act (CZMA) of 1972, 16 U.S.C. § 1456(c)(1), and that federal consistency review must take place before the loan can be approved. We would appreciate the opportunity to discuss the federal consistency review issues with the U.S. Department of Transportation prior to loan approval.

The CZMA creates a federal and state partnership for management of coastal resources. California's Coastal Management Program was certified in 1977, and the enforceable policies of that document are the policies in Chapter 3 of the California Coastal Act of 1976 (Cal. Pub. Res. Code §§ 30200 *et seq.*). Since 1977, the Commission has implemented the CZMA by exercising its review authority over proposed federal activities (including proposals to support private projects using federal funding), federal development projects, federal permits and licenses, and federal support to state and local governments.<sup>1</sup> Thus, all federal agency activities affecting California's coastal zone must be consistent to the maximum extent practicable with Chapter 3 of the Coastal Act.

As explained in greater detail in the November 4, 2021 letter to you from the North Coast Railroad Authority (NCRA), there are a number of potential adverse environmental impacts to

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<sup>1</sup> A federal agency activity is any function performed by or on behalf of a federal agency in the exercise of its statutory responsibilities. Although there are separate regulations governing the issuance of a federal license or permit and the granting of federal assistance to a state or local agency, so that those types of actions are not treated under the general heading of "a federal agency activity" requiring a consistency determination (CD), the decision to allocate federal funds to construct a private facility is a federal agency activity that triggers the Commission review authority. (See, e.g., CD 038-11, submitted by the National Marine Fisheries Service for funding construction of a fish processing facility <https://documents.coastal.ca.gov/reports/2011/10/F5b-10-2011.pdf>). Subsection (a) and (c) of 15 CFR § 930.31 specifically acknowledge that "federal agency activity" trigger covers a residual category of federal actions not covered under subparts D, E or F of Part 930.

California's coastal resources anticipated from approval of Mendocino Railway's loan application. NCRA's letter explains how the loan could facilitate the Mendocino Railway's attempt to submit an Offer of Financial Assistance to the Surface Transportation Board in an effort to prevent the legislatively required rail banking of the NCRA's rail line and conversion of that line to the Great Redwood Trail.

Should the Mendocino Railway successfully prevent such rail banking and attempt to rehabilitate NCRA's rail line, we anticipate significant adverse impacts on coastal resources that are required to be protected under the Coastal Act. For example, portions of the rail line are expected to be used as critical links in the California Coastal Trail,<sup>2</sup> and the loss of those sections would be inconsistent with Coastal Act sections 30210, 30211 and 30213. In addition, the rail line is on or adjacent to wetlands and environmentally sensitive habitat areas, both required to be protected under the Coastal Act. (Cal. Pub. Res. Code §§ 30233 and 30240). The rail line is also expected to be vulnerable to sea level rise and other coastal hazards; thus full rehabilitation of the rail line and use for rail service would be inconsistent with Coastal Act section 30253.

Even if the proposed loan would do no more than allow repair of the inoperable portions of the Mendocino Railway's existing line from Fort Bragg to Willits, we believe that this would have an adverse affect on the California coastal zone, also requiring review under the CZMA. It would increase the intensity of use of this line, including impacts on the Mendocino Railway's existing support facilities located in the coastal zone in the City of Fort Bragg and facilitating expansion plans the Mendocino Railway has discussed with Commission staff and City officials involving the extension of the railway from its current terminus along the coastal highway in the center of the City to and along the bluff edge to a proposed new train station that would have additional impacts on coastal zone resources. As proposed, the extension of the railway and train station would be constructed within areas of known archaeological resources and would be built parallel to, and immediately adjacent to a popular segment of the California Coastal Trail, creating safety hazards for those who would need to cross the rail line to access the trail and detracting from their use and enjoyment of the trail itself. We do not have sufficient information at this time to fully assess the scope of impacts of such a project on California's coastal zone. Such assessment would be undertaken at the time of the Commission's federal consistency review.

In sum, the Commission has had little time to understand the scope of the proposed use of the loan and its potential impacts on the coastal zone. Based on what we understand at this time, however, we believe that the funding provided to the Mendocino Railway will have a reasonably foreseeable effect on California's coastal zone resources. We therefore believe that it is subject to the Commission's review authority under the CZMA. We respectfully request the opportunity

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<sup>2</sup> For background, see: <https://scc.ca.gov/projects/california-coastal-trail/>

**CALIFORNIA COASTAL COMMISSION**

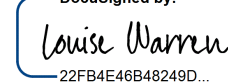
455 MARKET STREET, SUITE 300  
SAN FRANCISCO, CA 94105  
VOICE (415) 904-5200  
FAX (415) 904-5400  
TDD (415) 597-5885



to discuss the loan, as well as the Commission's authority under the CZMA, with the U.S. Department of Transportation at its earliest convenience.

Please contact me at: [Louise.Warren@coastal.ca.gov](mailto:Louise.Warren@coastal.ca.gov) or 415-904-5227 to discuss these issues or if you have any questions.

Sincerely,

DocuSigned by:  
  
22FB4E46B48249D...

Louise Warren  
Chief Counsel

cc: Amit Bose, Federal Railroad Administration, Administrator  
Morteza Farajian, Build America Bureau, Executive Director  
Roger Bohnert, Build America Bureau, Director of Outreach and Project Development  
Will Resch, Project Development Lead  
Alex Clegg, Project Development Lead  
Alfiya Mirzagalyam, Transportation Specialist  
Sam Beydoun, Project Development Lead  
Elizabeth Coleman, North Coast Railroad Authority, General Counsel

**From:** [captainford@jps.net](mailto:captainford@jps.net)  
**To:** [Lemos, June](#)  
**Subject:** Agenda item 5K  
**Date:** Monday, November 22, 2021 8:00:55 AM

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Dear Councilmember,

I am writing in opposition to the City's position in regard to the Mendocino railway loan application. Do you not understand the benefits that the Skunk Train generates for the city of Fort Bragg? Each visitor that comes to ride the train also supports local businesses with overnight accommodations, dining at local bars and restaurants, and purchases at local stores.

Every business has the right to improve its infrastructure and service without interference from government. Opening the tunnel will return the railway to a level of service it previously provided. The city had no problem with the railway then, and in fact, benefited from that service. Why the sudden change?

For years generations of Californians have traveled to Fort Bragg to ride the Skunk Train. The opening of the tunnel and improvement to the track will benefit the railway but also every other business in town and the community as a whole.

I urge you to remove item 5K from the agenda.

Respectfully,  
Glen Ford

To Fort Bragg City Clerk, Mayor, Vice Mayor and Councilmembers:

Re: Consent Agenda 5K (21-612) – Opposition to Skunk Train Loan

**I strongly support REMOVING this item from the consent agenda and further having the City REVERSE its stance and support the application of the Skunk Train for a loan from the Federal Government to improve its visitor facing facilities.**

For many years I was the Director of Tourism Development for Visit Mendocino County. As part of my job, I marketed the county, including Fort Bragg, all over the world. The Skunk Train is known from Germany to Korea and everywhere in between and has put Fort Bragg on the map in many ways.

Many riders of the train stay a night or two in the area, bringing in needed sales tax and bed tax revenues. The Skunk in many ways is an economic driver for the city, benefiting local hotels, restaurants, bars, and retail establishments. It is one of the largest employers.

**I see NO rational explanation for the city opposing a private company's effort to obtain a LOAN to improve and enhance its tourism business. The city should be falling all over itself to HELP the Skunk reopen Tunnel 1 and improve its tracks and rolling stock.**

Please remove this item from the consent item and VOTE IT DOWN.

Thank you.

Richard Strom

[rstrom@mcn.org](mailto:rstrom@mcn.org)

707-486-1330



**From:** [Donna Schuler](#)  
**To:** [Lemos, June](#)  
**Subject:** Skunk Train - No!  
**Date:** Sunday, November 21, 2021 9:18:40 PM

---

Dear City of Fort Bragg,

I am not in support of any of the plans the Skunk Train group has proposed in its large mailer that was received by me on Friday. Furthermore, I work next to the station, and they continue to conduct construction with in view of Planning and Building without permits, and have done nothing to repair the defunct rail grounds they currently occupy, including that horrible broken down shed. Why would they expect tax paying citizens, residents and business owners to support them as they try to claim eminent domain? It's insulting to the rest of us who follow laws and pay our way. Their train is not a major draw for this town. The steam engine has not run for serval years, just the disgusting polluting Diesel engine.

I will lobby with others against this outrageous bid for controlling our towns future.

Donna Schuler

Fort Bragg

--

Sent from Gmail Mobile

**From:** [dobby sommer](#)  
**To:** [Lemos, June](#)  
**Subject:** Meeting about the Skunk Train Takeover  
**Date:** Sunday, November 21, 2021 8:38:22 PM

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Hello,

As a 50 yr. resident I am writing to you to say that there must be a public meeting about the Skunk Train taking control of the entire mill site and the Pudding Creek watershed. Please do what is right. Your local residents deserve to be informed and have input on this important and far reaching matter.

Thank you very much.

dobby sommer

pob 568

Albion, Calif. 95410

707 937 4858

**From:** [Carla Sarvis](#)  
**To:** [Lemos, June](#)  
**Subject:** NO CLOSED SESSIONS - please open to public hearing/Skunk Train  
**Date:** Sunday, November 21, 2021 6:20:56 PM

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Dear June Lemos and Fort Bragg City Council:

There are flyers all over town and in our private mailboxes from the Skunk Train. High gloss, color photos showing what they intend to do with the Noyo Headlands and the Pudding Creek Watershed. It is a t.e.r.r.i.b.l.e. proposition. City Council should not have closed sessions about such a large commercial development. Noyo Headlands is not Disneyland. We need PUBLIC HEARINGS on this matter. We live here.....

Thank you.

Carla Sarvis  
Cleone

**From:** [Bruce Moore](#)  
**To:** [Lemos, June](#)  
**Subject:** Closed Session Agenda Item: Opposing Skunk Train Attempt To Assume Ownership of Fort Bragg Headlands Land Through Devious "Eminent Domain" Maneuver  
**Date:** Sunday, November 21, 2021 6:02:29 PM

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Dear Fort Bragg City Council Members:

Over the weekend I was made aware of bad faith actions by both Georgia Pacific and The Skunk Train in a coordinated attempt to "transfer" ownership of the remaining Mill Site land from GP to the . Their brazen attempt to circumvent the Fort Bragg City Council, and thereby the citizens of both Fort Bragg and the whole coastal community, perfectly demonstrates why neither of these two corporate entities should have any claim to these headlands. Further, any say they may have in future decisions about whether and/or how these lands might be developed should be viewed as highly suspicious. Neither entity is demonstrating good faith.

I encourage and will support the City Council in vigorously challenging and opposing this attempted "hostile takeover".

Best regards,  
Bruce Moore  
Fort Bragg

Sent from my iPhone

**From:** [Roslyn Moore](#)  
**To:** [Lemos, June](#)  
**Subject:** GP Mill Site  
**Date:** Sunday, November 21, 2021 5:39:45 PM

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Dear Council Members,

I am a long time resident of Fort Bragg. I strongly support the City of Fort Bragg's legal challenge to the Skunk Train's claim of eminent domain. I unequivocally support the City of Fort Bragg's purchase of the GP mill site.

Roslyn Moore  
Fort Bragg, CA

**From:** [Ron And Susan](#)  
**To:** [Lemos, June](#)  
**Subject:** Comments for public record  
**Date:** Sunday, November 21, 2021 5:09:06 PM

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We would like to voice our dismay at the Skunk Train's upcoming acquisition of the GP property. They are clearly not operating in the public's best interest and their claim to eminent domain is certainly unfounded. They run a for-profit, tourist based train.

We support the City's efforts in their goal of purchasing the property to be able to develop and manage it in the public's best interest.

We believe we need open, ongoing and transparent meetings to discuss what will undoubtedly have a major impact on our town's future.

Susan and Ron Munson

"Travel is fatal to prejudice, bigotry, and narrow-mindedness." Mark Twain

**From:** [Blair Foster](#)  
**To:** [Lemos, June](#); [Albin-Smith, Tess](#); [Norvell, Bernie](#); [Morsell-Haye, Jessica](#); [Peters, Lindy](#); [Rafanan, Marcia](#)  
**Subject:** Skunk Train ( item 5K on agenda for 11/22/2021 meeting)  
**Date:** Sunday, November 21, 2021 12:57:50 PM

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Dear City Council of Fort Bragg,

I am writing to you after following the the puzzling adversarial and obstructionist actions of the City of Fort Bragg toward Robert Pinoli and the Skunk Train.

I write to express my staunch support of the Skunk Train and their ongoing efforts to obtain a loan to fix the collapsed bridge and reopen the route between Willits and Fort Bragg.

I would ask that you please remove item 5K from the agenda.

The Skunk train has only been an asset to our community and area for years! Personally and professionally, I support this operation with no reservations: I raised my children on the Skunk Train (school filed trips, Christmas Polar Express outings, family visits and tours throughout the years); The Inn at Newport Ranch utilizes the Skunk Train with regularity and our guests love it; As President of the Board of the Mendocino Film Festival, I express deep gratitude and admiration for the Skunk Train's shockingly generous support with donations of the train and services for outdoor screenings in the Redwoods.

The Skunk Train is a unique form of transportation in our area (and yes, while a fun outing, it does qualify as transportation--I have ridden to Willits many times in the past and will look forward to doing so again when the track and tunnel 1 is repaired), and I, for one, find it exciting to see it thriving in an era when the so many of our historical industries are diminishing or dying (timber, fishing, etc).

I find it astounding that the City of Fort Bragg is being anything less than supportive of something that has been so beneficial to the economic health of our community.

Again, I would ask that item 5K is removed from the agenda as it's inclusion feels personally driven and is in direct conflict to the well being of our community, as well as a profound waste of effort and financial resources.

Thanks so much for the opportunity to share my opinion.

Kind regards,

Blair Foster



Blair Foster

General Manager

[blair@theinnatnewportranch.com](mailto:blair@theinnatnewportranch.com)

**From:** [Christy Wagner](#)  
**To:** [Lemos, June](#)  
**Subject:** Regarding Skunk Train's Land Grab  
**Date:** Sunday, November 21, 2021 12:10:52 PM

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Dear June Lemos:  
re: Fort Bragg City Council Meeting Agenda  
for Closed Session Nov 22, 2021

I am outraged by the Skunk Train's land grab of the GP mill site and by their dishonest claim of eminent domain. They are not a public utility and will serve their own pockets but not the public good. I absolutely support the City of Fort Bragg's legal challenge to the Skunk Train's claim of eminent domain. I absolutely support the City of Fort Bragg's purchase of the GP mill site truly in the interest of the public good.

Thank you,  
Christy Wagner  
428-B N. Harrison St  
Fort Bragg, CA 95437



CHRISTOPHER J. NEARY  
cjneary@pacific.net

JENNIFER M. O'BRIEN  
jobrien@nearyobrienlaw.com

**NEARY AND O'BRIEN**

ATTORNEYS AT LAW

110 SOUTH MAIN STREET, SUITE C  
WILLITS, CALIFORNIA 95490

FAX: (707) 459-3018

WWW.NEARYOBRIENLAW.COM

(707)459-5551

November 22, 2021

Via U. S. Mail and Email

Fort Bragg City Council  
C/O June Lemos, City Clerk  
416 North Franklin Street  
Fort Bragg, CA 95437

jlemos@fortbragg.com

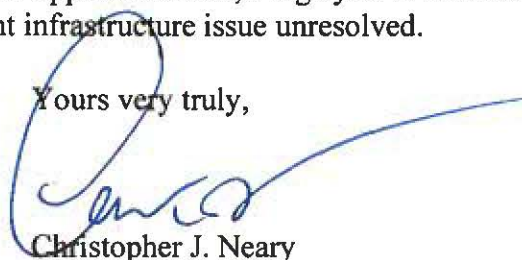
Re: November 22, 2021

Dear Ft. Bragg City Council,

As an observer of the effort to restore full service between Willits and Ft. Bragg via California Western, Item 5K of your consent agenda it appears to suggest that the City Council would oppose the California Western obtaining a federal loan to repair the collapsed tunnel and to fund other tasks identified in the loan.

Perhaps the agenda has a misprint stating that there is an intention to "oppose" the application. If not, it is difficult to understand why the City of Ft. Bragg would oppose an infrastructure loaned to California Western which would benefit Ft. Bragg, its businesses, and also benefit the businesses in Willits. As a lifetime resident in Willits, I am aware that the California Western Railroad is an integral part for the tourist business of both of our communities. If your intention is actually to oppose the loan, I urge you to reconsider as this opportunity may wane leaving an important infrastructure issue unresolved.

Yours very truly,



Christopher J. Neary

CJN/cm

Dear Fort Bragg City Council,

11-22-21

I was alarmed to hear of a Closed Session Meeting tonight regarding the Fort Bragg Mill Site and the Skunk Train's purchase/ planning process!

Our community has worked for years to envision community development on the Mill Site with enthusiasm and transparency. Upcoming meetings affecting the Mill Site, especially those influenced by the Skunk Train and whoever is funding their project, must also be completely transparent.

**Please ensure that all meetings regarding the Mill Site are made public so all interested citizens can get involved.**

Thank you, Larry Knowles

**From:** [Robert Jason Pinoli](#)  
**To:** [Lemos, June](#)  
**Cc:** [Allan Hemphill](#)  
**Subject:** FW: Opposition motion to Skunk Train funding  
**Date:** Monday, November 22, 2021 10:20:15 AM

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Good morning, June –

I hope that you're doing well.

The below from Alan Hemphill who wasn't able to get his email to send it you or the council.

Thank you,

Robert

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**From:** Alan Hemphill <vinguru@comcast.net>  
**Sent:** Monday, November 22, 2021 9:58 AM  
**To:** Robert Jason Pinoli <rjp@mcn.org>  
**Cc:** Robert Jason Pinoli <RJP@skunktrain.com>  
**Subject:** Opposition motion to Skunk Train funding

Fort Bragg Mayor and City Council Members,

This note is in regard to Item 5C you are considering at you meeting this evening to oppose federal loans to the Skunk Train.

Your agenda action is baffling in light of the long history beneficial relationship between Fort Bragg and the Skunk line and the tremendous economic benefit to the city and County that the railroad provides.

However, I have a more direct interest in the future of the railroad.

I have been involved in Scouting for years and the railroad has been an essential link to Camp Noyo since 1933. Our youth have been riding the Skunk to Camp at a very generous fee until the tunnel closure. This is not just a joy ride for the kids; but an essential and safe mode of transportation due to lack of decent roads to camp. The only alternative is over 15 miles of logging roads that are frequently impassable and go through active logging sites. It is just not safe and we need the train back! Our attendance at camp has been severely affected due to the closure.

Nine years ago Camp Noyo LLC bought camp from the Scouts and leased it back for a few weeks in the summer and for unit camping in the spring and fall at a very nominal fee. We also opened the camp to public camping when the Scouts are not there. This business was growing well and paying TOT taxes to the county until we lost train service. Many of our former campers did not return due to the road dangers.

I am sincerely requesting that you not oppose this critical funding and do everything you can to provide support to the railroad.

Allan Hemphill  
Managing Director  
Camp Noyo LLC

**From:** [ziacattalini@aol.com](mailto:ziacattalini@aol.com)  
**To:** [Lemos, June](#); [Norvell, Bernie](#); [Morsell-Haye, Jessica](#); [Albin-Smith, Tess](#); [lpeters@fortbragg.com](mailto:lpeters@fortbragg.com); [Mrafunan@fortbragg.com](mailto:Mrafunan@fortbragg.com)  
**Cc:** [rjp@skunktrain.com](mailto:rjp@skunktrain.com)  
**Subject:** Consent Calendar item # 5k 21-612  
**Date:** Monday, November 22, 2021 11:03:39 AM

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Dear Mayor and Fort Bragg City council members,

As a former business owner in Fort Bragg and Mendocino it is very apparent to me our coastal communities are economically dependent on tourism. The Skunk Train Depots in Fort Bragg and Willits sustain our local and inland Mendocino County economies.

Highways 20 and 128 are the main routes most depend on to travel and haul freight east - west from highway 101 to the coast. The Skunk Train rails once provided an alternative transport of freight for this same east-west span from inland to the coast and vice versa.

It is unfathomable to me that the city would oppose a loan the Skunk Train is seeking from the federal government to repair Tunnel No. 1.

Why would you want to oppose the needed repair of an historical, collapsed tunnel?

Why would you want to obstruct the reinstatement of a viable rail route that connects inland and coastal Mendocino county?

Please shelve your opposition letter, it denies an alternative transport option the Skunk rails could provide during emergency situations and other unusual circumstances that could arise.

Sincerely,  
Zia Cattalini  
Mendocino, CA

**From:** [Norvell, Bernie](#)  
**To:** [Lemos, June](#)  
**Subject:** Fwd: The Mill Site  
**Date:** Monday, November 22, 2021 11:12:08 AM

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Bernie Norvell  
Mayor City of Fort Bragg

Begin forwarded message:

**From:** Malia Elsner <maliarentals9@gmail.com>  
**Date:** November 22, 2021 at 11:10:48 AM PST  
**To:** "Norvell, Bernie" <Bnorvell2@fortbragg.com>  
**Subject: The Mill Site**

Mayor Norvell,

The people of Fort Bragg may have their differences on many issues but one thing we can all agree upon as a city is that we can work together on is our own Mill Site. Someone coming in from outside and seizing the Mill Site from under us for only monetary gain is a travesty!

We have money, let's hire the best lawyer in the country to fight their best lawyer in the country. Mike Hart of Sierra Energy is ruthless and will take whatever he wants with no concern for anything or anyone but lining his pockets.

Thank you for all you have done thus far in trying to stop them.

Please let us, your citizens, know what we can do to help.

Very Sincerely,

Malia Elsner  
501 E Bush St.  
Fort Bragg CA

**From:** [noreply@civicplus.com](mailto:noreply@civicplus.com)  
**To:** [citycouncil](#)  
**Subject:** Online Form Submittal: Contact Us (Dropdown)  
**Date:** Monday, November 22, 2021 8:50:14 AM

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## Contact Us (Dropdown)

First Name	Mark
Last Name	Taylor
Address1	512 S Main St
Address2	<i>Field not completed.</i>
City	Fort Bragg
State	CA
Zip	95437
Phone Number	7073678366
Email Address	mtaylor@mcn.org

(Section Break)

Whom would you like to contact?	City Council
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Question / Comment

Well, the City is venturing deeper and deeper into the Land If Lawyers and the future seems further and further out of our control as we go on. Not being a lawyer, I don't really know what I'm talking about, but I, and many many others, I'll bet, still have questions and suggestions and hope something will help. Regarding the Skunk Train and its eminent domain suit, and the fact that GP has capitulated to it, as I understand it, the City has powers of eminent domain, as well. While I don't know the limitations of those powers, they would supersede the Skunk's if it is determined that they do not qualify as a public utility. If the public utility designation stands, it seems as if the Skunk train could absorb the whole city as its operations expand if it chose to. And certainly, they could keep that as a threat. As I see it, they could, if they wished to make a point, claim the waste water treatment plant just as they have the rest of the mill site.

Another question is at what point does that power end? Under their plans, given the housing proposed, much of the land would have to be sold to private parties. Will those parties be aware that a Sword of Damacles hangs over their heads and that the

Skunk could take away their land and house for any reason, re-using their eminent domain powers, thus assuming dictatorial powers? Go along or else.

Another question, which I'm sure is under much discussion, is the responsibility of the City to the infrastructure for the project the Skunk is proposing, and vice versa. Since they own all the land, including anywhere roads and city utilities would be located, does the city have any responsibility for the installation or maintenance of those things? Does the city have to hook up the waste water treatment and the water plant, as well as do all the upgrades, at the citizens expense, necessary to support the Skunk's plans? As a public utility, can they ignore any or all city regulations concerning, for instance, water usage, utility assessments, zoning requirements.

Essentially, what powers will the City actually have over what happens on the millsite and conversely, what powers will the Skunk have to make the City do what it wants? As a last resort, would it be possible to simply contract the city limits to include only those areas of the mill site (like waste water treatment plant) that the city needs and let the mill site become an entity unto itself?

The is development is momentous and I know there are going to be so many questions that need to be answered. I hope the city will continue to pursue the question of the Skunk's status as a public utility. If it is determined that they aren't, many of the questions above will be answered. Please don't give up like GP did.

And good luck to you all in the rough waters ahead.

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Email not displaying correctly? [View it in your browser.](#)

**From:** [Diane Sorenson](#)  
**To:** [Lemos, June](#); [Norvell, Bernie](#); [Morsell-Haye, Jessica](#); [Albin-Smith, Tess](#); [Peters, Lindy](#); [Rafanan, Marcia](#)  
**Subject:** 11/22/2021 Consent Calendar item 5K (21-612)  
**Date:** Monday, November 22, 2021 12:09:22 PM

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Fort Bragg City Council:

I want to express my surprise and disappointment over the City Councils apparent opposition of the loan to the Skunk Train for the repairs to Tunnel 1. As a former employee of the Skunk Train, I have heard hundreds if not thousands of guests of the train, locals included, lament the current status of the route between Fort Bragg and Willits. The railroad has been operating since 1885 and Tunnel 1 needs to be restored to allow full operations to resume as expeditiously as possible. Fort Bragg should avail itself of any and all opportunities to bring new tourism and increased revenue to our town. There seems to be no valid reason for the Council to object to this loan and should support the railroad resuming full operations.

I hereby request that item 5K be dropped from the 11/22/2021 calendar and allow the Skunk Train to proceed forward with its plans to help improve our economy.

Respectfully,

D.L. Sorenson



**From:** [Bill Lemos](#)  
**To:** [Lemos, June](#)  
**Cc:** [george reinhardt](#)  
**Subject:** Noyo Headlands.  
**Date:** Monday, November 22, 2021 12:03:56 PM

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Hi June,

Please add our names to the list of people very concerned about the Skunk people taking on remediation of the serious toxic problems in the ponds on the Old Mill site and planning development in such a heavy handed way on this property. The Council should go on record opposing this project until a thorough vetting of the clean-up strategy is developed and the big picture of what the Skunk people are proposing is economically evaluated for the entire Mendocino Coast.

Best regards,  
Wm and Marilyn Lemos

Sent from my iPhone

**From:** [Jo Bradley](#)  
**To:** [Norvell, Bernie](#)  
**Cc:** [Lemos, June](#)  
**Subject:** Tonights Consent Calendar  
**Date:** Monday, November 22, 2021 12:14:52 PM

---

Mr. Norvell,

I am writing requesting that item 5K. 21-612 be pulled from the Consent Calendar on tonight's agenda. This item is too important to just be put through without discussion and a vote.

I will be at the meeting representing the Mendocino County Tourism Commission.

Thank You very much –

Jo Bradley RVT  
MCTC



Virus-free. [https://link.edgepilot.com/s/4c57c075/PZgg\\_wmHL0mDHOy4fE38GA?u=http://www.avast.com/](https://link.edgepilot.com/s/4c57c075/PZgg_wmHL0mDHOy4fE38GA?u=http://www.avast.com/)

**From:** [Sharon Bowers](#)  
**To:** [Lemos, June](#)  
**Subject:** Skunk Train  
**Date:** Monday, November 22, 2021 12:34:18 PM

---

Dear City Council,  
The Skunk Train should not be allowed to control the Puddingcreek watershed.  
The city looks after the welfare of its residents.  
The Skunk Train thinks only about profits, not people!  
Sincerely,  
Sharon Bowers

**From:** [George](#)  
**To:** [Lemos, June](#)  
**Subject:** A short comment for tonight's meeting. I will also be commenting via zoom.  
**Date:** Monday, November 22, 2021 12:45:23 PM

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Honorable City Council persons and staff,

The vision of a regional desire to protect and restore the forests, the coastal headlands and Pacific Ocean is being threatened by a fossil fuel funded, trash burning pollution machine which bought our local Skunk Train out of bankruptcy in 2003. Our community generally supported this because we wanted to see the Skunk Train survive. Also, we didn't know what a shoddy operation had come to town. The years since they took over the Skunk have given us a clear idea of what they are about. They entirely reject any form of regulatory oversight. Most importantly, for all of us, they reject CEQA and all environmental regulatory mechanisms. They refuse to get permits from the City of Fort Bragg and the California Coastal Commission for anything. They also refuse to do the clean-ups called for by DTSC—the CA Department of Toxic Substance Control. They have made enemies of the City, the Coastal Commission and DTSC.

We can probably use their pariah status to our advantage, but they are shameless about rewriting history and telling just plain ridiculous “tall tales” about what enviros they are or where the mill site planning process actually is. They have created a foolishly inaccurate document they call the “Little Stinker.” The name, Little Stinker, is an apt assessment of their history.

Our community needs public meetings to raise awareness and pursue full transparency with regard to mill site planning, property and environmental abuse. It is a lot like a carney “shell game” – Sierra Energy (the trash burning guys) & Mendocino Railway (the fossil fuel funded family that bought the Skunk out of bankruptcy) and Georgia-Pacific—who pretended for months that they would never go with the Skunks—all of these—what shall we call them? Here's what I call them, very bad for our community.

We should have an on-going contest to name they rascals. This could be fun.

Our community will not allow The Skunks ruin the Noyo Headlands. Their extremely misleading “Little Stinker” publication must be rejected. I suggest pulling item 5K from the Consent Calendar so there can be a beginning of the necessary airing of all the Mendocino Railway nonsense. During Closed Session I hope you will decide to have a series of public meetings to clarify that the Skunk train is nowhere near getting approval for their very bad ideas regarding development out on the headlands. Their claims to the Pudding Creek watershed are ludicrous and dangerous.

Many thanks for all that you folks are doing to protect our coastal environment,

George Reinhardt

**From:** [Mark Haydon](#)  
**To:** [Lemos, June](#)  
**Subject:** 11-22-21 Agenda Item 5K - Request for Removal from Agenda  
**Date:** Monday, November 22, 2021 2:12:15 PM

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Honorable Fort Bragg City Clerk,

My name is Mark Haydon, and I am the Facility and Quality Control Manager at Geo Aggregates in Fort Bragg, CA. I am writing this letter in support of the *Mendocino Railway U.S. Department of Transportation Railroad Rehabilitation & Improvement Financing Loan*. The railway between Willits and Fort Bragg is crucial for Fort Bragg tourism. Not allowing the reconstruction of a Mendocino County landmark would be a negative to the local Fort Bragg downtown community.

In addition to being massive for our local shops, this rail will relieve congestion on an already overdrive Highway 20. Many trucking companies are reluctant (and some even refuse) to transport goods over the winding road options currently available. The use of this rail system for getting goods to Fort Bragg would certainly lesson the transportation burden on the already overstretched trucking industry. Less trucks congesting the roads into this beautiful City would increase the drive appeal for our tourist friends.

Finally, this project plans on spending upwards of \$22,000,000 on this project; all from a loan that will be paid back with interest. Based on my experience with these types of infrastructure projects, the vast majority of this money would be used for local materials and labor. This is economic sustainability as it puts these dollars right back into our local community. Please, think about your vote this evening. Please consider the Fort Bragg business and tourism industry. Please don't remove a resource that brings nothing but positive to our beautiful corner of this planet.

I graciously ask, for the good of the entire Fort Bragg community, please remove item 5K from tonight's agenda.

Respectfully,

Mark Haydon  
Facility and QC Manager  
Geo Aggregates, Inc.  
1221 North Main Street  
Fort Bragg, CA 95437  
(707) 354-3077 (Geo Cell)  
(530) 518-1645 (Personal Cell)  
[mark@geoagg.net](mailto:mark@geoagg.net)

**From:** [Paul Clark](#)  
**To:** [Lemos, June](#)  
**Cc:** [CMAR \(CMAR@MCN.ORG\)](mailto:CMAR@MCN.ORG)  
**Subject:** FW: City Council Meeting 11/22/2021 Item 5K  
**Date:** Monday, November 22, 2021 3:13:16 PM

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## Mayor Norvell and City Council Members

In case I cant call in tonight, there is a lot of information that was just put on the city website today regarding this item, and little time to digest it all, the letter from the city and much more in the comments file.

Some general thoughts, the GP mill closed in 2002, and the city still has not finished the rezoning. The fact that someone has come along to purchase it should be no surprise. The city as I recall at one point asked GP to give it to them, and from any fair review of the process, GP has not been treated as a respected partner, far from it. Daylighting the streams, open areas and all that. Almost 20 years of local input and planning processes and no result. No wonder GP wants to put Fort Bragg in its past. I don't blame them at all.

I personally asked the then property manager for GP why did they sell the trail? For the record, I am glad they did, and the city should get the credit for that, but the answer was they felt the City would view them favorably and work with them to do the rezoning. That didn't happen. GP has spent millions in clean up, remember that process? Polanco or some such process.

No matter who purchases the mill site, they will have mountains of studies and regulations to follow.

A question to ask I guess, if the city were to purchase this property as

they have tried. Would the city be in a position to rezone the property in an unbiased manner? Could they if the Skunk train purchased it? As mentioned before, I don't think the city should be in the development market. What has been needed for longer than 2002 is to annex to the East to Monson lane as was once proposed, (yes I own property in that area) infrastructure is mostly there now. Many homes could have been built in the time that has passed waiting for the GP site to be rezoned. But the general plan put the stop to that, partly in thinking that the GP site would be the answer to all things. It hasn't proved to be that even now. I think the city should be very careful in taking this position.

If the department of transportation reached out to the city fine, but going this route has a very bitter feel to it. I think the interests of the citizens should be foremost. I suggest the city council not approve this letter. Let the chips fall where they may.

Paul Clark

**From:** [David Figueiredo](#)  
**To:** [Lemos, June](#); [Norvell, Bernie](#); [Morsell-Haye, Jessica](#); [Albin-Smith, Tess](#); [Peters, Lindy](#); [Rafanan, Marcia](#)  
**Subject:** Regarding 5K on 11-22-2021 agenda  
**Date:** Monday, November 22, 2021 3:03:04 PM

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To the Fort Bragg City Council,

I am writing in regards to the counsels opposing views on the Skunk Trains loan to forward the reopening of the skunk train running from Willits to Fort Bragg. I am shocked that our City Counsel would try to stop 21,000,000 dollars from coming into our community for the betterment of our town, especially after such a long two years of being shut down by our government.

I would think that the people running our community counsel would want what is best for our communities financial growth. Not to mention the opportunity for the citizens in this community. I would like to see 5K removed from the agenda tonight and to allow the SkunkTrain to move forward with their business so that they can keep employing people and increase bringing more people to our community

I, as a business owner in downtown Fort Bragg am excited to share our beautiful coast with the many people from all over the world that come to see this outstanding place that we are so lucky to call home.

Regards,

David Figueiredo



**From:** [Bill Mann](#)  
**To:** [Norvell, Bernie](#); [Albin-Smith, Tess](#); [Morsell-Haye, Jessica](#); [Peters, Lindy](#); [Rafanan, Marcia](#); [Miller, Tabatha](#); [sarah mccormick](#); [O'Neal, Chantell](#); [Lemos, June](#)  
**Subject:** CITY OF FORT BRAGG vs. MENDOCINO RAILWAY  
**Date:** Monday, November 22, 2021 4:19:02 PM

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Mayor, Council, Manager, Staff (please add the following for Public Record input before tonight's Council Meeting:

This is to echo large community support for salvaging your ongoing efforts to save the Mill Property from the SKUNK TRAIN land grab.

Please employ whatever legal means necessary to implement the City Plan and Vision outlined in your November 22, 2021 Letter to the Dept. of Transportation. The multi-acre tract of land under discussion is probably the last opportunity for the City of Fort Bragg to develop a true oceanic 'Blue Economy.'

We stand behind your efforts, and we urge you:  
Do not surrender!

Bill Mann  
Sue Rogers



Virus-free. <https://link.edgepilot.com/s/a9148299/8DgwmdOKAUitgBZAuXDbAw?u=http://www.avast.com/>



November 22, 2021

Dear City Council of Fort Bragg:

We are asking item 5K be removed from the consent calendar and for the City of Fort Bragg to not oppose an awesome effort of a local business working tirelessly to ensure a successful future for our town.

We rely heavily on the tourism industry which brings the City, by far, the largest amount of income towards their General Fund paying for staff, Police services, and so much more. To oppose an effort which would cost the city nothing and essentially guarantee Fort Bragg remain a viable and attractive community for locals and visitors for years to come is astonishing, insulting and unnecessary.

I strongly support Mendocino Railway and their ongoing efforts to repair Tunnel 1 along with bridges and rail line which is in need of repair to keep the county's largest and most popular attraction open.

The guests of the Noyo Harbor Inn as well as the dozens of other properties in Fort Bragg benefit greatly from the Skunk Train and the appeal it brings to the area.

The City of Fort Bragg should be nothing less than supportive of something that has been extremely beneficial to the economic health of our community and the services we rely on every day. In fact, each visitor who rides the train spends, on average, over \$150 per day with other businesses in and around town. What kind of town would this be without this economic engine to keep it viable?

Again, remove item 5K and support the efforts of Mendocino Railway as it has done more for the residents, visitors and businesses of Fort Bragg and the Mendocino Coast than anyone could ever realize.

Warm Regards,

Joseph Marino, Owner  
Noyo Harbor Inn, LLC

**From:** [Linda Rosengarten](#)  
**To:** [Lemos, June](#)  
**Subject:** For the Record, Please  
**Date:** Tuesday, November 23, 2021 9:33:15 AM

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To the Members of the Fort Bragg City Council,

Do not allow the takeover of the Mill Site by Sierra Energy. Do not concede to the disingenuous premise for the Skunk Train's cahoots with Sierra Energy - or Hart Energy, a mineral and royalty acquisition company, which has no good business as owners of the Mill Site. The presumption, gall, and malevolence of pretending to be a real utility with all its built-in perks and exemptions for zoning and environmental laws should be alarming and cause you to seek legal recourse!

This purchase does not augur well for the city of Fort Bragg, and it happened on your watch.

Open these session so this community has a clearer view into the council's considerations and actions, as well as on-the-record input. Your constituents and those who live on the coast and in Mendocino County deserve better treatment and access to what affects them. In this case what affects them about the Mill Site.

Thank you for your consideration,  
Linda Rosengarten

--  
Linda Rosengarten  
16650 Mitchell Creek Drive  
Fort Bragg, CA 95437

**From:** [ajregister@yahoo.com](mailto:ajregister@yahoo.com)  
**To:** [Lemos, June](#)  
**Subject:** Skunk Train Issues  
**Date:** Tuesday, November 23, 2021 12:23:12 AM

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Hi June,

What gets me is the unilateral nature of the Skunk Train's activities and the lack of checks and balances.

I do not trust what they say at this point. While I believe they should be treated fairly, those who ask for equity should do equity.

Emotions may be running high, but I hope the city's voice is not squelched. I agree with Jacob Patterson's verbal comments during the last meeting tonight and believe they are on point. The city missed an opportunity by not intervening in the eminent domain suit.

The Skunk Train's activities should not be channel for putting other people at risk, such as by neglecting brownfield/toxic soils issues.

The Skunk Train's words do not match their actions as far as I can tell.

Thank you.

Best Regards,

Andrew Jordan  
Fort Bragg, CA

**From:** [john heldstab](#)  
**To:** [Lemos, June](#)  
**Subject:** City Council Meeting Agenda Item 5K Comment  
**Date:** Monday, November 22, 2021 7:57:20 PM

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Hello my name is John Heldstab I am an employee of Mendocino Railway but I would like to speak as a member of the community. I have been a member of this community for the last 26 years of my life. I went through all of the local public school systems, and have worked a number of jobs for businesses within the Fort Bragg area. My wife is a 3rd generation fort Bragg native, born here in our hospital; today we own a home within the city limits and we are raising two children in this wonderful community.

As a child growing up on Pudding Creek Road, the chugging of the steam locomotive and the rumble of the diesel electric locomotive were always familiar sounds that have been ingrained into my core memories. And though I may not know many of the details surrounding the Skunk Train's future plans on the GP land, as far as the Skunk Train's Tunnel #1 goes, I know the basics, that is unusable at this time and has been out of commission for several years. My understanding is that the city is opposed to the Skunk Train's application for a loan to repair the tunnel and other areas within the railroad. It seems to me growth of the railroad by reopening the tunnel would mean more jobs in this area, and more support for working families in this community. It also means more of a reason for folks to visit this area from all over the globe and spend money while they are here. I have friends that own businesses within our community who rely primarily on the dollars of visitors from out of town year after year. With the tunnel reopened, it will mean more people visiting this area, and more people means more money to restaurants, lodging, and grocery stores within our community. To the best of my understanding, I believe that everyone will benefit from the reopening of the tunnel and why the Skunk Train should be allowed to submit their application for a loan on money they plan to pay back. That is my opinion, thank you all for your time.

-John

**From:** [Josh Morsell](#)  
**To:** [Lemos, June](#)  
**Subject:** Comment on public record  
**Date:** Monday, November 22, 2021 9:48:35 PM

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Hi June,

I'm writing to enter a comment on the public record in connection to tonight's Fort Bragg City Council meeting: I object to the Skunk Train's land grab of the GP mill site by their claim of eminent domain. I support the City of Fort Bragg's legal challenge to the Skunk Train's claim. I support the City of Fort Bragg's purchase of the GP mill site for the public good, and I support making the land near the mouth of Pudding Creek a state park.

Thank you, Josh Morsell

**From:** [Nancy Reynolds](#)  
**To:** [Lemos, June](#)  
**Subject:** Skunk takeover  
**Date:** Monday, November 22, 2021 6:05:28 PM

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I have received a flood of emails about the attempted Skunk takeover of the Ft Bragg mill site and Pudding Creek watershed. Until a few days ago I had heard nothing about this issue. A friend provided me with a copy of The Little Stinker whose proposal looks quite advanced and potentially interesting. However who is funding this project? Where will the water come from to supply it? How many more people will our local infrastructure need to support? Is our city government involved and does it have jurisdiction over zoning? I would like to see this process unfold in the light of public discussion. It seems that much has been arranged in secret. A major development as this needs to be done with Community/city support.

Nancy Reynolds



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

## Text File

File Number: 21-610

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**Agenda Date:** 11/22/2021

**Version:** 1

**Status:** Consent Agenda

**In Control:** City Council

**File Type:** Resolution

**Agenda Number:** 5L.

Adopt City Council Resolution Approving Professional Services Agreement for the Preparation of a Preliminary Engineering Report (35%) to Establish Municipal Broadband Utility Serving Fort Bragg and Authorizing City Manager To Execute Contract (Amount Not to Exceed \$38,000; Account No. 110-4130-0319)

The City of Fort Bragg is pursuing establishing a city-owned Broadband Utility that provides fast, reliable, and affordable connectivity to all households and businesses in the city. The proposed broadband project includes the construction of a fiber-to-the-premise network utilizing underground conduit and fiber installation, with speeds up to 10Gbps. In September 2021, Council directed staff to: 1) invest resources in grant opportunities; 2) work out operating details with Mendocino Community Network (MCN); and 3) contract out for detailed design and entitlement work.

Staff has initiated meetings with MCN to serve as the service provider and is currently pursuing construction funding. The subject 35% Preliminary Engineering Report (PER) would be utilized in a US Department of Commerce Economic Development Administration (EDA) application for construction dollars.



**RESOLUTION NO. \_\_\_\_-2021**

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING PROFESSIONAL SERVICES AGREEMENT FOR THE PREPARATION OF A PRELIMINARY ENGINEERING REPORT (35%) TO ESTABLISH MUNICIPAL BROADBAND UTILITY SERVING FORT BRAGG AND AUTHORIZING CITY MANAGER TO EXECUTE CONTRACT (AMOUNT NOT TO EXCEED \$38,000; ACCOUNT NO. 110-4130-0319)**

**WHEREAS**, the City is interested in establishing broadband connectivity that provides fast, reliable and affordable service to all Fort Bragg households and businesses; and

**WHEREAS**, on September 20, 2021 City Council received a presentation of the Fort Bragg Digital Infrastructure Plan 2021-2025; and

**WHEREAS**, the purpose of the study was to explore the possibility of a City-owned Broadband Utility, including an evaluation of the financial cost and feasibility of a such a project; and

**WHEREAS**, staff was directed to seek grant opportunities and contract out for detailed design and entitlement work; and

**WHEREAS**, staff is seeking US Department of Commerce Economic Development Administration (EDA) investment dollars to help implement project; and

**WHEREAS**, EDA grant applications for construction projects require a Preliminary Engineering Report to at least 35%; and

**WHEREAS**, the City proposes to utilize the services of an independent contractor to provide engineering services to develop a 35% Preliminary Engineering Report that can be utilized in EDA application and other grant proposals; and

**WHEREAS**, details of report are fully described in the scope of work, included herein as Exhibit A; and

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Fort Bragg does hereby approve a Professional Services Agreement for the preparation of a Preliminary Engineering Report to 35% and authorizes the City Manager to execute contract (amount not to exceed \$38,000; Account No.110-4130-0319).

**The above and foregoing Resolution was introduced by Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 22<sup>nd</sup> day of November, 2021, by the following vote:**

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**
- RECUSED:**

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**BERNIE NORVELL**  
Mayor

**ATTEST:**

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**June Lemos, CMC**  
City Clerk



## CITY OF FORT BRAGG

416 N. FRANKLIN, FORT BRAGG, CA 95437  
PHONE (707)961-2823 FAX (707)961-2802

RE: Scope of Work to Develop 35% Preliminary Engineering Report Based on Fort Bragg Digital Infrastructure Project, June 2021

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The City of Fort Bragg is seeking to bring the “desk-top designs” from the *Fort Bragg Digital Infrastructure Project, 2021-2015* document up to a 35% Preliminary Engineering Report (PER) to meet application requirements for grant funds to construct a city-owned broadband utility.

The City anticipates funding and constructing the entire broadband project at one time. Seeking EDA investment to link businesses (although residential parcels can indirectly benefit), and USDA, CDBG or other source to connect residences. As such, we are looking to separate routes and costs into two buckets, that are differentiated in PER in two colors:

1. **Businesses.** This would include commercial zoning districts, industrial zoning districts (with the exception of Timber Resources industrial, aka former GP Mill Site), and home based businesses. City Zoning Map and locations of home business/non-conforming commercial businesses are attached.
2. **Residential.** This would include everything that is not covered in the first bucket. The City will pursue other funding sources for residential connectivity.

PER should contain at a minimum, the following:

- **Drawings.** Drawings showing the general layout and location of the existing site conditions and of the project components as well as location of businesses outside commercial/industrial zoning. Rough dimensions and quantities for major project components should be shown and labeled on the drawings. Drawings should clearly identify the project components that are being proposed. Applicants are encouraged to clarify such drawings, for example, through color coding, labeling, and other appropriate methods.
- **Construction Cost Estimate.** Current detailed construction cost estimate for each of the project components. Show quantities, unit prices, and total costs and provide a basis for the determination of construction contingencies.
- **Overall Estimated Project Schedule.** Include the number of months for each of the following:

- i. design period;
- ii. period of time to obtain required permits;
- iii. period of time to obtain any required easements or rights-of-way;
- iv. solicitation of bids and awarding of contracts, and
- v. construction period.

To City Council members,

After reading the Resolution and the Scope of Work under item 5L on the City Council agenda for the meeting on 11-22-2021 I believe that this project requiring \$35,000 is not ready to be adopted as is along with all the other items listed for the consent calendar. While the explanation on the agenda about item 5L makes sense, the title for the scope of work makes no sense. It says: "The Scope of Work to Develop 35% Preliminary Engineering Report Based on Fort Bragg Digital Infrastructure Project."

Please remove this item from the agenda and discuss at some future meeting. What is available for the public to read is hard to understand as incomplete sentences are used; terms mentioned without any explanation like "desk-top design" and buckets; abbreviations used without explanation what they stand for like EDA, USDA, CDBG; attachments listed that are not attached like City Zoning Map, and locations of home business/non-conforming commercial businesses. Looking up these abbreviations I found the US Economic Development Administration, the US Department of Agriculture, and the Community Development Block Grant Program. Realizing by reading the Resolution the City Council apparently received a presentation on 9-20-2021 and discussed underground Fiber to the Premise (FTTP) broadband deployment.

In the two documents included for the 11-22-21 meeting we can not find out what broadband technology the City is thinking about unless people look up what was presented on 9-20-2021. It was there that I also found the term "desk-top design" and found out that the City is trying to provide underground Fiber to the Premise (FTTP) broadband. No indication was given as far as "buckets" are concerned.

Broadband provides high speed internet access via multiple types of technologies including fiber optics, wireless, cable, DSL and satellite. Therefore, it is important to know exactly what the City is intending to do.

The Resolution was not proofread and for example indicates that the EDA stands for US Department of Commerce Economic Development Administration and has several typos. Also what was not explained clearly in both documents is how the 35% relate to the \$35,000.

Looking up the City Council meeting of 9-20-2021 I found a Fort Bragg Infrastructure Plan, a Fort Bragg Broadband Plan and a public comment from Jacob Patterson. Jacob Patterson seemed impressed with the detail and quality of the report and excited about the project. I am glad that the technology used is underground Fiber to the Premise, but am very frustrated by the sloppiness and lack of clarity of the two documents that should explain to the City Council and community members why that item should be voted on along with all the other items during the consent calendar.

This project requiring \$35,000 is not ready to be adopted as is along with all the other items listed for the consent calendar. Please remove from the agenda and bring back at another time for the above stated reasons.

Sincerely, Annemarie Weibel  
11-22-2021



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

## Text File

File Number: 21-595

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**Agenda Date:** 11/22/2021

**Version:** 1

**Status:** Business

**In Control:** City Council

**File Type:** Resolution

**Agenda Number:** 8A.

Receive Report and Consider Adoption of City Council Resolution Approving a 10-year Solid Waste Franchise Agreement with Redwood Waste Solutions, Inc. (dba C&S Waste Solutions) and Authorizing the City Manager to Execute and Implement the Agreement



AGENCY: City Council  
MEETING DATE: November 22, 2021  
DEPARTMENT: City Manager  
PRESENTED BY: Tabatha Miller  
EMAIL ADDRESS: [tmiller@fortbragg.com](mailto:tmiller@fortbragg.com)

## AGENDA ITEM SUMMARY

### **TITLE:**

**Receive Report and Consider Adoption of City Council Resolution Approving a 10-year Solid Waste Franchise Agreement with Redwood Waste Solutions, Inc. (dba C&S Waste Solutions) and Authorizing the City Manager to Execute and Implement the Agreement**

### **ISSUE:**

The City of Fort Bragg's Franchise Agreement with USA Waste of California, Inc., dba Empire Waste Management (WM) was to expire on June 30, 2021. The City Council approved the extension on February 8, 2021 and Amendment No. 7 extends the City's current Franchise Agreement with WM until June 30, 2022.

On June 14, 2021, the City Council approved issuing a Joint County of Mendocino and City of Fort Bragg Request for Proposals (RFP) for Solid Waste Refuse Collections. On June 15, 2021, the Joint RFP was issued with a closing date of August 3, 2021. The City and the County received three responses from:

- C&S Waste Solutions of California, Inc. (C&S)
- Solid Waste of Willits, Inc. (SWOW)
- Waste Management Collection and Recycling, Inc. (WM)

The City Council Solid Waste Franchise Agreement Ad Hoc Committee, comprised of Mayor Bernie Norvell, Councilmember Lindy Peters and the City Manager, reviewed the responses and rated each proposal based on predetermined criteria. On September 13, 2021 the City Council authorized the City Manager to enter into negotiations with C&S Waste Solutions of California, Inc. for residential and commercial garbage, recyclable materials and organic waste collection under an exclusive 10-year Franchise Agreement. Redwood Waste Solutions, Inc. (Redwood) is the entity that will contract with the City and the County for new Solid Waste services.

The City and Redwood have reached agreement on a final Franchise Agreement and staff recommends that the City Council adopt a Resolution approving the Agreement and authorizing the City Manager to execute and implement the same, with services to start July 1, 2022. Mendocino County also selected C&S Waste Solutions of California, Inc. and has negotiated an almost identical agreement with Redwood.

### **ANALYSIS:**

#### **Franchise Agreements**

The current Solid Waste Franchise Agreement was executed on January 8, 2007 and originally contained a termination date of June 30, 2014. In August of 2011, the Agreement



was extended to June 30, 2021 and as mentioned above, an additional 1-year extension was executed in February 2021, so that the agreement now expires on June 30, 2022.

[California Public Resources Code Section 40059](#) provides the City with the authority to determine all aspects of solid waste handling as it is of local concern, including the frequency of and means of collection, transportation, level of services, charges and fees and extent of providing such services. Section 40059 also allows cities to determine how services are procured; it allows cities to obtain services by using partially exclusive or wholly exclusive franchises, contracts, licenses or permits with or without competitive bidding. This code section also provides the City with the authority to establish its own terms for procuring solid waste services by resolution or ordinance.

[Fort Bragg Municipal Code Chapter 6.08 – Refuse and Recyclable Collections, Section 6.08.020](#) provides that no one can engage in refuse and recycling collection in the City except under contract with the City. That contract can be exclusive or nonexclusive and the City may regulate all aspects of collection. The chapter also provides regulation on how solid waste is prepared, contained, stored and collected within City limits.

#### C&S Waste Solutions

C&S Waste Solutions (C&S), based in Ukiah, is a group of companies with more than 20 years of experience in Northern California. The group of companies provides integrated waste services, including collection, transfer and disposal, recyclable collection and processing, green and wood waste collection and processing, landfill operations, sanitation services and scrap metal purchasing and marketing. They also have presence in southern Nevada. C&S currently provides services to the City of Ukiah, Lake County and Clearlake in our area.

C&S maintains a large facility in Ukiah that would support the facility proposed for the Fort Bragg Coastal area. The facility includes the large Material Recovery Facility (MRF) which can process commingled paper, aluminum, PET, LDPE, HDPE plastics (1-7), glass, cans and cardboard. The facility also houses the green and wood waste processing facility. Both operations have the capacity to add the City of Fort Bragg to their processing. C&S also operates transfer stations in Ukiah and Lake County.

C&S has secured property at 1280 N. Main Street, Fort Bragg to locate a direct (truck-to-truck) waste transfer operation, equipment storage and maintenance, and a customer service center. The property is zoned Light Industrial and is not located in the Coastal Zone. The facility would serve as a direct-haul transfer facility. The collector trucks, which collect refuse, recyclables and green waste from City and County customers, will transfer the waste directly into hauling trucks, which will transport waste to the SWOW facility in Willits per the City's existing contracts. A direct-haul transfer facility will move material from one covered vehicle to another so the material is never placed on the floor or ground. Improvements to the property are subject to the permit requirements of the City of Fort Bragg, which are well underway. The waste transfer operations WM conducts at the Pudding Creek facility are almost identical.

Although solid waste will continue to be collected at the same locations and in the same volume, C&S's collection within City limits will operate differently. Waste Management uses

three separate trucks to collect the refuse, recyclables and green waste and then transport it back to the Pudding Creek facility. C&S will use split-body side loading trucks that will allow it to collect recyclables and green waste in one pass per house, instead of two. In other words, instead of three trucks traveling to each residence on trash pickup day, only two trucks will be used by C&S. This difference will reduce the collector truck miles traveled in Fort Bragg. C&S's proposal includes new trucks and new bins, creating the presumption that the new trucks will improve air quality and operate more efficiently. Less collection trips will also reduce the wear and tear on City streets.

C&S's Diversion and Education and Outreach programs received high marks, as did the high-tech locally based customer service and collection systems. An experienced full-time Waste Diversion Coordinator will oversee the diversion programs. In order to aid in the transition from WM, C&S's transition team includes former WM District Manager, Bob Thornsberry.

Finally, the City Council Ad Hoc Solid Waste Franchise Committee was concerned for loss of employment by WM employees laid off as a result of the transition. One of the requirements in the RFP was a commitment by any selected provider to agree to retain the employees of the prior Vendor/Subcontractor for a period of not less ninety (90) days pursuant to sections [1072](#) and [1075](#) of the California Labor Code.

#### Environmental Analysis

City staff reviewed the proposed change in service provider for solid waste collection and transportation and determined that the awarding of a new Franchise Agreement will not result in significant environmental impacts and is categorically exempt from the California Environmental Quality Act (CEQA) under Section 15301 Class 1 Existing "Facilities," Section 15308 Class 8 "Actions By Regulatory Agencies for Protection of the Environment," and 15061(b)(3) the common sense exemption because the change in Franchise Agreement is essentially a "like-for-like" service provided by a different organization. (see Attachment 4).

#### **RECOMMENDED ACTION:**

Staff recommends the City Council adopt the Resolution approving the Exclusive Franchise Agreement for Solid Waste Refuse Collection for the Fort Bragg Service Area with Redwood Waste Solutions, Inc. authorizing the City Manager to sign and implement the terms of the Agreement.

#### **ALTERNATIVE ACTION(S):**

1. Do not approve the resolution and provide staff alternative direction.

#### **FISCAL IMPACT:**

The City will receive Franchise Fees at the same percent as set forth in the existing Agreement with Waste Management. The City receives a 10% franchise fee for administration of the Agreement and 10.96% for the continuing costs associated with closing the Caspar Landfill, which is owned jointly with Mendocino County.

#### Rate Comparison

The chart below provides selected proposed rates from the RFP respondents as a point of comparison. The figures on the right, compare the proposed C&S rates to the current rates

charged by WM.

Residential - Single Family	SWOW	WM	C&S	Current WM		
				Rate	Difference	%
Weekly Service						
20 Gallons	\$ 26.00	\$ 26.41	\$ 22.01	\$ 24.45	\$ (2.44)	-10.0%
32 Gallons	\$ 38.00	\$ 42.07	\$ 33.11	\$ 38.95	\$ (5.84)	-15.0%
64 Gallons	\$ 77.00	\$ 84.14	\$ 66.22	\$ 77.91	\$ (11.69)	-15.0%
96 Gallons	\$ 115.00	\$ 126.24	\$ 99.36	\$ 116.89	\$ (17.53)	-15.0%
Commercial & Multi-Family	SWOW	WM	C&S	Current WM		
1-Weekly Service						
32-Gallon Cart	\$38.00	\$37.93	\$39.99	\$37.37	\$ 2.62	7.0%
64-Gallon Cart	\$77.00	\$75.85	\$79.96	\$74.73	\$ 5.23	7.0%
96-Gallon Cart	\$115.00	\$113.79	\$119.95	\$112.11	\$ 7.84	7.0%
1 CY Bin	\$225.03	\$228.41	\$240.78	\$225.03	\$ 15.75	7.0%
1.5 CY Bin	\$299.91	\$306.31	\$322.90	\$301.78	\$ 21.12	7.0%
2 CY Bin	\$385.55	\$395.26	\$416.68	\$389.42	\$ 27.26	7.0%
3 CY Bin	\$452.41	\$463.83	\$488.97	\$456.98	\$ 31.99	7.0%
4 CY Bin	\$722.72	\$722.72	\$761.88	\$712.04	\$ 49.84	7.0%
6 CY Bin	\$954.80	\$927.66				
2 CY Compactor	\$452.41	\$625.77	\$678.17	\$616.52	\$ 61.65	10.0%
3 CY Compactor	\$516.72	\$682.27	\$739.41	\$672.19	\$ 67.22	10.0%
4 CY Compactor	\$578.29	\$806.65	\$874.20	\$794.73	\$ 79.47	10.0%

Costs associated with the RFP including the services of HDR Engineering and staff time will be borne by Redwood, as the successful provider.

**GREENHOUSE GAS EMISSIONS IMPACT:**

Changing solid waste providers by itself will have little impact on greenhouse gas emission, however, new equipment and trucks would positively reduce greenhouse gas emissions.

**CONSISTENCY:**

Securing a long-term contract with a provider is consistent with Chapter 6.08: Refuse and Recyclable Collection – of the Fort Bragg Municipal Code.

**IMPLEMENTATION/TIMEFRAMES:**

Service requirements would be effective July 1, 2022.

**ATTACHMENTS:**

1. Resolution
2. Franchise Agreement
3. Exhibits to Franchise Agreement
4. Memo CEQA Exemption

**NOTIFICATION:**

1. Bruce McCracken, C&S Waste Solutions

**RESOLUTION NO. \_\_\_\_-2021**

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL  
APPROVING A 10-YEAR SOLID WASTE FRANCHISE AGREEMENT WITH  
REDWOOD WASTE SOLUTIONS, INC. AND AUTHORIZING THE CITY  
MANAGER TO EXECUTE AND IMPLEMENT THE AGREEMENT**

**WHEREAS**, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989, has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for Solid Waste handling within their jurisdictions; and

**WHEREAS**, pursuant to California Public Resources Code Section 40059 (a) (2), the City Council of the City of Fort Bragg (City) determined that the public health, safety and well-being require that an exclusive franchise be awarded to a qualified Solid Waste enterprise for the collection and recovery of solid waste from certain residential, industrial and commercial areas in the City; and

**WHEREAS**, the Fort Bragg Municipal Code Section 6.08.020 provides that no one can engage in refuse and recycling collection services in the City except under contract with the City; and

**WHEREAS**, regular pickup of garbage, green waste and recyclables is more sanitary and reduces the risk of the solid waste being spread by animals or creating unwanted smells; and

**WHEREAS**, The City and USA Waste of California, Inc., DBA Empire Waste Management (Waste Management) executed a Franchise Agreement (Agreement) dated January 8, 2007 which expires on June 30, 2022; and

**WHEREAS**, the City's intention in executing the Agreement was to maintain reasonable rates for collection and transportation of solid waste, discarded recyclable materials and green waste within the area covered by the Agreement; and

**WHEREAS**, the City of Fort Bragg and the County of Mendocino issued a joint Request for Proposals for residential and commercial garbage, recyclable material and organic waste collection for the County Solid Waste Franchise Area Number Two and the City of Fort Bragg City limits; and

**WHEREAS**, C&S Waste Solutions of California, Inc. (C&S), was selected as the preferred Solid Waste Provider by the City's Solid Waste Franchise Agreement Ad Hoc Committee and by the Mendocino County's Evaluation Committee based on a proposal review weighting 55% of the score for technical proposal, qualifications and sustainability and 45% for the proposed cost to the customers; and

**WHEREAS**, C&S has operated in Northern California for more than two decades and provides integrated collection, transfer, processing of waste and recyclables (including green waste), and

**WHEREAS**, Redwood Waste Solutions, Inc. is the company incorporated by C&S to do business under the City of Fort Bragg and Mendocino County, Franchise Area 2, Franchise Agreements; and

**WHEREAS**, based on all the evidence presented, the City Council finds as follows:

1. The foregoing recitals are true and correct and are made a part of this Resolution.
2. It is in the best interest of the City and all Fort Bragg solid waste customers to secure refuse and recyclable collection services for the next ten (10) years.
3. C&S Waste Solutions of California, Inc. has successfully operated integrated waste services locally for more than a decade in Mendocino and Lake County and was recommended to the City by other jurisdictions.
4. Redwood Waste Solutions, Inc. has agreed to hire staff laid off from Waste Management as a result of the City’s decision to transition refuse and recycling services to another provider.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Fort Bragg does hereby authorize the City Manager to execute and implement a ten (10) year Solid Waste Franchise Agreement between the City of Fort Bragg and Redwood Waste Solutions, Inc.

**The above and foregoing Resolution was introduced by Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 22nd day of November, 2021, by the following vote:**

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**
- RECUSED:**

\_\_\_\_\_  
**BERNIE NORVELL**  
Mayor

**ATTEST:**

\_\_\_\_\_  
**June Lemos, CMC**  
City Clerk

EXCLUSIVE FRANCHISE AGREEMENT FOR  
SOLID WASTE REFUSE COLLECTION  
FORT BRAGG SERVICE AREA  
FOR SINGLE-FAMILY, MULTI-FAMILY, AND COMMERCIAL GENERATORS  
BETWEEN THE  
CITY OF FORT BRAGG  
AND  
REDWOOD WASTE SOLUTIONS, INC.

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**EXCLUSIVE FRANCHISE AGREEMENT FOR SOLID WASTE REFUSE  
FORT BRAGG SERVICE AREA  
BETWEEN  
CITY OF FORT BRAGG  
AND  
REDWOOD WASTE SOLUTIONS, INC.**

This Agreement for Solid Waste Refuse Fort Bragg Service Area between the City of Fort Bragg and Redwood Waste Solutions, Inc. (the "Agreement") is made and entered into as of the last date of execution (the "Effective Date") between the City of Fort Bragg, a California municipal corporation (hereinafter, "City") and Redwood Waste Solutions, Inc. (hereinafter, "Contractor"), a Delaware corporation qualified to do business in California, each of whom shall separately be a "Party" and collectively be the "Parties."

**RECITALS**

**WHEREAS**, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939"), has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for Solid Waste handling within their jurisdictions; and

**WHEREAS**, pursuant to California Public Resources Code Section 40059(a)(2), the City of Fort Bragg City Council has determined that the public health, safety, and well-being require that an exclusive franchise be awarded to a qualified enterprise for the collection and recovery of Solid Waste, Organic Waste, and Recyclable Materials from certain residential, industrial, and commercial areas in the City; and

**WHEREAS**, City and Contractor are mindful of the provisions of local, state, and federal laws governing the safe Collection, Transport, and Disposal of Solid Waste, Organic Waste, and Recyclable Materials, including, but not limited to AB 341, AB 876, AB 901, AB 939, AB 1594, AB 1826, SB 1383, the Resource Conservation and Recovery Act ("RCRA") and the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"); and

**WHEREAS**, City has not, and by this Agreement does not, instruct Contractor on its Collection Methods, nor supervise the Collection of waste; and

**WHEREAS**, Contractor has represented and warranted to the City that it has the experience, responsibility, and qualifications to arrange with residents, commercial, industrial, institutional, and other entities in the Franchise Area for the collection and safe transport to Approved or Designated Facilities for Solid Waste, Organic Waste, and Recyclable Materials, the City of Fort Bragg City Council determines and finds that the public interest, health, safety, and well-being would be best served if Contractor were to make arrangements with residents and other entities to perform these services; and

**WHEREAS**, the City of Fort Bragg City Council declares its intention of maintaining reasonable rates for the collection and transportation of Solid Waste, Organics Waste, and Recyclable Materials within the area covered by this grant of franchise; and

**WHEREAS**, the City wishes to contract with Contractor for Solid Waste, Organic Wastes, and Recyclable Materials collection and processing services; and

**WHEREAS**, the City and Contractor wish to enter into this Agreement on the terms and conditions stated herein; and

**NOW, THEREFORE**, the Parties agree to the terms and conditions set forth herein.

## **ARTICLE 1: GRANT AND ACCEPTANCE OF EXCLUSIVE RESIDENTIAL AND COMMERCIAL FRANCHISE**

**1.1** City grants to Contractor, for the term of and in accordance with this Agreement (including all extensions or renewals), an exclusive privilege, duty and right to make and enter into independent agreements with residents of single family units, residents and/or owners of multifamily units, and Persons in charge of commercial, industrial, institutional and other entities in the Franchise Area for the collection, transportation and disposal of Solid Waste, Organic Waste, and Recyclable Materials, generated or accumulated within the Franchise Area, with the exception of sewage sludge and seepage, which has been placed in a Contractor-provided Container, in the areas covered by this Agreement, as its boundaries are now constituted or may hereafter be amended.

**1.2** Contractor agrees to be bound by and comply with all the requirements of this Agreement.

**1.3** In the event of and to the extent that any of the following (Items A to C below) require or are amended to require that either Party take certain action or desist from taking certain action that affects the promises, covenants and/or performance of the Parties hereunder, then this Agreement shall be amended to provide for the satisfaction of such requirements. Further, should such amendments to this Agreement result in the Contractor having to incur additional expenses in performing its obligations hereunder, or if certain cost cutting measures are implemented that justify lower rates, then Contractor or City may seek rate adjustments therefore in accordance the procedures under Article 9 below.

**A.** The City Code, the California Public Resources Code, other applicable state and federal laws, rules and regulations promulgated thereunder;

**B.** The County of Mendocino County-wide Integrated Waste Management Plan and the County's Source Reduction and Recycling Elements and Household Hazardous Waste elements; and

**C.** Any and all amendments to said laws, plans, and regulations.

**1.4** City may, in its sole discretion, enforce the exclusivity provisions of this Agreement against third-party violators, taking into account the cost of doing so and other factors. Contractor may independently enforce the exclusivity provisions of this Agreement against third-party violators, including, but not limited to, seeking injunctive relief and/or damages, and City shall use good-faith efforts to cooperate in such enforcement actions

brought by Contractor. City shall use its best efforts to adopt ordinances, rules or regulations that have the effect of requiring third parties, including, without limitation, customers, to comply with the provisions of this Agreement, including, without limitation, the exclusive service rights granted to Contractor pursuant to this Agreement.

## **ARTICLE 2: DEFINITIONS**

For purposes of this Agreement, unless a different meaning is clearly required, the words and phrases in this Article shall have the following meanings respectively ascribed to them by this Article and shall be capitalized throughout this Agreement.

### **2.1 AB 341**

“AB 341” means the Assembly Bill approved by the Governor of the State of California on October 5, 2011, which amended Chapter 476 Sections 41730, 41731, 41734, 41735, 41736, 41800, 42926, 44004, and 50001 of, and added Sections 40004, 41734.5, and 41780.01 and Chapter 12.8 (commencing with Section 42649) to Part 3 of Division 30 of, and added and repealed Section 41780.02 of, the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded and replaced from time to time.

### **2.2 AB 876**

“AB 876” means the Assembly Bill approved by the Governor of the State of California on October 8, 2015, which added Section 41821.4 to Chapter 593 of the Public Resources Code, relating to Solid Waste as amended, supplemented, superseded, and replaced from time to time.

### **2.3 AB 901**

“AB 901” means Assembly Bill approved by the Governor of the State of California on October 10, 2015, which amended Chapter 746 Section 41821.5 of, amended, renumbered and added Section 41821.6 of, and added Sections 41821.7 and 41821.8 to, the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time.

### **2.4 AB 939**

“AB 939” means the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000, et seq.), Chapter 1095, as amended, supplemented, superseded, and replaced from time to time.

### **2.5 AB 1594**

“AB 1594” means the Assembly Bill approved by the Governor of the State of California on September 28, 2014, which amended Chapter 719 Sections 40507 and 41781.3 of the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time.

## **2.6 AB 1826**

“AB 1826” means the Assembly Bill approved by the Governor of the State of California on September 28, 2014, Chapter 727 which added Chapter 12.9 (commencing with Section 42649.8) to Part 3 of Division 30 of the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time.

## **2.7 Affiliate**

“Affiliate” means all businesses (including corporations, limited and general partnerships, and sole proprietorships) that are directly or indirectly related to Contractor by virtue of direct or indirect ownership interest or common management and shall be deemed to be “Affiliated with” Contractor and included within the term “Affiliates” as used herein. An Affiliate shall include a business in which Contractor owns a direct or indirect ownership interest, a business that has a direct or indirect ownership interest in Contractor, and/or a business that is also owned, controlled, or managed by any business or individual that has a direct or indirect ownership interest in Contractor. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that: (i) “ten percent (10%)” shall be substituted for “fifty percent (50%)” in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater. Affiliate includes Subsidiaries.

## **2.8 Agreement**

“Agreement” means this Exclusive Franchise Agreement between the City and Contractor, including all exhibits and attachments, and any amendments thereto.

## **2.9 Alternative Daily Cover (ADC)**

“Alternative Daily Cover” or “ADC” has the same meaning as in 27 CCR Section 20690.

## **2.10 Alternative Facility**

“Alternative Facility” means any Facility approved by City for use pursuant to Section 5.

## **2.11 Alternative Intermediate Cover (AIC)**

“Alternative Intermediate Cover” or “AIC” has the same meaning as in 27 CCR Section 20700.

## **2.12 Applicable Law**

“Applicable Law” means all federal, State, County, and local laws, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the Collection, Transportation, Processing, and Disposal of Discarded Materials that are in force on the Effective Date and as may be enacted, issued, or amended during the Term of this Agreement. Applicable Law includes, but is in no way limited to, AB 939, AB 341, AB 1826, and SB 1383 and corresponding regulations.

### **2.13 Approved Facilities**

“Approved Facility(ies)” means a facility(ies) proposed by Contractor and approved by the City for the Processing and/or Disposal of the following materials: Bulky Waste, C&D, Food Waste, Green Waste, Industrial Solid Waste, Organic Waste, Solid Waste, and Source Separated Recyclable Materials.

### **2.14 Back-Haul**

“Back-Haul” means generating and transporting Organic Waste to a destination owned and operated by the Generator using the Generator’s own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A).

### **2.15 Bin**

“Bin” shall mean a container designed for mechanical emptying with a close-fitting cover and of a design approved by the City with capacity of approximately one (1) to six (6) cubic yards.

### **2.16 Blue Container**

“Blue Container” has the same meaning as in 14 CCR Section 18982.2(a)(5) and shall be used for the purpose of storage and Collection of Source Separated Recyclable Materials or SSBCOW.

### **2.17 Board**

“Board” means the Board of Supervisors of Mendocino County.

### **2.18 Bulky Waste**

“Bulky Waste” means and includes, but not by way of limitation, discarded white goods (i.e., major household appliances), furniture, tires, carpets, mattresses, and similar large items, which cannot be placed in a covered Container.

### **2.19 Business Day(s)**

“Business Days” mean days during which the City offices are open to do business with the public.

## **2.20 C&D**

“C&D” means Construction and Demolition Debris.

## **2.21 C&D Collection Site**

“C&D Collection Site” means properties where construction and demolition work is performed as evidenced by City issuance of a land clearing, building, or demolition permit, or from a non-permitted municipal project or as otherwise stated per City Code Chapter 18.30.

## **2.22 California Code of Regulations (CCR)**

“California Code of Regulations” or “CCR” means the State of California Code of Regulations. CCR references in this Agreement are preceded with a number that refers to the relevant Title of the CCR (e.g., “14 CCR, Division 7, Chapter 12” refers to Title 14, Division 7, Chapter 12 of the California Code of Regulations).

## **2.23 CalRecycle**

“CalRecycle” means California’s Department of Resources Recycling and Recovery, which is the Department designated with responsibility for developing, implementing, and enforcing SB 1383 Regulations on Counties and Cities and other regulated entities.

## **2.24 Cart**

“Cart” means a plastic Container with a hinged lid and wheels serviced by automated or semi-automated Collection vehicles and with a Container capacity of 20, 35, 65, or 95 gallons (or similar volumes).

## **2.25 City Council**

“City Council” means the City Council of the City of Fort Bragg.

## **2.26 City**

“City” means the City of Fort Bragg, California.

## **2.27 City Franchise Agreement**

“City Franchise Agreement” means that certain Exclusive Franchise Agreement for Solid Waste Refuse Fort Bragg Service Area between the City and Contractor.

## **2.28 Collect/Collection**

“Collect” or “Collection” means the act of taking physical possession of Discarded Materials at Single-Family, Multi-Family, or Commercial Premises within the City and from City facilities and transporting the Discarded Materials to an Approved or Designated Facility for Processing, Transfer, or Disposal.

## **2.29 Commercial Business (Commercial)**

“Commercial Business” or “Commercial” means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, or industrial facility, or as otherwise defined in 14 CCR Section 18982(a)(6), with the exception that Multi-Family is excluded from the definition of Commercial Business for the purposes of this Agreement.

## **2.30 Commercial Edible Food Generators**

“Commercial Edible Food Generators” includes Tier One Commercial Edible Food Generators and Tier Two Commercial Edible Food Generators, or as otherwise defined in 14 CCR Section 18982(a)(7). For the purposes of this definition, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators, or as otherwise specified by 14 CCR Section 18982(a)(7).

## **2.31 Community Composting**

“Community Composting” means any activity that composts green material, agricultural material, food material, and vegetative food material, alone or in combination, and the total amount of feedstock and Compost on-site at any one time does not exceed 100 cubic yards and 750 square feet, as specified in 14 CCR Section 17855(a)(4); or as otherwise defined in 14 CCR Section 18982(a)(8).

## **2.32 Compostable Plastics**

“Compostable Plastics” or “Compostable Plastic” means plastic materials that meet the ASTM D6400 standard for compostability, or as otherwise described in 14 CCR Section 18984.1(a)(1)(A) or 18984.2(a)(1)(C).

## **2.33 Compost**

“Compost” has the same meaning as in 14 CCR Section 17896.2(a)(4), which stated, as of the Effective Date of this Agreement, that “Compost” means the product resulting from the controlled biological decomposition of organic Solid Wastes that are Source Separated from the municipal Solid Waste stream, or which are separated at a centralized Facility.

## **2.34 Construction and Demolition Debris**

“Construction and Demolition Debris” means: (1) Discarded materials generally considered to be not water soluble and nonhazardous in nature, including but not limited to steel, glass, brick, concrete, asphalt material, pipe, gypsum, wallboard, and lumber from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure and/or landscaping, and including rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing, landscaping and development operations for construction project; (2) Clean cardboard, paper, plastic, wood, and metal scraps from any construction and/or landscape project;



(3) Non-construction and demolition debris wood scraps; (4) Insignificant amounts of other non-hazardous wastes that are generated at the construction or demolition projects provided such amounts are consistent with best management practices of the industry; (5) Mixing of construction and demolition debris with other types of Solid Waste will cause it to be classified as other than construction and demolition debris.

### **2.35 Contractor**

“Contractor” means Redwood Waste Solutions, Inc. and its DBAs, and Subcontractors that perform services on Contractor’s behalf.

### **2.36 Container(s)**

“Container(s)” means a receptacle for temporary storage of Discarded Materials. Containers may include Bins, Carts, Roll-Off Boxes, compactors, or other storage instruments to the extent such Containers are permitted by the City for use for Collection services provided under this Agreement.

### **2.37 County**

“County” means the County of Mendocino, State of California.

### **2.38 County Franchise Agreement**

“County Franchise Agreement” means that certain “Exclusive Franchise Agreement for Residential and Commercial Garbage, Recyclable Material and Organic Waste Collection for County Solid Waste Franchise Area No. Two between the County and the Contractor.

### **2.39 Customer(s)**

“Customer” means the Person who receives the Contractor’s Collection services and to whom the Contractor submits its billing invoice to and collects payment from for Collection services provided to a Premise. The Customer may be either the occupant, owner, or property manager of the Premises, as allowed under the City Code.

### **2.40 DBA**

“DBA” means a fictitious name, assumed name, or trade name that is different from Contractor’s legal name, which Contractor uses for “doing business as” to provide Collection services.

### **2.41 Debris Box**

“Debris Box” means an open-top Container with a capacity of ten (10) to fifty (50) cubic yards that is serviced by a roll-off Collection vehicle.

### **2.42 Designated Disposal Facility**

“Designated Disposal Facility” means Willits Solid Waste Transfer Station and Recycling

Center located at 350 Franklin Avenue, Willits, CA, which is owned and operated by Solid Waste of Willits, Inc., for all Solid Waste collected within the Fort Bragg Collection Area, as defined in Section 3.5 of this Agreement. Solid Waste collected within the Fort Bragg Collection Area shall be directed to the Willits Solid Waste Transfer Station through December 3, 2024, which is the current expiration date of the Agreement between the City and Solid Waste of Willits, Inc., or as otherwise extended by amendment or new agreement. Upon expiration or termination of the Agreement between the City and Solid Waste of Willits, Inc., Contractor shall submit to City for approval a written request to use a Contractor-selected Designated or Approved Disposal Facility.

#### **2.43 Designated Organic Waste Processing Facility**

“Designated Organic Waste Processing Facility” means the Facility at 6000 Potter Valley Road, Potter Valley, CA, that is an Organic Waste Processing Facility which is owned and operated by Cold Creek Compost, Inc., and that the Jurisdiction is directing the Contractor to use. Organic waste collected within the Fort Bragg Collection Area, as defined in Section 3.5 of this Agreement, shall be directed to the Cold Creek Compost, Inc. facility through December 31, 2022, which is the current expiration date of the Agreement between the County and Cold Creek Compost, Inc., or as otherwise extended by amendment or new agreement. Upon expiration or termination of the Agreement between the City and Cold Creek Compost, Inc., Contractor shall submit to City for approval a written request to use a Contractor-selected Designated or Approved Organic Waste Processing Facility.

#### **2.44 Designated Source Separated Recyclable Materials Processing Facility**

“Designated Source Separated Recyclable Materials Processing Facility” means Willits Solid Waste Transfer Station and Recycling Center located at 350 Franklin Avenue, Willits, CA, a Source Separated Recyclable Materials Processing Facility which is owned and operated by Solid Waste of Willits, Inc., for all Recyclable Materials collected within the Fort Bragg Collection Area, as defined in Section 3.5 of this Agreement. Recyclable Materials collected within the Fort Bragg Collection Area shall be directed to the Willits Solid Waste Transfer Station and Recycling Center through December 3, 2024, which is the current expiration date of the Agreement between the City and Solid Waste of Willits, Inc., or as otherwise extended by amendment or new agreement. Upon expiration or termination of the Agreement between the City and Solid Waste of Willits, Inc., Contractor shall submit to County for approval a written request to use a Contractor-selected Approved Source Separated Recyclable Materials Processing Facility.

#### **2.45 Discarded Materials**

“Discarded Materials” are a form of Solid Waste and shall be regulated as such. For purposes of this Agreement, material is deemed to have been discarded, without regard to whether it is destined for Recycling or Disposal, and whether or not it has been separated from other Solid Wastes, in all cases where a fee or other compensation, in any form or amount, is directly or indirectly solicited from, or levied, charged, or otherwise imposed on, or paid by, the Generator or Customer in exchange for handling services. As

used herein, handling services include, without limitation, the Collection, removal, Transportation, delivery, and Processing and/or Disposal of the material. Discarded Materials do not include Edible Food that is recovered for human consumption and is not discarded. For the purposes of this Agreement, Discarded Materials include Source Separated Recyclable Materials, SSBCOW, SSGCOW, Food Waste, Gray Container Waste, and C&D once the materials have been placed in Containers for Collection.

#### **2.46 Disposal**

“Disposal” or “Dispose” means the final disposition of any Solid Waste Collected by the Contractor at a permitted Landfill or other permitted Solid Waste Facility.

#### **2.47 Diversion**

“Diversion (or any variation thereof including “Divert”)” means activities which reduce or eliminate Discarded Materials from Disposal, including, but not limited to, source reduction, Reuse, salvage, Recycling, and composting.

#### **2.48 Edible Food**

“Edible Food” means food intended for human consumption. For the purposes of this Agreement, Edible Food is not Solid Waste if it is recovered and not discarded. Nothing in this Agreement requires or authorizes the recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code. If the definition in 14 CCR Section 18982(a)(18) for Edible Food differs from this definition, the definition in 14 CCR Section 18982(a)(18) shall apply to this Agreement.

#### **2.49 Effective Date**

“Effective Date” means the date on which this Agreement becomes binding upon the Parties, which is the date when the latter of the Parties has executed this Agreement.

#### **2.50 Environmental Laws**

“Environmental Laws” means all Federal and State statutes and County and City ordinances concerning public health, safety, and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC Section 9601, et seq.; the Resource Conservation and Recovery Act, 42 USC Section 6901, et seq.; the Federal Clean Water Act, 33 USC Section 1251, et seq.; the Toxic Substance Control Act, 15 USC Section 2601, et seq.; the Occupational Safety and Health Act, 29 USC Section 651, et seq.; the California Hazardous Waste Control Act, California Health and Safety Code Section 25100, et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health and Safety Code Section 25300, et seq.; the Porter-Cologne Water Quality Control Act, California Water Code Section 13000, et seq.; the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5, et seq.; all as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

## **2.51 Excluded Waste**

“Excluded Waste” means Hazardous Substance, Hazardous Waste, Infectious Waste, Designated Waste, volatile, corrosive, Medical Waste, infectious, regulated radioactive waste, and toxic substances or material that Facility operator(s) reasonably believe(s) would, as a result of or upon acceptance, Transfer, Processing, or Disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be Disposed of in Class III Landfills or accepted at the Facility by permit conditions, waste that in Contractor’s reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or City to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Single-Family or Multi-Family Solid Waste after implementation of programs for the safe Collection, Processing, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code.

## **2.52 Facility(ies)**

“Facility(ies)” means any plant, site, or operation used for the purpose of handling Discarded Materials, including, but not limited to, Disposal, Transfer, Recycling, composting, and Processing facilities or operations.

## **2.53 Food Recovery**

“Food Recovery” means actions to collect and distribute food for human consumption which otherwise would be disposed, or as otherwise defined in 14 CCR Section 18982(a)(24).

## **2.54 Food Recovery Organization**

“Food Recovery Organization” means an entity that primarily engages in the collection or receipt of Edible Food from Commercial Edible Food Generators and distributes that Edible Food to the public for Food Recovery either directly or through other entities, including, but not limited to:

- A food bank as defined in Section 113783 of the Health and Safety Code;
- A nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and,
- A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.

If the definition in 14 CCR Section 18982(a)(25) for Food Recovery Organization differs from this definition, the definition in 14 CCR Section 18982(a)(25) shall apply to this Agreement.

## **2.55 Food Recovery Service**

“Food Recovery Service” means a Person or entity that collects and transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food Recovery; or as otherwise defined in 14 CCR Section 18982(a)(26).

### **2.56 Food Scraps**

“Food Scraps” means all food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells.

### **2.57 Food-Soiled Paper**

“Food-Soiled Paper” means compostable paper material that has come in contact with food or liquid, such as, but not limited to, compostable paper plates, paper coffee cups, napkins, pizza boxes, and milk cartons.

### **2.58 Food Waste**

“Food Waste” means Source Separated Food Scraps and Food-Soiled Paper. Food Waste is a subset of SSGCOW. Edible Food separated for Food Recovery shall not be considered Food Waste.

### **2.59 Franchise Area**

“Franchise Area” means the incorporated City limits of Fort Bragg as designated on the map entitled “Fort Bragg Solid Waste Refuse Collection Area” (included as Exhibit F) including all amendments and changes thereto.

### **2.60 Franchise Fee**

“Franchise Fee” means the fee or assessment imposed by the City on Contractor solely because of its status as Party to this Agreement, and which, inter alia, is intended to compensate City for its expenses in administering this Agreement and other Solid Waste-related activities.

### **2.61 Generator**

“Generator” means any Person as defined by the Public Resources Code, whose act or process produces Solid Waste, Organic Waste, or Recyclable Materials as defined in the Public Resources Code, or whose act first causes Solid Waste to become subject to regulation.

### **2.62 Gray Container**

“Gray Container” has the same meaning as in 14 CCR Section 18982(a)(28) and shall be used for the purpose of storage and Collection of Gray Container Waste.

### **2.63 Gray Container Waste**

“Gray Container Waste” means Solid Waste that is collected in a Gray Container that is part of a three-Container Organic Waste Collection service that prohibits the placement of Organic Waste in the Gray Container as specified in 14 CCR Sections 18984.1(a) and (b) or as otherwise defined in 14 CCR Section 17402(a)(6.5). For the purposes of this Agreement, Gray Container Waste includes carpet and textiles.

#### **2.64 Green Container**

“Green Container” has the same meaning as in 14 CCR Section 18982(a)(29) and shall be used for the purpose of storage and Collection of SSGCOW.

#### **2.65 Green Waste**

“Green Waste” means those discarded materials that will decompose and/or putrefy, including but not limited to green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of yard waste. Green Waste to be placed in a Container for Collection shall not exceed six inches in diameter and four feet in length. Tree stumps and logs are not to be considered “Green Waste” unless they are reduced to a chipped form; they shall be considered Bulky Waste. Biodegradable plant material, which is mixed with other kinds of Solid Waste, shall not be considered “Green Waste.” Green Waste is a subset of SSGCOW.

#### **2.66 Gross Revenues**

“Gross Revenues” means any and all revenue actually collected by Contractor for the services provided collecting and transporting Solid Wastes, Organic Waste, and Recyclable Materials generated in the Franchise Area pursuant to this Agreement and all revenue actually collected by Contractor for the sale of Organic Waste and Recyclable Materials generated in the Franchise Area pursuant to this Agreement.

#### **2.67 Hauler Route**

“Hauler Route” means the designated itinerary or sequence of stops for each segment of the City’s Collection service area.

#### **2.68 Hazardous Substance**

“Hazardous Substance” shall mean any of the following: (a) any substance defined, regulated or listed (directly or by reference) as “hazardous substances,” “hazardous materials,” “hazardous wastes,” “toxic waste,” “pollutant,” or “toxic substances” or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC Section 9601, et seq.; (ii) the Hazardous Materials Transportation Act, 49 USC Section 5101, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC Section 6901, et seq.; (iv) the Clean Water Act, 33 USC Section 1251, et seq.; (v) California Health and Safety Code Sections 25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC Section 7401, et seq.; and (vii) California Water Code Section 13050; (b)

any amendments, rules, or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereinafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste, or pollutant identified as hazardous or toxic or regulated under any other applicable federal, State, and local environmental laws currently existing or hereinafter enacted, including without limitation, friable asbestos, polychlorinated biphenyl (“PCBs”), petroleum, natural gas and synthetic fuel products, and by-products.

## **2.69 Hazardous Waste**

“Hazardous Waste” or “Hazardous Wastes” means any waste which meets the definitions set forth in 22 CCR Section 66261.3, et seq. and is required to be managed; or as otherwise defined in 14 CCR Section 17402(a)(7). Hazardous Waste includes hazardous wood waste, which means wood that falls within the definition of “treated wood” or “treated wood waste” in 22 CCR Section 67386.4, or as otherwise defined in 14 CCR Section 18982(a)(30.5).

## **2.70 Holidays**

“Holidays” are defined as New Year’s Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, and Christmas Day.

## **2.71 Incompatible Materials**

“Incompatible Materials” or “Incompatibles” mean(s) human-made inert material, including, but not limited to, glass, metal, plastic, and also includes organic waste for which the receiving end-user, facility, operation, property, or activity is not designed, permitted, or authorized to perform Organic Waste recovery activities as defined by 14 CCR Section 17402(a)(7.5).

## **2.72 Industrial Solid Waste**

“Industrial Solid Waste” means Solid Waste in an amount exceeding an average of five hundred pounds (500 lbs.) per operating day produced by any Person principally engaged in the business of Processing or manufacturing agricultural, animal, or other products or materials whose principal outlet for such products is wholesale rather than retail, and by any Person engaged in the business of building construction and demolition. Industrial Solid Waste excludes Non-Discarded Recyclable Materials.

## **2.73 Landfill**

“Landfill” means a “Solid Waste Landfill” defined by Public Resources Code Section 40195.1.

## **2.74 Large Event**

“Large Event” means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an

average of more than 2,000 individuals per day of operation of the event, at a location that includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event. If the definition in 14 CCR Section 18982(a)(38) differs from this definition, the definition in 14 CCR Section 18982(a)(38) shall apply to this Agreement.

## **2.75 Large Venue**

“Large Venue” means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. For purposes of 14 CCR, Division 7, Chapter 12 and this Agreement, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of 14 CCR, Division 7, Chapter 12 and this Agreement, a site under common ownership or control that includes more than one Large Venue that is contiguous with other Large Venues in the site, is a single Large Venue. If the definition in 14 CCR Section 18982(a)(39) differs from this definition, the definition in 14 CCR Section 18982(a)(39) shall apply to this Agreement.

## **2.76 Liquidated Damages**

“Liquidated Damages” means the amounts due by Contractor for failure to meet specific quantifiable standards of performance as described in Section 11.9 and Exhibit G.

## **2.77 Medical Waste**

“Medical Waste” means any Solid Waste that is generated or has been used in the diagnosis, treatment, or immunization of human beings or animals, or research pertaining thereto, and shall include, but not be limited to, biomedical, biohazardous and medical waste, or other Solid Waste resulting from medical activities or services as defined by the Public Resources Code, as currently enacted or subsequently amended.

## **2.78 Multi-Family or Multi-Family Dwelling Unit**

“Multi-Family” means of, from, or pertaining to residential Premises with two (2) or more dwelling units. Multi-Family Premises do not include hotels, motels, or other transient occupancy facilities, which are considered Commercial Businesses. References to “Multi-Family Dwelling Unit” refer to an individual residential unit of the Multi-Family Premises.

## **2.79 Non-Compostable Paper**

“Non-Compostable Paper” includes, but is not limited to, paper that is coated in a plastic material that will not break down in the composting process, or as otherwise defined in 14 CCR Section 18982(a)(41).

## **2.80 Non-Discarded Recyclable Materials**



“Non-Discarded Recyclable Materials” means any Recyclable Materials as defined herein, that the Generator retains, sells, or donates.

### **2.81 Non-Organic Recyclables**

“Non-Organic Recyclables” means non-putrescible and non-hazardous recyclable wastes including, but not limited to, bottles, cans, metals, plastics, and glass, or as otherwise defined in 14 CCR Section 18982(a)(43). Non-Organic Recyclables are a subset of Source Separated Recyclable Materials.

### **2.82 Occupant**

“Occupant” means the Person in possession or control of the Premises, including but not limited to Persons such as tenant, lessee, licensee, manager, custodian, or caretaker.

### **2.83 Organic Waste**

“Organic Waste” means Solid Wastes containing material originated from living organisms and their metabolic waste products including, but not limited to, food, yard trimmings, organic textiles and carpets, lumber, wood, Paper Products, Printing and Writing Paper, manure, biosolids, digestate, and sludges, or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined in 14 CCR Section 18982(a)(4) and 14 CCR Section 18982(a)(16.5), respectively.

### **2.84 Paper Products**

“Paper Products” include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling; or as otherwise defined in 14 CCR Section 18982(a)(51).

### **2.85 Parent Company**

“Parent Company” means a company that has a controlling interest in another company, enabling the Parent Company to control management and operations of the Affiliate or Subsidiary company.

### **2.86 Party or Parties**

“Party” or “Parties” refers to the City and Contractor, individually or together.

### **2.87 Person**

“Person” has the same meaning as in Public Resources Code Section 40170, which states, as of the Effective Date of this Agreement, that a Person includes an individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

## **2.88 Premises**

“Premises” means a parcel of real property to the center of any alley adjacent thereto, located in the Franchise Area, upon which is situated any dwelling house or other place of human habitation, including each unit of a multiple dwelling building, or of a mobile home park; or upon which is conducted any business, occupation, or activity which results in the production or accumulation of Solid Waste.

## **2.89 Process, Processed, or Processing**

“Processing” means the controlled separation, recovery, volume reduction, conversion, or Recycling of Solid Waste including, but not limited to, organized, manual, automated, or mechanical sorting, the use of vehicles for spreading of waste for the purpose of recovery, and/or includes the use of conveyor belts, sorting lines, or volume reduction equipment, or as otherwise defined in 14 CCR Section 17402(a)(20).

## **2.90 Prohibited Container Contaminants**

“Prohibited Container Contaminants” means the following: (i) Discarded Materials placed in the Blue Container that are not identified as acceptable Source Separated Recyclable Materials for the City’s Blue Container; (ii) Discarded Materials placed in the Green Container that are not identified as acceptable SSGCOW for the City’s Green Container; (iii) Discarded Materials placed in the Gray Container that are acceptable Source Separated Recyclable Materials and/or SSGCOW to be placed in City’s Green Container and/or Blue Container; and (iv) Excluded Waste placed in any Container.

## **2.91 Property Owner**

“Property Owner” means the owner of real property, or as otherwise defined in 14 CCR Section 18982(a)(57).

## **2.92 Public Resources Code (PRC)**

“Public Resources Code” or “PRC” means the California Public Resources Code.

## **2.93 Putrescible Waste**

“Putrescible Waste” means wastes that are capable of being decomposed by micro-organisms with sufficient rapidity as to cause nuisances because of odors, gases, or other offensive conditions, and includes materials such as, but not limited to Food Waste, offal, and dead animals; or as otherwise defined in 14 CCR Section 17402(a)(21).

## **2.94 Rate**

“Rate” means the maximum amount, expressed as a dollar unit, approved by the City that the Contractor may bill a Customer for providing specified services under this Agreement. A Rate has been established for each individual Service Level and the initial Rates for Rate Period One are presented in Exhibits A, B and C. The Rates approved by City are

the maximum Rate that Contractor may charge a Customer for a particular Service Level and Contractor may, in its sole discretion, charge any amount up to and including the maximum Rate approved by the City.

### **2.95 Rate Period**

“Rate Period” means a twelve (12) month period, commencing January 1 and concluding December 31 for which rates are calculated, with the exception that Rate Period One shall commence July 1, 2022 and conclude December 31, 2022.

### **2.96 Recyclable Material(s)**

“Recyclable Material(s)” includes materials which are reused or processed into a form suitable for reuse through reprocessing or remanufacture, consistent with the requirements of the Public Resources Code. No materials shall be considered Recyclable Materials unless such material is separated from Solid Waste and Organic Waste. Recyclable Materials shall include, but not be limited to: newspaper (including inserts, coupons, and store advertisements); mixed paper (including office paper, computer paper, magazines, telephone books, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, cereal and other similar food boxes); chipboard; corrugated cardboard; paper milk cartons; glass containers of any color (including brown, clear, green and blue bottles and jars); aluminum (including beverage containers, foil, food containers, small pieces of scrap metal); small pieces of scrap metal weighing less than 10 pounds and fitting into the Blue Container; steel, tin or bi-metal cans; plastic containers (no. 1 to 7); and aseptic beverages boxes.

### **2.97 Recycle/Recycling**

“Recycle” or “Recycling” means the process of Collecting, sorting, cleansing, treating, and reconfiguring materials for the purpose of returning them to the economic mainstream in the form of raw material for new, Reused, or reconstituted products that meet the quality standards necessary to be used in the marketplace. Recycling includes processes deemed to constitute a reduction of Landfill Disposal pursuant to 14 CCR, Division 7, Chapter 12, Article 2. Recycling does not include gasification or transformation as defined in Public Resources Code Section 40201.

### **2.98 Remnant Organic Material**

“Remnant Organic Material” means the Organic Waste that is Collected in a Gray Container that is part of the Gray Container Collection stream, or as otherwise defined in 14 CCR 17402(a)(23.5).

### **2.99 Residual (or Residue)**

“Residual” or “Residue” means the Solid Waste destined for Disposal, further transfer/processing as defined in 14 CCR Section 17402(a)(30) or 14 CCR Section 17402(a)(31), or transformation which remains after Processing has taken place and is

calculated in percent as the weight of Residual divided by the total incoming weight of materials.

### **2.100 Responsible Party**

“Responsible Party” means: 1) Any individual or any corporation, partnership, or business association or an officer, director, or management employee of a corporation, partnership, or business association that has the authority to make discretionary decisions with respect to the operations of financial management of the Contractor; or, 2) Any corporation, sole-proprietorship, partnership, or business association, or officer, director, or management employee of such entity, that holds at least five percent (5%) equity or debt interest in the Contractor. If any holder of such debt or equity is not a natural person, the term “responsible party” includes only the debtor, equity holding Person and officers, directors, and management employees of the debt or equity holder who are empowered to make discretionary decisions with respect to the operation of financial management of the Contractor.

### **2.101 Reusable Items**

“Reusable Items” means items that are capable of being Reused after minimal Processing. Reusable Items may be Collected Source Separated or recovered through a Processing Facility. Reusable Items may include, but are not limited to, clothing, furniture, and/or sporting equipment.

### **2.102 Reuse**

“Reuse” or any variation thereof, means the use, in the same, or similar, form as it was produced, of a material which might otherwise be discarded, or as otherwise defined in 14 CCR Section 17402.5(b)(2).

### **2.103 Roll-Off Box**

“Roll-Off Box” has the same meaning as “Debris Box.”

### **2.104 Salvageable Material (or Salvaged Material)**

“Salvageable Material” or “Salvaged Material” means an object or material that results from salvaging, where salvaging means the controlled separation of Solid Waste material which does not require further processing for Reuse or Recycling prior to Transfer activities, or as otherwise defined in 14 CCR Section 17402(a)(24).

### **2.105 SB 1383**

“SB 1383” means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction

targets in a statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.

### **2.106 SB 1383 Regulations**

“SB 138 Regulations” or “SB 1383 Regulatory” refers to the Short-Lived Climate Pollutants (SLCP) Organic Waste Reductions regulations developed by CalRecycle and adopted in 2020 that created Chapter 12 of 14 CCR, Division 7 and amended portions of regulations of 14 CCR and 27 CCR.

### **2.107 Self-Hauler (or Self-Haul)**

“Self-Hauler” or “Self-Haul” means a Person who hauls Solid Waste, Organic Waste, or recovered material they have generated to another Person, or as otherwise defined in 14 CCR Section 18982(a)(66). Self-Hauler also includes a Person who Back-Hauls waste.

### **2.108 Service Level**

“Service Level” refers to the number and size of a Customer’s Container(s) and the frequency of Collection service, as well as ancillary services such as lock/unlock service, Container push/pull service, etc.

### **2.109 Single-Family or Single-Family Dwelling (SFD)**

“Single-Family” or “Single-Family Dwelling” or “SFD” means any residential Premises with less than two (2) units.

### **2.110 Solid Waste**

“Solid Waste” has the same meaning as defined in PRC Section 40191, which defines Solid Waste as all putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes, with the exception that Solid Waste does not include any of the following wastes:

- Hazardous waste, as defined in PRC Section 40141.
- Radioactive waste regulated pursuant to the Radiation Control Law (Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code).
- Medical waste regulated pursuant to the Medical Waste Management Act (Part 14, commencing with Section 117600, of Division 104 of the Health and Safety Code). Untreated medical waste shall not be disposed of in a solid waste Landfill, as

defined in PRC Section 40195.1. Medical waste that has been treated and deemed to be Solid Waste shall be regulated pursuant to PRC, Division 30.

### **2.111 Solid Waste Ordinance**

“Solid Waste Ordinance” means Chapter 6.08 of the Fort Bragg Municipal Code, as currently adopted by the City of Fort Bragg City Council and future amendments to Chapter 6.08 as adopted by the City Council.

### **2.112 Source Separated**

“Source Separated” means materials, including commingled Recyclable materials, that have been separated or kept separate from the Solid Waste stream, at the point of generation, for the purpose of additional sorting or Processing those materials for Recycling or Reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace, or as otherwise defined in 14 CCR Section 17402.5(b)(4). For the purposes of this Agreement, Source Separated shall include separation of materials by the Generator, Property Owner, Property Owner’s employee, property manager, or property manager’s employee into different Containers for the purpose of Collection such that Source Separated materials are separated from Gray Container Waste and other Solid Waste for the purposes of Collection and Processing.

### **2.113 Source Separated Blue Container Organic Waste (SSBCOW)**

“Source Separated Blue Container Organic Waste” or “SSBCOW” means Source Separated Organic Waste that can be placed in a Blue Container that is limited to the Collection of those Organic Wastes and Non-Organic Recyclables as defined in 14 CCR Section 18982(a)(43); or as otherwise defined by 14 CCR Section 17402(a)(26.7).

### **2.114 Source Separated Green Container Organic Waste (SSGCOW)**

“Source Separated Green Container Organic Waste” or “SSGCOW” means Source Separated Organic Waste that can be placed in a Green Container that is specifically intended for the separate Collection of Organic Waste by the Generator, excluding SSBCOW, carpets, Non-Compostable Paper, and textiles.

### **2.115 Source Separated Recyclable Materials**

“Source Separated Recyclable Materials” means Source Separated Non-Organic Recyclables and SSBCOW.

### **2.116 State**

“State” means the State of California.

### **2.117 Subcontractor**

“Subcontractor” means any Person, firm, or entity hired by Contractor to carry out any of Contractor’s duties under this Agreement.

### **2.118 Subsidiary**

“Subsidiary” means an Affiliate with 50 percent (50%) or more of its ownership controlled by Contractor.

### **2.119 Term**

“Term” means the duration of this Agreement, including extension periods if granted, as provided for in Section 3.1.

### **2.120 Tier One Commercial Edible Food Generators**

“Tier One Commercial Edible Food Generator” means a Commercial Edible Food Generator that is one of the following, each as defined in 14 CCR Section 18982:

- Supermarket.
- Grocery Store with a total facility size equal to or greater than 10,000 square feet.
- Food Service Provider.
- Food Distributor.
- Wholesale Food Vendor.

If the definition in 14 CCR Section 18982(a)(73) of Tier One Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(73) shall apply to this Agreement.

### **2.121 Tier Two Commercial Edible Food Generators**

“Tier Two Commercial Edible Food Generator” means a Commercial Edible Food Generator that is one of the following, each as defined in 14 CCR Section 18982:

- Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet.
- Hotel with an on-site food facility and 200 or more rooms.
- Health facility with an on-site food facility and 100 or more beds.
- Large Venue.
- Large Event.

- A State agency with a cafeteria with 250 or more seats or total cafeteria facility size equal to or greater than 5,000 square feet.
- A local education agency with an on-site food facility.

If the definition in 14 CCR Section 18982(a)(74) of Tier Two Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(74) shall apply to this Agreement.

### **2.122 Ton**

“Ton” or “Tonnage” or “Tons” means a unit of weight equal to 2,000 pounds (907.18474 kg).

### **2.123 Transfer**

“Transfer” means the act of transferring Discarded Materials Collected by Contractor from Contractor’s Collection vehicles into larger vehicles at a Transfer Facility for Transport to other Facilities for Processing or Disposing of such materials. Transfer allows for removal of materials excluded or prohibited from handling at the Transfer Facility (e.g., removal of Hazardous Waste).

### **2.124 Transportation or Transport**

“Transportation” or “Transport” means the act of conveying Collected materials from one location to another.

### **2.125 Work Days**

“Work Days” or “Working Days” means days on which the Contractor is required to provide regularly scheduled Collection services under this Agreement.

## **ARTICLE 3: TERMS OF AGREEMENT**

### **3.1 TERM OF AGREEMENT**

#### **3.1.1 Effective Date and Commencement Date**

The Effective Date of this Agreement shall be the date the latter of the two Parties signs this Agreement.

The Commencement Date shall be July 1, 2022 and shall be the date on which Contractor initiates provision of Collection, Transportation, and Processing services required by this Agreement.

Between the Effective Date and the Commencement Date, Contractor shall perform all activities necessary to prepare itself to start Collection, Transportation, and Processing services required by this Agreement on the Commencement Date.



### **3.1.2 Term**

The Term of this Agreement shall continue in full force from 12:01 a.m. on July 1, 2022 (Commencement Date), to midnight June 30, 2032 unless this Agreement is extended by the Parties pursuant to Section 3.1.3 or terminated in accordance with Article 11.

### **3.1.3 Option to Extend Term**

The City acknowledges that the County Franchise Agreement grants to Contractor an identical Term of Agreement. The City agrees that, in the event that either or both the County and the City desires to exercise their option to extend the Term of this Agreement, the County and the City shall be required to meet and agree to an identical Term of extension. City shall, at the City's sole discretion, have the option to extend the Term of this Agreement for up to two (2) additional five (5) year periods, provided that the County also exercises their option to extend the County Franchise Agreement for an identical term. The option to extend may be exercised with regard to either the first five (5) year term or both five (5) year terms simultaneously. If the City extends this Agreement, with agreement from the County, it shall give written notice to Contractor no less than 365 days prior to the expiration date of this Agreement. The City's written notice shall specify the number of years by which it elects to extend the Term of this Agreement and the revised expiration date of this Agreement.

### **3.1.4 City's Rights upon Expiration or Revocation**

At the expiration or revocation of this Agreement, the City may proceed with a competitive bidding or request for proposal process or exercise any other option available under Applicable Law. In case of expiration, the City may proceed with a competitive bidding or request for proposal process prior to the expiration date so as to avoid a lapse in service.

## **3.2 LIMITATIONS TO SCOPE**

The materials listed below in this Section may be Collected and Transported by other Persons. Such Persons shall do so in accordance with the City Code.

### **3.2.1 Industrial Recyclable Materials**

Recyclable Materials from a Generator of Industrial Solid Waste that are not disposed of and are recycled including, but not limited to, wood chips from the forest products industry used as boiler fuel, and agricultural waste used to produce compost. If Solid Waste residue in Recyclable Materials exceeds five percent (5%) by volume it shall be considered Solid Waste and not Industrial Recyclable Material and shall be collected by the Contractor.

### **3.2.2 Non-Discarded Recyclable Materials**

Provided the transporter is paid no direct or in-kind fee for the service and compensates the Generator for the Recyclable Materials.

### **3.2.3 Materials Hauled by Owner, Occupant, or a Cooperative of Persons or its Contractor**

Solid Waste, Organic Waste, and/or Recyclable Materials that are removed from any Premises by the Owner, Occupant, or a Cooperative of persons and are transported, without compensation, to a Disposal Site or Processing Site by (i) the Owner, Occupant, or cooperative of persons of such Premises, (ii) by full-time employee(s) of Owner, Occupant, or cooperative of persons that uses the Owner's, Occupant's or cooperative of persons' equipment to Transport materials; or (iii) by a contractor whose removal of the Solid Waste and/or Recyclable Materials, and/or Demolition and Construction Debris incidental to the service being performed and such contractor removes materials as no additional or separate fee using contractor's own equipment and labor.

### **3.2.4 Containers Recycled**

Containers delivered for recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, California Public Resources Code et. seq. as may be amended from time to time.

### **3.2.5 Animal, Grease Waste, and Used Cooking Oil**

Animal waste and remains from slaughterhouse or butcher shops, grease waste, or used cooking oil.

### **3.2.6 Sewage Treatment By-Product**

By-products of sewage treatment including sludge, sludge ash, grit, and screenings.

### **3.2.7 Hazardous Wastes**

Household Hazardous Waste, Hazardous Waste, and Designated Waste regardless of its source.

### **3.2.8 State and Federal Wastes**

Materials generated by state and federal agencies, special districts, school districts, State parks, State correction facilities, and Indian reservations.

### **3.2.9 Edible Food**

Edible Food that is collected from a Generator by other Person(s), such as a Person from a Food Recovery Organization or Food Recovery Service, for the purposes of Food Recovery; or that is transported by the Generator to another location(s), such as the location of a Food Recovery Organization, for the purposes of Food Recovery, regardless of whether the Generator donates, sells, or pays a fee to the other Person(s) to collect or receive the Edible Food from the Generator.

### **3.2.10 On-Site or Community Composting**

Organic Waste that is composted or otherwise legally managed at the site where it is generated or at a Community Composting site.

### **3.2.11 Other Materials**

Lead-acid batteries, waste oil, tires, and scrap metal not covered as Discarded Recyclable Materials.

## **3.3 SUBCONTRACTING**

Contractor shall not engage any Sub-contractors for Collection, Transportation, Processing, or Disposal of Solid Waste, Organic Waste, or Recyclable Materials services without prior written consent of the City.

## **3.4 COMPLIANCE WITH LAWS AND REGULATIONS**

Contractor warrants that it will comply with all applicable laws in effect during the term of this Agreement, including implementing regulations, as they may, from time to time, be amended, specifically including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S .C. Section 6901, et seq., the California Public Resources Code Section 40000 et. seq., and all other applicable laws of the State of California, the County of Mendocino, ordinances of the City, the Mendocino Solid Waste Management Authority (MSWMA) County-wide Source Reduction and Recycling Element, the MSWMA County-wide Household Hazardous Waste Element, the requirements of Local Enforcement Agencies and other agencies with jurisdiction relating to the services provided by Contractor under this agreement. In the event of conflict between regulations or statutes, Contractor shall comply with the regulation or statute containing the most stringent applicable standards. Contractor shall comply with all final and binding judgments entered against Contractor regarding its services performed under this agreement.

## **3.5 FRANCHISE AREA DEFINED**

This Agreement allows the Contractor to Collect, Transport, and Process Solid Waste, Organic Waste, and Recyclable Materials generated within the Franchise Area, which is the incorporated area of the City of Fort Bragg, including territory which may in the future be annexed to the city, subject to implementation delays which may be imposed by law. and shown on certain map entitled “Fort Bragg Collection Area” and included as Exhibit F – Franchise Area Limits.

No Persons shall be granted a right to collect refuse in Contractor’s Franchise Area unless approved by the City Council due to an emergency, a lack of service by the Contractor, or as allowed according to this Agreement herein.

## **3.6 CITY’S RIGHT TO REQUEST CHANGES**

City reserves the right to request that Contractor perform additional services or modify the manner in which it performs existing services. Upon such a request by the City, the Parties shall meet and confer in good faith to discuss the requested additions and/or modifications, any rate adjustments necessary for Contractor to provide such additional or modified services and any other matters reasonably necessary for the Parties to determine in connection with the City's request. Upon the City and Contractor reaching an agreement on the scope of any requested additional or modified services and the applicable rate adjustments associated therewith, all of which shall be memorialized in a written amendment to this Agreement, City shall adjust rates to reflect the increase, if any, that such changes requested by City increases Contractor's costs for providing services within the Service Area. Except as otherwise described in Section 3.7 below, under no circumstances shall Contractor have any obligation to provide any additional or modified services unless and until an adjustment in Contractor's revenue requirement has been agreed upon and approved by all applicable parties. Changes in Contractor compensation shall be addressed in accordance with Article 9 of this Agreement.

### **3.7 CITY'S RIGHT TO DIRECT SERVICES IN THE EVENT OF AN EMERGENCY**

In the event of emergencies such as riots, wars, sabotage, civil disturbances, insurrection, explosion, natural disasters such as floods, earthquakes, landslides, fires, and volcanic eruptions, epidemics and pandemics, strikes, lockouts and other labor disturbances or other catastrophic events which are beyond the reasonable control of City, City reserves the right to direct Contractor to perform additional services or modify the manner in which it performs existing services. If Contractor is reasonably capable of performing or developing the ability to perform the requested emergency services, Contractor shall promptly take direction from City in responding. In addition to the rates set forth in Exhibits A, B, and C, City shall also pay Contractor at agreed-upon Emergency Services Rates as specified in Exhibit C. If an applicable agreed-upon rate for the service does not exist, Contractor shall commence the service while the appropriate rate is being determined.

## **ARTICLE 4: COLLECTION SERVICES**

### **4.1 GENERAL**

The nature of the Solid Waste, Organic Waste, and Recyclable Material services Contractor shall offer and provide to Customers residing or doing business in the Fort Bragg Solid Waste Franchise Area as determined by the Fort Bragg City Council.

The scope of services to be performed by Contractor pursuant to this Agreement shall include the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform all requirements of this Agreement. The enumeration of, and specification of requirements for, particular items of labor or equipment shall not relieve the Contractor of the duty to furnish all others, as may be required, whether enumerated or not.

The scope of services to be performed by Contractor pursuant to this Agreement shall be accomplished in a manner so that Customers are provided reliable, courteous, and high-

quality Collection services and other services described in this Agreement at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Contractor of the duty of accomplishing all other aspects in the manner generally provided in this Article for the delivery of services, whether such other aspects are enumerated elsewhere in this Agreement or not.

Contractor shall not knowingly Collect Blue, Green, or Gray Containers that include Prohibited Container Contaminants.

## **4.2 OWNERSHIP OF DISCARDED MATERIALS**

By operation of this Agreement, ownership, and the right of possession of all Discarded Materials shall be transferred to Contractor from the Person discarding the materials (Customer and/or Generator) once such materials are placed in Contractor-provided Containers and properly placed for Collection.

If Prohibited Container Contaminants are found in Containers set out for Collection, the materials shall be considered not properly placed for Collection, and Contractor shall have the right to reject Collection of the contaminated Containers pursuant to Section 5.2, and the ownership of materials shall remain with the Person discarding the materials (Customer and/or Generator). In the event said Generator or producer of the Solid Waste is unknown, the Solid Waste shall become the property of the Owner of the parcel upon which said Solid Waste has been deposited. Notwithstanding anything herein to the contrary, under no circumstances shall title to and liability for any Prohibited Container Contaminants pass to Contractor, even if Contractor inadvertently collects or disposes of such Prohibited Container Contaminants.

Upon being legally deposited in a Disposal site approved by the City or transferred to an Approved Facility not owned by the Contractor, all Solid Waste, Organic Waste, and Recyclable Materials shall forthwith become the property of the permitted operator of the facility.

Except as required in the City's sole discretion for law enforcement purposes, at no time shall the City obtain any right of ownership or possession of Discarded Materials placed for collection and nothing in this Agreement shall be construed as giving rise to any inference that City has such rights.

## **4.3 THREE-CONTAINER SYSTEM**

### **4.3.1 General**

No later than January 1, 2023, Contractor shall provide a three-Container Collection program for the separate collection of Source Separated Recyclable Materials, SSGCOW, and Gray Container Waste as specified in this Section, using Containers that comply with the requirements of Section 6.9.

### **4.3.2 Source Separated Recyclable Materials Collection (Blue Container)**

Contractor shall provide Blue Containers to Customers for Collection of Source Separated Recyclable Materials Collection Service, as described in Exhibits A, B, and C of this Agreement. Contractor shall Transport the Source Separated Recyclables Materials to the Designated Recycling Facility, as specified in Section 5.1.

Source Separated Recyclable Materials that are to be accepted for Collection shall include, but not be limited to the following: newspaper (including inserts, coupons, and store advertisements); mixed paper (including office paper, computer paper, magazines, junk mail, catalogs, brown paper bags, brown paper, paperboard, paper eggs cartons, telephone books, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, cereal and other similar food boxes, chipboard); corrugated cardboard; paper milk cartons; glass containers of any color (including brown, clear, green, and blue glass bottles and jars); aluminum (including beverage containers, foil, food containers, small pieces of scrap metal); small pieces of scrap metal weighing 10 pounds and fitting into the Blue Container; steel, tin or bi-metal cans; plastic containers (no. 1 to7); and aseptic boxes. Prohibited Container Contaminants shall not be Collected in the Blue Containers. The Containers shall comply with the requirements of Section 6.9.

#### **4.3.3 SSGCOW Collection (Green Container)**

Contractor shall provide Green Containers to Customers for Collection of Green Waste and shall provide Green Waste Collection Service as described in Exhibits A, B, and C of this Agreement. Contractor shall transport the Green Waste to the Designated Facility as specified in Section 5.1.

Green Waste that is to be accepted for Collection in the SSGCOW Collection program include the following: green trimmings, grass, weeds, flowers, leaves, prunings, branches, dead plants, brush, tree trimmings, and dead trees. The Parties agree that accepted types of Green Waste may be added or removed from the list from time to time by mutual consent or at the sole discretion of the City. Prohibited Container Contaminants shall not be Collected in the Green Containers. The Containers shall comply with the requirements of Section 6.9.

Contractor shall implement a Food Waste Collection program that allows Generators to intentionally commingle Food Waste and Green Waste in the Green Containers. Contractor shall provide SSGCOW Collection service as described in Exhibits A, B, and C of this Agreement and Transport the SSGCOW to the Designated Facility as specified in Section 5.1.

#### **4.3.4 Gray Container Waste (Gray Container)**

Contractor shall provide Gray Containers to Customers for Collection of Gray Container Waste, and shall provide Gray Container Waste Collection service, as described in Exhibits A, B, and C of this Agreement. Contractor shall Transport the Gray Container Waste to the Approved Facility as specified in Section 5.1. Contractor may allow carpets and textiles to be placed in the Gray Containers. Prohibited Container Contaminants shall

not be collected in the Gray Containers. The Containers shall comply with the requirements of Section 6.9.

#### **4.4 PUBLIC LITTER AND RECYCLING CONTAINER SERVICES**

Contractor shall provide service to an agreed-upon number of public litter and recycling containers in the City of Fort Bragg. Collection service shall be three-per-week (M-W-F).

Contractor will provide service to a total of 45 agreed-to locations in Fort Bragg. The existing receptacle locations will continue to be serviced. All new locations in Fort Bragg will be mutually agreed upon by the Parties. The recycling receptacles will receive mixed glass, aluminum, and plastic beverage containers. The Contractor will be responsible for servicing and cleaning up spilled refuse or recyclable materials due to overflow or upset. The Contractor shall perform an annual cleaning of these public litter and recycling containers. The City will be responsible for procurement and installation of receptacle housings and the Contractor will provide disposable liner replacements as needed and if applicable. The Contractor will exercise diligence and fully cooperate with the City in the implementation of this program. The City reserves the right to demand a greater amount of servicing as needed to address community concerns. The City and Contractor will negotiate the additional fee for the additional container servicing.

#### **4.5 DEBRIS BOX COLLECTION**

Contractor shall provide Debris Box collection services at Customer's request for the collection of C&D and other Bulky Waste on an as-needed basis. Debris Box Solid Waste shall be transported to the Approved or Designated Disposal Facility or Approved C&D Processing Facility that provides the lowest total cost to the Customer. Customers shall pay the Roll-off Pull Rates as specified in Exhibit B in addition to the actual disposal charge based on the weight of the Debris Box Solid Waste.

The collection frequency of Debris Boxes will be for a period of up to fourteen (14) calendar days. Contractor has the right to collect the Debris Box after fourteen (14) days, and if the Debris Box is not ready for collection upon arrival, Contractor may charge the approved Trip Charge, and inactivity fee as set forth in Exhibit B. If, prior to the pickup, the Customer requests an extension to the collection period of the initial fourteen (14) days, the Contractor may charge the inactivity fee set forth in Exhibit B.

#### **4.6 BULKY ITEMS AND REUSABLE MATERIALS COLLECTION**

Contractor shall provide on-call Bulky Item Collection services to Single-Family and Multi-Family Customers each year as described in Exhibits A and B. Pursuant to Exhibits A and B, Contractor shall Transport all Bulky Items and Reusable Materials Collected under this Agreement to the appropriate facility.

### **ARTICLE 5: OTHER SERVICES**

#### **5.1 TRANSFER, PROCESSING, AND DISPOSAL**

### **5.1.1 Designated or Approved Facilities**

Contractor shall Transport all Discarded Materials to the Designated or Approved Facility(ies) as defined in Article 2 and as specified in Exhibit D of this Agreement.

### **5.1.2 Transportation and Facility Costs**

Contractor shall pay all costs for the Transport, Transfer, Processing, and/or Disposal of Discarded Materials Collected in accordance with this Agreement. Contractor's compensation for such services is included in the Rates charged to Customers.

### **5.1.3 Transportation to Non-Approved Facilities Prohibited**

If Contractor Transports Discarded Materials to a Facility other than the Designated or Approved Facility(ies) or an Alternative Facility without prior City approval, Contractor's failure to comply may result in assessment of Liquidated Damages pursuant to Section 11.9 and Exhibit G.

## **5.2 CONTAMINATION MONITORING**

### **5.2.1 General**

In order to promote public education, Contractor shall create all public education materials and conduct education programs and activities described in this Section at its expense.

### **5.2.2 Contamination Monitoring Procedures**

**A. General.** This Section presents inspection methods for Prohibited Container Contaminants to be used by the Contractor in conducting contamination monitoring required by Sections 5.2.2 and 5.2.3. Contractor shall have the discretion to elect which inspection method(s) to employ from time to time.

#### **B. Container Inspection Methods.**

1. **Option 1: Physical Container Inspections.** When Contractor's Hauler Route personnel dismounts from Collection vehicles to empty a Container, such personnel shall lift the Container lid and observe the contents. Upon finding Prohibited Container Contaminants in a Container, Contractor shall follow the contamination noticing procedures and contaminated Container handling protocols set forth in Section 5.2.2.C.

2. **Option 2: Visual Inspections via On-Board Monitoring System.** For Collection vehicles with automated Collection service, the Collection vehicle hopper shall be equipped with a video camera and monitoring system. The Contractor's Hauler Route personnel shall observe, via the hopper video camera and monitoring system, the contents of the Containers as the materials are emptied into the vehicle. Upon finding Prohibited Container Contaminants in a Container, Contractor shall follow the contamination noticing procedures and contaminated Container handling protocols set forth in Section 5.2.2.C.



The next day on which that Customer is to receive service, the Contractor's Hauler Route personnel shall dismount the Collection vehicle, lift the lid of the Container, and visually inspect the contents of the Container. If the Contractor's Hauler Route personnel determines that the Container again contains Prohibited Container Contaminants, Contractor shall follow the contamination noticing procedures and contaminated Container handling protocols set forth in Section 5.2.2.C.

**C. Actions Upon Identification of Prohibited Container Contaminants.**

1. **Record Keeping.** The driver or other Contractor representative shall record each event of identification of Prohibited Container Contaminants in a written log or in the on-board computer system including date, time, Customer's address, type of Container (Blue, Green, or Gray Container); and maintain photographic evidence, if captured. Contractor shall submit this record to the Contractor's Customer service department, and Contractor's Customer service department shall update the Customer's account record to note the event, if the documentation of the on-board computer system did not automatically update the Customer's account record.

2. **Identification of Excluded Waste.** If Contractor's personnel observe Excluded Waste in an uncollected Container, the Contractor's personnel shall issue a non-Collection notice for this Container in accordance with Section 5.2.2.C.5 and shall not Collect the Discarded Materials that contain Excluded Waste. Contractor's personnel shall record that observation in accordance with Section 5.2.2.C.1 and immediately inform their route supervisor. Contractor shall follow protocols specified in Sections 5.2.2.C.5 and 5.2.2.C.6. The route supervisor shall investigate and initiate applicable action within one (1) Business Day or sooner if the Hazardous Waste may cause immediate danger.

3. **Courtesy Pick-Up Notices.** Upon identification of Prohibited Container Contaminants in a Customer's Container, Contractor shall provide the Customer a courtesy pick-up notice. The courtesy pick-up notification shall:

(i) inform the Customer of the observed presence of Prohibited Container Contaminants; (ii) include the date and time the Prohibited Container Contaminants were observed; (iii) include information on the Customer's requirement to properly separate materials into the appropriate Containers, and the accepted and prohibited materials for Collection in the Blue Container, Green Container, and/or Gray Container; (iv) inform the Customer of the courtesy pick-up of the contaminated materials on this occasion with information that following three (3) instances Contractor may assess contamination Processing fees or issue a non-Collection notice; and, (v) may include photographic evidence. Contractor shall leave the courtesy pick-up notice attached to or adhered to the Generators' contaminated Containers; at the Premises' door or gate; or, subject to City's approval, may deliver the notice by mail, email, text message, or other electronic message.

Contractor shall Collect the contaminated Source Separated Recyclable Materials or SSGCOW and Transport the material to the appropriate Facility for Processing; or,

Contractor may Collect the contaminated materials with Gray Container Waste and Transport the contaminated materials to the appropriate Facility for Disposal/ Processing.

4. **Notice of Assessment of Contamination Processing Fees.** If the Contractor observes Prohibited Container Contaminants in a Generator's Container on more than one (1) occasion and issued courtesy pick-up notices on that occasion, the Contractor may impose a contamination Processing fee in accordance with the rate schedule in effect at the time. Contractor shall notify the City in its monthly report of Customers for which contamination Processing fees were assessed. Contractor shall leave a contamination Processing fee notice attached to or adhered to the Generators' contaminated Containers; at the Premises' door or gate; or, subject to City's approval, may deliver the notice by mail, email, text message, or other electronic message. The contamination Processing fee notice shall describe the specific material(s) of issue, explain how to correct future set outs, and indicate that the Customer will be charged a contamination Processing fee on its next bill. The format of the contamination Processing fee notice shall be approved by the City.

Contractor shall Collect the contaminated Source Separated Recyclable Materials or SSGCOW and Transport the material to the appropriate Facility for Processing.

5. **Non-Collection Notices.** Upon identification of Prohibited Container Contaminants in a Container in excess of standards agreed upon by the Parties or Excluded Waste, Contractor shall provide a non-Collection notice to the Generator. The non-Collection notice shall, at a minimum: (i) inform the Customer of the reason(s) for non-Collection; (ii) include the date and time the notice was left or issued; (iii) describe the fee to Customer for Contractor to return and Collect the Container after Customer removes the Contamination; and, (iv) provide a warning statement that a contamination Processing fee may be assessed if Prohibited Container Contaminants are observed on more than one (1) occasion. The non-Collection notice may include photographic evidence of the violation(s).

The Contractor's notice of non-Collection may be left attached to or adhered to the Generator's Container, or at the Premises' door or gate at the time the violation occurs, or subject to City's approval, may be delivered by mail, email, text message, or other electronic message.

Contractor shall submit a sample of its non-Collection notice to the City for approval prior to implementing use of it with Customers.

6. **Communications with Customer.** Whenever a Container at the Premises of a Commercial or a Multi-Family Customer is not Collected, Contractor shall contact the Customer on the scheduled Collection day or within eight (8) hours of the scheduled Collection day by telephone, email, text message, or other verbal or electronic message to explain why the Container was not Collected. Whenever a Container is not Collected because of Prohibited Container Contaminants, a Customer service representative shall contact the Customer to discuss and encourage the Customer to adopt proper Discarded Materials preparation and separation procedures.

7. **Contractor Return for Collection.** Upon request from Customer, Contractor shall Collect Containers that received non-Collection notices within one (1) Working Day of Customer's request if the request is made at least two (2) Working Days prior to the regularly scheduled Collection Day. Contractor shall bill Customer for the extra Collection service event ("extra pick-up") at the applicable City-approved Rates only if Contractor notifies Customer of the premium Rate for this service at the time the request is made by Customer.

### **5.2.3 Contamination Monitoring – Hauler Route Review Option Methodology and Frequency**

If using this approach, the Contractor shall, at its sole expense, conduct Hauler Route reviews for Prohibited Container Contaminants in Collection Containers in a manner that is deemed safe by the Contractor; is approved by the City; and, is conducted in a manner that results in all Hauler Routes being reviewed annually.

The Contractor shall conduct Hauler Route reviews that include inspection of the contents of Customers' Collection Containers for Prohibited Container Contaminants in a manner such that a minimum of 10 percent (10%) of Containers on each and every Hauler Route are inspected annually. The Containers shall be randomly selected.

Contractor shall develop a Hauler Route review methodology to accomplish the above Container inspection requirements and such methodology shall comply with the requirements of 14 CCR Section 18984.5(b). Contractor shall submit its proposed Hauler Route review methodology for the coming year to the City no later than January 15 of each year describing its proposed methodology for the calendar year and schedule for performance of each Hauler Route's annual review. City and/or CalRecycle will review and approve the proposed methodology. Contractor may commence with the proposed methodology upon approval.

If the City and/or CalRecycle notifies the Contractor that the methodology is inadequate to meet the requirements of 14 CCR Section 18984.5(b), Contractor shall, at its sole expense, revise the methodology and, after obtaining City or CalRecycle approval, conduct additional Hauler Route reviews, increased Container inspections, or implement other changes using the revised procedure. If the Contractor's proposed methodology meets the requirements of 14 CCR Section 18984.5(b), but has been deemed inadequate by the City, the Contractor shall, at the expense of the City, revise the methodology and implement the necessary changes using the revised procedure.

The City may request, and Contractor shall accept, modifications to the schedule to permit observation of the Hauler Route reviews by the City. In addition, Contractor shall provide an email notice to the City no less than ten (10) Working Days prior to each scheduled Hauler Route review that includes the specific time(s), which shall be within the City's normal business hours, and location(s).

#### **A. Noticing of Generators with Contamination, Non-Collection, and Disposal of Materials.**

Upon finding Prohibited Container Contaminants in a Container, Contractor shall follow the contamination noticing procedures and contaminated Container handling protocols set forth in Sections 5.2.1.C.

**B. Monthly Reporting Requirements.**

Contractor shall maintain records and report to the City monthly on contamination monitoring activities and actions taken, in accordance with Exhibit H.

**5.2.4 Contamination Monitoring – Waste Evaluation Option**

**A. General.**

If using this approach Contractor shall, at its sole expense, conduct waste evaluations that comply with the requirements of this Section and meet the requirements of 14 CCR Section 18984.5(c). The City maintains the right to observe, or hire a third party to observe, the waste evaluations. Contractor shall, no later than January 15 of each calendar year, provide the City with a proposed waste evaluation methodology and a schedule of waste evaluations for the calendar year for review and approval by City. The City may request, and Contractor shall accept modifications to the schedule to permit observation by the City. In addition, Contractor shall provide an email notice to the City no less than ten (10) Working Days prior to each scheduled waste evaluation that includes the specific time(s), which shall be within the City's normal business hours, and location(s) for the waste evaluation.

**B. Sampling Method, Study Protocols.**

The Contractor shall conduct waste evaluations for Prohibited Container Contaminants by sampling the contents of Containers on Hauler Routes in the following manner:

1. The Contractor shall conduct waste evaluations at least twice per year and the studies shall occur in two distinct seasons of the year.
2. The Contractor's waste evaluations shall include samples of Source Separated Recyclable Materials, SSGCOW, and Gray Container Waste.
3. The waste evaluations shall include samples from each Container type served by the Contractor and shall include samples taken from different areas in the City that are representative of the City's waste stream.
4. The waste evaluations shall include at least the following minimum number of samples from all the Hauler Routes included in the studies:
  - a. For Hauler Routes with less than 1,500 Generators, the study shall include a minimum of 25 samples;
  - b. For Hauler Routes with 1,500-3,999 Generators, the study shall include a minimum of 30 samples;

c. For Hauler Routes with 4,000-6,999 Generators, the study shall include a minimum of 35 samples; and,

d. For Hauler Routes with 7,000 or more Generators, the study shall include a minimum of 40 samples.

5. The Contractor shall Transport all of the material Collected for sampling to a sorting area at an Approved or Designated Facility, where the presence of Prohibited Container Contaminants for each Container type shall be measured to determine the ratio of Prohibited Container Contaminants present in each material stream by weight. To determine the ratio of Prohibited Container Contaminants, the Contractor shall use the following protocol:

a. The Contractor shall take one sample of at least 200 pounds from the material Collected from each material stream for sampling. For example, Contractor shall take a 200-pound sample taken from the combined contents of the SSGCOW Container samples.

b. The 200-pound sample shall be randomly selected from different areas of the pile of Collected material for that material stream.

c. For each 200-pound sample, the Contractor shall remove any Prohibited Container Contaminants and determine the weight of Prohibited Container Contaminants.

d. The Contractor shall determine the ratio of Prohibited Container Contaminants in the sample by dividing the total weight of Prohibited Container Contaminants by the total weight of the sample.

e. All weights shall be recorded in pounds.

### **C. Contamination Response.**

If the sampled weight of Prohibited Container Contaminants exceeds twenty-five percent (25%) of the measured sample for any material stream, the Contractor shall:

1. Notify the City within fifteen (15) Working Days of the waste evaluation.

2. Option 1: Within fifteen (15) Working Days of the waste evaluation, notify all Generators on the sampled Hauler Route of their requirement to properly separate materials into the appropriate Containers. The Contractor may provide this information by placing a written notice on the Generators' Containers or the gate or door of the Premises; and/or by mail, email, or electronic message to the Generators. The format of the warning notice shall be approved by the City.

OR

Option 2: Within fifteen (15) Working Days of the waste evaluation, perform a targeted Hauler Route review of Containers on the Hauler Route sampled for waste evaluations to determine the sources of contamination and notify those Generators of their obligation to properly separate materials. The Contractor may provide this information to these Generators by placing a written notice on the Generators' Containers or the gate or door of the Premises; and/or by mail, email, or electronic message to the applicable Generators. The format of the warning notice shall be approved by the City.

#### **D. Noticing of Generators with Contamination, Non-Collection, and Disposal of Materials.**

Upon finding Prohibited Container Contaminants in a Container, Contractor shall follow the contamination noticing procedures and contaminated Container handling protocols set forth in Section 5.2.1.C, which include protocols for non-Collection and Disposal of contaminated materials.

#### **E. Monthly Reporting Requirements**

In accordance with Exhibit H, Contractor shall maintain records and report to the City on a monthly basis on contamination monitoring activities and actions taken.

### **5.3 EDUCATION AND OUTREACH**

#### **8.1.1 General**

In order to promote public education, Contractor shall create all public education materials and conduct education programs and activities described in this Section at its expense.

#### **8.1.2 Program Objectives**

Contractor's public education and outreach strategy shall focus on improving Generators' understanding of the benefits of and opportunities for source reduction, Reuse, and Landfill Disposal reduction. In general, Contractor-provided public education and outreach, which shall include all content required by this Section 5.3, should: (i) inform Generators about the services that are provided under this Agreement with specific focus on describing the methods and benefits of source reduction, Reuse, and reduction of Solid Waste Disposal; (ii) instruct Generators on the proper method for placing materials in Containers for Collection and setting Containers out for Collection with specific focus on minimizing contamination of Source Separated Recyclable Materials and SSGCOW; (iii) clearly define Excluded Waste and educate Generators about the hazards of such materials and their opportunities for proper handling; (iv) discourage Generators from buying products if the product and its packaging are not readily reusable, recyclable, or compostable; (v) inform Generators subject to Food Recovery requirements under SB 1383 Regulations of their obligation to recover Edible Food and actions they can take to prevent the creation of Food Waste; (vi) encourage the use of Compost; and, (vii) encourage Generators to purchase products/packaging made with Recycled-content materials. The cumulative intended effect of these efforts is to reduce each Generator's

reliance on Contractor-provided Gray Container Waste service and, ultimately, Disposal, and Contractor agrees to support and not undermine or interfere with such efforts.

### **8.1.3 Contractor Cooperation**

Contractor acknowledges that they are part of a multi-party effort to operate and educate the public about the integrated waste management system. Contractor shall cooperate and coordinate with the City on public education activities to minimize duplicative, inconsistent, or inappropriately timed education campaigns.

Contractor shall obtain approval from the City on all Contractor-provided public education materials including, but not limited to print, radio, television, or internet media before publication, distribution, and/or release. City shall have the right to request that Contractor include City identification and contact information on public education materials and approval of such requests shall not be unreasonably withheld. The City reserves the right to direct the Contractor to modify the education and outreach program at any time.

### **8.1.4 Annual Education Plan**

Annually, Contractor shall develop and submit an annual public education plan to promote the programs performed by Contractor under this Agreement. The annual public education plan shall present the education activities for the upcoming calendar year and shall be submitted with the Contractor's annual report in accordance with Exhibit H. Each public education plan shall specify the target audience for services provided, include upcoming promotions for ongoing and known special events, identify program objectives, individual tasks, public education materials to be developed or updated, opportunities for expanded partnerships, a timeline for implementation, and an itemized description of how Contractor's annual public education budget (described in Section 5.3.5) will be spent. The City shall be permitted to provide input on each annual public education plan, and the plan shall not be finalized or implemented without approval of the City. Each plan's implementation success shall be measured according to the deadlines identified and products developed. Contractor shall meet with the City to present and discuss the plan. City shall be allowed up to thirty (30) days after receipt to review and request modifications. The City may request, and Contractor shall not unreasonably deny, modifications to be completed prior to approving the plan. Contractor shall have up to fifteen (15) Business Days to revise the plan in response to any requested changes by the City. Any further delays may result in Liquidated Damages for failure to perform education and outreach activities as identified in Exhibit G. Each Business Day that the plan is late shall count as a single event/activity.

### **8.1.5 Annual Budget**

In addition to staffing expenses, Contractor shall spend, for the public education and outreach services described in this Section 5.3, no less than ten thousand (\$10,000) in Rate Period One. The Rate Period One budget shall be adjusted annually thereafter by the same percentage used to adjust Rates pursuant to Article 9. Annually, Contractor shall provide to the City, for review and approval, a detailed description of how such

budget will be spent as part of the annual public education plan to be developed in accordance with Section 5.3.4. Contractor shall be prohibited from expending such funds without the prior written approval of the City. Any expenditures not approved by the City in advance shall neither be counted in Contractor's annual public education and outreach budget, nor be recovered through Rates.

### **8.1.6 Education Requirements during Program Implementation/Roll-Out**

Beginning on the Effective Date of this Agreement and through Rate Period One, Contractor shall conduct an education campaign focused on informing Customers of the Collection program changes. At a minimum, Contractor shall perform the activities listed below and shall perform these services in a manner that complies with requirements of this Section 5.3 and 14 CCR, Division 7, Chapter 12, Article 4.

- Prepare and distribute an initial mailer to all Customers explaining the change from the existing hauler to the new Contractor (if applicable), changes from the existing Collection programs to new programs, Hauler Route changes, dates of program implementation, Recycling and Landfill Disposal reduction programs available, special services available, holiday Collection schedules, proper handling and disposal of Household Hazardous Waste, Contractor's contact information, and any additional education and outreach information specified in 14 CCR, Division 7, Chapter 12, Article 4. The initial mailer shall be printed and mailed, or hand delivered to Customers and shall also be made available in an electronic format through the Contractor's website. Contractor may provide a Customer with an electronic version of the initial mailer, rather than a printed version, if specifically requested by the Customer.

- Prepare a "how-to" flyer describing how to prepare Source Separated Recyclable Materials, SSGCOW, and Gray Container Waste for Collection and describe the acceptable materials that can be included in the Blue and Green Containers, as well as non-allowable materials. The flyer should emphasize any new types of Source Separated Recyclable Materials to be included in Blue Containers and the new Food Waste Collection program. Prepare separate flyers for Single-Family, Multi-Family, and Commercial Customers addressing their unique service conditions. The flyers shall be printed and distributed to each Customer, as well as made available in an electronic format through the Contractor's website. The Contractor shall provide a sufficient number of flyers to each Multi-Family property manager for their distribution to each tenant unit. Contractor may provide a Customer with an electronic version of the flyer rather than a printed version, if specifically requested by the Customer.

- Prepare printed signage and posters describing Collection programs and distribute to Multi-Family property managers and Commercial Customers for on-site use.

- Prepare an instructional packet identifying key transition dates and verifying the Customer's specific current Service Level, which shall be printed and distributed to each Customer and made available in an electronic format on the Contractor's website. Contractor may provide an electronic version of the instructional packet rather than a printed version, if requested by the Customer.



- Prepare and distribute public service announcements (PSA) for local newspapers.
- Meet with up to four (4) business associations (such as the Chamber of Commerce, Rotary Club, and other similar organizations) in separate venues to: educate Commercial Businesses on the Collection programs, State requirements (including SB 1383 and SB 1383 Regulatory requirements) for the Jurisdiction and Generators; answer questions; and, provide service and Rate information.
- All education material designed and/or distributed by the Contractor shall be submitted to the City for approval prior to distribution or posting on the Contractor's website.

### **8.1.7 Annual and/or Ongoing Education Requirements**

- **Specific Annual Educational Activities**
  - Annual Notice of Requirements. Not less than once per year during each Rate Year, Contractor shall prepare and distribute to each Generator in the City a mailer that includes information specified in 14 CCR Section 18985.1(a). Such mailer shall be distributed by Contractor to all residential and commercial mailing addresses including individual Multi-Family Dwelling Units. Contractor shall also make this notice available in an electronic format through the Contractor's website.
  - Billing Inserts Upon City Request. Contractor agrees to insert and distribute brochures, newsletters, or other information developed by the City as inserts in Contractor's Customer invoices at no additional charge to the City. Upon City request, Contractor shall be responsible for printing the bill inserts. For Customers receiving electronic bills, Contractor agrees to distribute brochures, newsletters, or other information developed by the City as attachments to Customer invoices at no additional charge to the City. Contractor shall provide electronic bill inserts (or separate email attachments) to Customers who are billed electronically, and paper bill inserts to Customers who receive paper bills. Electronic bill inserts/attachments must be readily available for the Customer to view upon receipt of the invoice (attachments shall not be provided as links). Upon City request for such inserts, Contractor shall comply with such request during its next billing cycle for the targeted Customer group. Contractor shall perform this service with no additional requirement for compensation.
  - Multi-Family and Commercial Customer Signage. Contractor shall provide all Multi-Family and Commercial Customers with Source Separated Recyclable Materials, SSGCOW, and Gray Container Waste program guidelines, including posters to be placed in Collection areas and enclosures and other community areas at each Premises or building where Discarded Materials are stored.
  - Minimum Website Requirements. Contractor shall develop and maintain a website (with a unique URL specific to the City) that is specifically dedicated to the City to provide Generators with detailed service information. The website or webpage shall be accessible by the public and shall include all education and outreach

materials being provided, without requirement for login. Contractor shall update the website regularly so that information provided is current.

- Instructional Service Guide. Contractor shall prepare a service guide that describes available services, including how to place Containers for Collection, which materials should be placed in each Container and prohibited materials, and provides Collection holidays and a Customer service phone number. On or before January 1, 2023, the service guide shall be printed and delivered with each set of Containers distributed to a Generator and shall be delivered annually to all Generators. Contractor shall prepare different service guides for Single-Family, Multi-Family, Commercial Generators, and Commercial Edible Food Generators. Contractor shall, at its sole expense, revise, re-print, and redistribute service guides once every two (2) years or at least sixty (60) days prior to a change in the accepted or prohibited materials for any program. Contractor shall make the service guide available in an electronic format through the Contractor's website. Contractor may provide an electronic version of the instructional service guide rather than a printed version, if requested by the Customer.

- Annual Multi-Family Dwelling Unit Notices. Prior to the Commencement Date of this Agreement, Contractor shall obtain and track in its Customer information system(s) the number and addresses of dwelling units at each Multi-Family Premises serviced by Contractor. Contractor shall maintain this database by auditing the data at least once every two (2) years. At least annually, commencing no later than January 1, 2023, Contractor shall prepare and distribute notices to each Multi-Family Dwelling Unit at Multi-Family Premises serviced by Contractor. The annual notices shall be a minimum of one page which may include the front and back of a single printed sheet), and shall include information on regulations governing Discarded Materials, Hazardous Waste, and toxic waste; City, County and State requirements to properly separate Discarded Materials (such as requirements of the City Code and of State statutes and corresponding regulations, including, but not limited to, AB 341, AB 1826, and SB 1383); instructions on properly separating materials; waste prevention; services available; and any other information required by the City, County or by State regulations (including SB 1383 Regulatory requirements for education, pursuant to 14 CCR, Division 7, Chapter 12, Article 4). As an alternative, Contractor may comply with these requirements through preparation and distribution of an annual newsletter distributed to each Multi-Family Dwelling Unit that provides the same information. Contractor shall make notices and newsletters available in an electronic format through the Contractor's website. Contractor may provide an electronic version of the notices rather than a printed version, if requested by the Customer.

- Provision of Educational Materials to Non-Compliant Entities. Contractor shall provide educational materials to non-compliant entities under this Agreement, as further described in Section 5.8.2.

- Education Materials for Property and Business Owners and Tenants. Contractor shall annually provide Property Owners and Commercial Business owners with public education materials for their distribution to all employees, contractors, tenants, and Customers of the properties and businesses. The Contractor's public education

materials shall include, at a minimum, information about Organic Waste recovery requirements and proper sorting of Discarded Materials and shall reflect content requirements described in Section 5.3.8 below. Contractor shall provide the following materials for this purpose: insert materials (such as, but not limited to, welcome packets, flyers, and signs). A Commercial Business or Multi-Family Property Owner may request these materials more frequently than the standard annual provision if needed to comply with the requirement of 14 CCR Section 18984.10 for Commercial Businesses and Multi-Family Property Owners to provide educational information to new tenants and employees before or within fourteen (14) days of occupation of the Premises. In this case, the Commercial Business or Multi-Family Property Owner may request delivery of materials by contacting the Contractor's customer service department not later than two (2) weeks in advance of the date that the materials are needed.

- Education Requirements for Commercial Edible Food Generators

- On or before January 1, 2023, the Contractor shall develop a list of Food Recovery Organizations and Food Recovery Services operating within the City, maintain the list on the Contractor's City-specific website, share the list with the City if the City wants to post the list on additional City websites, and update the list annually. The list shall include, at a minimum, the following information about each Food Recovery Organization and each Food Recovery Service:

- Name and physical address;
- Contact information;
- Collection service area; and,
- An indication of types of Edible Food the Food Recovery Service or Food Recovery Organization can accept for Food Recovery.

- At least annually, the Contractor shall provide Commercial Edible Food Generators with the following information:

- Information about the City's Edible Food Recovery program;
- Information about the Commercial Edible Food Generator requirements under 14 CCR, Division 7, Chapter 12, Article 10;
- Information about Food Recovery Organizations and Food Recovery Services operating within the City, and where a list of those Food Recovery Organizations and Food Recovery Services can be found; and,
- Information about actions that Commercial Edible Food Generators can take to prevent the creation of Food Waste.

- The Contractor may provide the information required by subsection b above by including it with regularly scheduled notices, education materials, billing inserts, or other information disseminated to Commercial Businesses.

### **8.1.8 Minimum Content Requirements**

Prior to January 1, 2023; and annually thereafter, the Contractor shall include the following education and outreach content to Customers by incorporation of this content into the public education materials described in Section 5.3.7.

- Collection system description: Information on the Generator’s requirements to properly separate Source Separated Recyclable Materials, SSGCOW, and Gray Container Waste and place such materials in appropriate Containers pursuant to this Agreement, SB 1383 Regulations, and all other Applicable Law.

- Information on methods for the prevention of Source Separated Recyclable Materials and SSGCOW generation; managing SSGCOW on Generator’s Premises through composting or other Landfill Disposal reduction activities allowed under 14 CCR Sections 18983.1 and 18983.2; sending SSGCOW to Community Composting operations; and any other local requirements regarding Discarded Materials.

- Information regarding the methane reduction benefits of reducing the Disposal of SSGCOW, and the method(s) that the Contractor uses to recover SSGCOW.

- Information regarding how to recover Source Separated Recyclable Materials, SSBCOW, and SSGCOW, and a list of haulers approved by the City.

- Information related to the public health and safety and environmental impacts associated with the Disposal of SSGCOW and SSBCOW.

- Information regarding programs for donation of Edible Food;

- For Commercial Customers, information about the City’s Edible Food Recovery Collection program; Tier One Commercial Edible Food Generators and Tier Two Edible Food Generators requirements specified in 14 CCR, Division 7, Chapter 12, Article 10; Food Recovery Organizations and Food Recovery Services operating within the City, and where a list of those Food Recovery Organizations and Food Recovery Services can be found; and, information about actions that Commercial Edible Food Generators can take to prevent the creation of Food Waste.

- Information regarding Self-Hauling requirements.

- Any other federal, State, or local requirements to properly separate Discarded Materials or other necessary actions by Generators, including applicable requirements of the City Code, AB 341, AB 1826, and SB 1383 and corresponding regulations.

### **8.1.9 Material Distribution Methods**

Contractor shall use the following methods to provide education information to Customers.

•**Printed materials.** Contractor shall provide printed education materials. The Contractor shall be responsible for the design, printing, and distribution of these materials. All Contractor-printed public education materials shall, at a minimum, use recycled paper and/or be made of recycled material. The Contractor will use one hundred percent (100%) post-consumer paper and procure printed materials from local businesses.

•**Electronic materials and website content.** Contractor shall provide electronic and website content for education and outreach materials, which may include, but are not limited to digital graphics, digital versions of print materials, social media posts, and blog posts. The Contractor shall be responsible for the design, posting, and electronic distribution of these materials.

### **8.1.10 Non-English Language Requirements**

The Contractor shall make all public education and outreach materials required by this Section available in English and Spanish.

### **8.1.11 Record Keeping and Reporting Requirements**

Contractor shall comply with the public education and outreach record keeping and reporting requirements of Exhibit H.

### **8.1.12 Personnel**

The Contractor shall designate at a minimum one (1) staff member to serve as Outreach Coordinator. The duties of the Outreach Coordinator(s) shall be focused on public education, community outreach, Commercial and Multi-Family site visits, and technical assistance. The Outreach Coordinator(s) shall educate Customers and Customers' employees on the importance of Recycling, Food Recovery, resource recovery, Landfill Disposal reduction, as well as all State, federal, County, local, and Jurisdiction mandates, including SB 1383 and SB 1383 Regulations; and shall work with Customers to implement services, increase participation in Source Separated Recyclable Materials and SSGCOW Collection programs, and reduce contamination. The Outreach Coordinator(s) shall identify potential organizations and partners involved with Food Recovery and resource recovery. The Outreach Coordinator(s) shall be responsible for implementing the education plans and programs specified in this Section.

## **5.4 FOOD RECOVERY PROGRAM SUPPORT**

Contractor shall cooperate with and shall not impede, interfere, or attempt to impede or interfere with the implementation, expansion, or operation of Food Recovery efforts in the City.

## 5.5 BILLING

### A. General Billing Requirements

1. **Contractor Responsible.** Contractor shall bill all Customers and be solely responsible for collecting payment from Customers. Billing shall be performed on the basis of services rendered and this Agreement shall create no obligation on the part of any Person on the sole basis of the Ownership of property. Individual contracts between Contractor and a Customer for services provided under this Agreement shall be prohibited unless otherwise approved in writing by the City on a case-by-case basis.

2. **Frequency.** Contractor shall bill all Single-Family Customers monthly in advance of services provided. Contractor shall bill all Commercial and Multi-Family Customers for scheduled and regularly recurring services on a monthly basis in arrears of services provided. Contractor shall bill Customers for any on-call and/or non-recurring services no more frequently than monthly and shall only bill for services provided during the previous billing period. Contractor shall remit invoices to Customers no earlier than the twentieth (20th) day of each month for which service is being billed.

3. **Bill Format.** Contractor shall bill Customers electronically using paperless invoices; however, Contractor shall bill Customers who decline or are otherwise unable to provide email contact information by standard mail, using standard (paper) invoices. Contractor shall permit Customers the ability to pay their bills through an electronic check or credit card and include the ability for Customer billings to be automatically charged on a recurring basis. Contractor shall prepare and mail bills and collect payments from Customers who decline to use such internet-based billing system. Contractor shall make arrangements to allow such Customers to pay bills by cash, check, electronic check, money order, and credit card.

4. **Bill Inserts.** Contractor shall include bill inserts in accordance with Section 5.3.

5. **Records.** Contractor shall maintain copies of all billings and receipts, each in chronological order, for the Term of this Agreement, for inspection and verification by the City at any reasonable time, but in no case more than ten (10) calendar days after receiving a request to do so.

B. **Rates and Waivers.** Contractor shall bill Customers and collect Customer payments at Rates not to exceed the City-approved maximum Rates. Note that maximum Rates are established for Multi-Family and Commercial Customers that have been granted de minimis, space constraint, Collection frequency, low population, disaster, and/or emergency waivers pursuant to Sections 5.6 and 5.7. Contractor shall ensure that accurate records are maintained for such waivers and Customers are billed properly.

C. **Application of Contamination Surcharges.** In accordance with Section 5.2.2.C.4, the Contractor shall assess contamination Processing fees on Customers with repeated occurrences of excess Prohibited Container Contaminants. Any contamination Processing fees to be assessed for a Customer shall be included and itemized on the

Customer's invoice for the billing period in which the Contractor notified the Customer of the assessment of the contamination Processing fee.

D. **Delinquent Accounts.** Service may, at Contractor's option, be withheld during any period in which bills for prior service remain delinquent, such bills becoming delinquent forty-five (45) days after the end of each full month for which services have been rendered. Contractor shall notify the Customer in writing fifteen (15) days before stopping service and the notice will include the amount and time covered by all unpaid services by Contractor.

## 5.6 GENERATOR WAIVER PROGRAM COORDINATION

### 5.6.1 Types of Generator Waivers

(1) **General.** City may grant waivers described in this Section to Generators that impact the scope of Contractor's provision of service for those Customers. Waivers issued shall be subject to compliance with SB 1383 Regulatory requirements, pursuant to 14 CCR Section 18984.11, or other requirements specified by the City.

(2) **De Minimis Waivers.** The City may waive a Multi-Family's, Commercial Business', or its Property Owner's obligation to comply with some or all of the Source Separated Recyclable Materials and SSGCOW requirements set forth in this Agreement and SB 1383 Regulations if the Multi-Family, Commercial Business, or its Property Owner provides documentation or the City has evidence demonstrating one of the following de minimis conditions:

a) The Multi-Family's or Commercial Business' total Solid Waste Collection service is two (2) cubic yards or more per week, and SSGCOW or SSBCOW subject to Collection in a Blue Container or Green Container comprises less than twenty (20) gallons per week, per applicable Container, of the Multi-Family's or Commercial Business' total waste; or,

b) The Multi-Family's or Commercial Business' total Solid Waste Collection service is less than two (2) cubic yards per week, and SSGCOW or SSBCOW subject to Collection in a Blue Container or Green Container comprises less than ten (10) gallons per week, per applicable Container, of the Multi-Family's or Commercial Business' total waste.

(3) **Physical Space Waivers.** The City may waive a Multi-Family's, Commercial Business', or its Property Owner's obligation to comply with some or all of the Source Separated Recyclable Materials or SSGCOW Collection service requirements set forth in this Agreement and SB 1383 Regulations if the Multi-Family, Commercial Business, or its Property Owner provides documentation, or the City has evidence from its staff, the Contractor, licensed architect, or licensed engineer demonstrating that the Premises lacks adequate space for Blue Containers and/or Green Containers.

(4) **Collection Frequency Waivers.** The City may allow the Contractor to provide Collection of Blue Containers, Gray Containers, or both once every fourteen (14)

days, rather than once per week, for Customers that have been granted a Collection frequency waiver from the City.

### **5.6.2 Contractor Waiver Request on Behalf of Generator**

Upon reasonable belief that a Generator may qualify for a de minimis, physical space or Collection frequency waiver, the Contractor may submit a request to the City to grant a waiver to the Generator, provided that adequate evidence of the de minimis, physical space, or Collection frequency waiver requirements specified in 14 CCR Section 18984.11 is included with the request. City shall review and approve or deny the waiver request. Contractor's request for consideration of a waiver shall include the Generator's name and address, type of Commercial Business or number of Multi-Family units if Customer is a Multi-Family premises, reasons Generator may be eligible for the waiver, and evidence such as, but not limited to: Service Level data, photo documentation, weight records, and technical assistance assessment results.

### **5.6.3 Contractor Review of Generator Waiver Requests**

Generators may submit requests for de minimis waivers, physical space waivers and Collection frequency waivers to the Contractor. Contractor shall within ten (10) days review the Generator's waiver application and inspect the Generator's Premises to verify the accuracy of the application. Contractor shall provide documentation of the inspection, including the Contractor's recommendation to approve or deny the waiver request, and send this information to the City within thirty (30) days of receipt of the Generator's waiver application for the City's review and approval. The City ultimately retains the right to approve or deny any application, regardless of the Contractor's recommendation. Contractor shall report information regarding waivers reviewed on a monthly basis, in accordance with Exhibit H.

### **5.6.4 Contractor Change in Customers' Service Levels**

When the City grants a waiver to a Generator, the City shall notify the Contractor within ten (10) days of the waiver approval with information on the Customer and any changes to the Service Level or Collection service requirements for the Customer. Contractor shall have thirty (30) days to modify the Customer's Service Level and billing statement, as needed.

### **5.6.5 Waiver Reverification**

It shall be the responsibility of the Contractor to verify that the Generators with de minimis or physical space constraint waivers continue to meet the waiver requirements set forth in this Section. Contractor shall conduct such reverifications of waivers through inspection of each Generator's Premises and review of applicable records at least once every five (5) years for de minimis and physical space constraint waivers. Pursuant to Exhibit H, Contractor shall maintain a record of each waiver verification and provide a monthly report to the City documenting the waiver reverifications performed and recommendations to the City on those waivers that Contractor concludes are no longer warranted. The City shall make a final determination of the waiver eligibility of Generators.



### **5.6.6 Contractor Recordkeeping of Generators Granted Waivers**

Upon Contractor request, no more the one (1) time per year, the City shall provide Contractor an updated listing of waivers approved by the City, including the Generators' names, mailing address, service address, and type of waiver. Contractor shall maintain waiver-related records and report on waiver verifications pursuant to Exhibit H.

## **5.7 SERVICE WAIVER PROGRAM COORDINATION**

### **5.7.1 Low Population Area Waivers**

Certain census tracts of the City may qualify as Low-Population Areas. Some Collection service requirements may be waived for the Low-Population Areas. Low-population waivers are granted by CalRecycle and are only valid for a period of up to five (5) years.

### **5.7.2 Processing Facility Temporary Equipment or Operational Failure Waiver**

(1) **Notification to the City.** The Contractor, or their Subcontractor (such as a Facility operator), shall notify the City of any unforeseen operational restrictions that have been imposed upon a Designated or Approved Facility by a regulatory agency or any unforeseen equipment or operational failure that will temporarily prevent a Designated or Approved Facility from Processing and recovering Source Separated Recyclable Materials or SSGCOW. The Contractor or Subcontractor shall notify the City as soon as possible and no later than twenty-four (24) hours from the time of the incident. The notification shall include the following: (i) name of Designated or Approved Facility; (ii) the Recycling and Disposal Reporting System Number of the Designated or Approved Facility; (iii) date the Designated or Approved Facility became unable to Process Source Separated Recyclable Materials or SSGCOW; (iv) description of the operational restrictions that have been imposed upon the Designated or Approved Facility by a regulatory agency or unforeseen equipment failure or operational restriction that occurred; (v) the period of time the Contractor anticipates the temporary inability of the Designated or Approved Facility to Process Source Separated Recyclable Materials, or SSGCOW; (vi) Contractor's proposed action plan to deliver materials to an Alternative Facility for Processing (refer to Exhibit D) or Contractor's request for waiver to deliver Source Separated Recyclable Materials or SSGCOW to the Designated or Approved Disposal Facility.

(2) **Use of Alternative Facility or Waiver for Disposal of Materials.** Upon notification by Contractor or Subcontractor of a Designated or Approved Facility's inability to Process materials, City shall evaluate the notification and determine if City shall require Contractor to use an Alternative Facility or allow the Contractor to Transport the Source Separated Recyclable Materials, SSGCOW, or Mixed Waste to the Designated or Approved Disposal Facility for Disposal on a temporary basis for a time period specified by the City. Upon City's decision, the City shall notify the Contractor of its requirement to use an Alternative Facility for Processing or to use the Designated or Approved Disposal Facility for Disposal, and the period of time that the City will allow the Source Separated Recyclable Materials and SSGCOW to be redirected to the Alternative Facility or the

Designated or Approved Disposal Facility. Pursuant to 14 CCR Section 18984.13, the Designated or Approved Disposal period shall not exceed ninety (90) days from the date the Designated or Approved Facility's Processing restriction or failure commenced. In such case, the Contractor must receive permission from the City prior to depositing any Discarded Material in a Landfill.

(3) **Record Keeping and Reporting.** Contractor shall maintain a record of any Facility incidents and report this information to the City in accordance with Exhibit H.

### **5.7.3 Disaster Waivers**

In the event of a disaster, the City may grant Contractor a waiver of some or all Discarded Materials Collection requirements under this Agreement and 14 CCR, Division 7, Chapter 12, Article 3 in the disaster-affected areas for the duration of the waiver, provided that such waiver has been approved by CalRecycle. Any resulting changes in Collection requirements shall be addressed as a change in scope in accordance with this Agreement.

### **5.7.4 Quarantined Waste**

If approved by the City, the Contractor may Dispose of specific types of SSGCOW that are subject to quarantine and meet the requirements described in 14 CCR Section 18984.13(d) for a period of time specified by the City or until City provides notice that the quarantine has been removed and directs Contractor to Transport the SSGCOW to the Designated or Approved Facility(ies) for such material.

In accordance with Exhibit H, the Contractor shall maintain records and submit reports regarding compliance agreements for quarantined SSGCOW that are Disposed of pursuant to this subsection.

## **5.8 INSPECTION AND ENFORCEMENT**

### **5.8.1 Annual Compliance Reviews**

**A. General.** Contractor shall perform compliance reviews described in this Section commencing July 1, 2022, and at least annually thereafter, unless otherwise noted.

**B. Commercial Generator Compliance Reviews.** The Contractor shall complete a compliance review of all Multi-Family and Commercial Customers that generate two (2) cubic yards or more per week of Solid Waste, including Organic Waste, to determine their compliance with: (i) Generator requirements under the City's Discarded Materials Collection program; and, (ii) if applicable for the Generator, Self-Hauling requirements pursuant to 14 CCR Section 18988.3, including whether a Multi-Family or Commercial Business is complying through Back-Hauling SSGCOW and/or Source Separated Recyclable Materials and/or SSBCOW. The compliance review shall mean a "desk" review of records to determine Customers' compliance with the above requirements and does not necessarily require on-site observation of service; however,

the City may request that the Contractor perform an on-site observation of service in addition to or in lieu of the desk review if needed to obtain the required information.

**C. Annual Hauler Route Review.** Beginning October 1, 2022 and annually thereafter, the Contractor shall conduct annual Hauler Route reviews of Commercial, Multi-Family, and Single-Family Generators for compliance with the City's Discarded Materials Collection program and Container contamination monitoring. These Hauler Route reviews may be performed concurrently with the contamination monitoring Hauler Route reviews, provided that Contractor documents a reasonable sampling of Generators for which compliance with the City's Discarded Materials Collection program during the Hauler Route review was assessed.

**D. Generator Waiver Inspections.** In accordance with Section 5.6, Contractor shall verify Multi-Family and Commercial Generator de minimis and physical space constraint waivers, if applicable, at least once every five (5) years from the date of issuance of the waiver and verify Collection frequency waivers at least once every five (5) years from the date of issuance of the waiver.

## **5.8.2 Compliance Review Process**

**A. Number of Reviews.** The Contractor shall conduct a sufficient number of compliance reviews, Hauler Route reviews, and inspections of Generators, to adequately determine the Generators' overall compliance with SB 1383 Regulations, AB 1826, and AB 341. The number of reviews shall be no less than once per year. City reserves the right to require additional inspections, if the City determines that the amount of inspections conducted by the Contractor is insufficient. City may require the Contractor to prioritize inspections of entities that the City determines are more likely to be out of compliance.

**B. Non-Compliant Entities.** From July 1, 2022 through December 31, 2023, when compliance reviews are performed by Contractor, Contractor shall provide educational materials in response to violations. Contractor shall provide these educational materials to the non-compliant Customers and Generators within fourteen (14) days of determination of non-compliance or immediately upon determination of non-compliance if such non-compliance is determined during an inspection or Hauler Route review. Contractor shall document the non-compliant Customers and Generators and the date and type of education materials provided, and shall report such information to the City in accordance with Exhibit H. Beginning January 1, 2024, the Contractor shall, in addition to providing the education materials described in this subsection, document non-compliant Customers and Generators determined through Contractor's compliance reviews, and shall report all Customers and Generators with violations of SB 1383 Regulations to the City in accordance with Exhibit H. The City shall be responsible for subsequent enforcement action against the Generators.

**C. Documentation of Inspection Actions.** The Contractor shall generate a written and/or electronic record and maintain documentation for each inspection, Hauler Route review, and compliance review conducted, including the information described in Exhibit H.

## 5.9 SERVICE COMPLAINTS

### 5.9.1 Documentation of Complaints

**A. General.** The Contractor agrees to maintain a computer database log of all oral and written complaints received by Contractor from Customers or other Persons. Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all Customer complaints. Contractor agrees to document and maintain for a period of at least five (5) years on a form or log all Complaints registered by Customers and Persons, in accordance with this Section and Exhibit H. Contractor shall record complaints received related to SB 1383 Regulatory non-compliance in its log in a manner further described in subsection B below.

**B. SB 1383 Regulatory Non-Compliance Complaints.** For complaints received in which the Person alleges that an entity is in violation of SB 1383 Regulations, Contractor shall document the information listed in Exhibit H. Contractor shall provide this information in a brief complaint report to the City for each SB 1383 Regulatory non-compliance complaint within fourteen (14) days of receipt of such complaint, and a monthly summary report of SB 1383 Regulatory non-compliance complaints in accordance with Exhibit H.

### 5.9.2 Investigation of SB 1383 Regulatory Non-Compliance Complaints

**A. Investigation.** Contractor shall commence an investigation within ninety (90) days of receiving a complaint in the following circumstances: (i) upon Contractor receipt of a complaint that an entity may not be compliant with SB 1383 Regulations and if City determines that the allegations against the entity, if true, would constitute a violation of SB 1383 Regulations; and, (ii) upon City request to investigate a complaint received by City, in which City determines that the allegations against the entity, if true, would constitute a violation of SB 1383 Regulations. Contractor is required to investigate complaints against Customers and Generators, but not against Food Recovery Organizations, Food Recovery Services, and other entities regulated by SB 1383 Regulations.

Contractor shall investigate the complaint using one or more of the methods:

1. Reviewing the Service Level of the entity that may not be compliant with SB 1383 Regulations;
2. Reviewing the waiver list to determine if the entity has a valid de minimis, physical space constraint, or Collection frequency waiver;
3. Reviewing the Self-Haul registration list, if applicable, to determine if the entity has registered and reviewing the entity's reported Self-Haul information;
4. Determining if the entity is located in a Low-Population Area;

5. Inspecting Premises of the entity identified by the complainant, if warranted; or,

6. Contacting the entity to gather more information, if warranted.

**B. Reporting.** Within fourteen (14) days of completing an investigation of an SB 1383 Regulatory non-compliance complaint, Contractor shall submit an investigation complaint report that documents the investigation performed and recommends to City on whether or not the entity investigated is in violation of SB 1383 Regulations based on the Contractor's investigation. The City shall make a final determination of the allegations against the entity.

#### **5.10 CONTRACTOR'S RESPONSIBILITY IN LIEU OF DIRECTION BY CITY**

Throughout the term of this Agreement, unless the City gives notice as provided for herein and subject to the terms of this Agreement, it shall be the Contractor's sole responsibility and duty to Dispose of the Solid Waste Collected and Process the Recyclable Materials and Green Waste Collected in a safe manner and in compliance with all federal, state, and local laws and regulations. Contractor agrees that it shall Dispose of all Solid Waste Collected and Process all Recyclable Materials and Green Waste Collected in the Franchise Area at a Solid Waste facility or Processing facility that is fully licensed and appropriately permitted and, to Contractor's knowledge, is not in material violation of any health, safety or Hazardous Materials laws, rules, regulations or orders.

#### **5.11 INVALIDATION OF CITY FLOW CONTROL VOIDS FRANCHISE**

Should a court of competent County rule any provision in this Franchise Agreement unlawful or unconstitutional, then the entire Franchise Agreement shall become null and void upon the election of the City. However, this Agreement shall not become null and void, and shall remain in full force and effect, as long as the Contractor continues to direct Solid Waste, Recyclable Materials, and Green Waste as instructed by the City and abides by all other terms of this section. City deems control of the waste stream a vital component of its waste Disposal program which inures to the general benefit and welfare of the public. This provision will preserve the City's ability to pursue any legal methods whereby flow control of waste stream can be achieved.

#### **5.12 OTHER SPECIAL SERVICES**

Contractor can provide other special services as related to this Agreement at their discretion provided said services and charges for such services are approved by the City.

#### **5.13 EMERGENCY SERVICES**

Contractor shall provide emergency services at the City's request in the event of major accidents, disruptions, or natural calamities. Emergency services may include, but are not limited to, assistance handling salvaged materials, Processing, Disposing of Solid Waste or Recyclable Materials following a major accident, disruption, or natural calamity. Contractor shall be capable of providing emergency services within twenty-four (24) hours

of notification by the City or as soon thereafter as is reasonably practical in light of the circumstances. Emergency services, which exceed the Contractor's obligations, shall be compensated in accordance with Exhibit C. If Contractor cannot provide the requested emergency services, the City shall have the right to take possession of the Contractor's equipment for the purposes of providing emergency services.

#### **5.14 FREE ENVIRONMENTAL SERVICES**

The Contractor will provide the following free environmental services to the City throughout the term of this Agreement consistent with the City's obligations in accordance with applicable regulations.

##### **8.12.1 Curbside Holiday Tree Collection**

The Contractor will provide curbside holiday tree collection from December 26 through the second Friday in January each year of this Agreement; provided, however, that Customers shall (i) remove all lights, wire, tinsel, ornaments, nails, stands, tinsel, flocking and other non-organic decorative materials and other materials that are not part of the original tree, and (ii) cut the trees into pieces small enough to fit entirely into the Customers' Green Container. If customers are unable to cut the trees into pieces, trees may be placed whole in the Customer's Green Container. Holiday trees will be managed by the Contractor at the Designated or Approved Organic Waste Processing Facility.

##### **8.12.2 Free Paper Shredding Events**

One (1) time per year, at no additional cost to City residents, the selected Vendor will conduct a free paper shredding event. At each event, all City residents will be permitted to deliver an unlimited amount of paper for shredding free of charge by Vendor. Vendor must arrange for all shredded paper generated by each event to be processed in such a manner so as to ensure the diversion of this material from landfilling.

#### **5.15 CRV REDEMPTION CENTER**

Contractor shall provide a certified California Redemption Value buy back center (CRV Center) which Contractor intends to locate at the following proposed address:

- 1280 North Main Street, Fort Bragg, CA.

Contractor shall submit necessary applications for CRV Center approval to applicable agencies within ninety (90) days of execution of this Agreement. The CRV Center shall be fully operational within ninety (90) days of all application approvals or July 1, 2022, whichever is later. Contractor shall use commercially reasonable efforts to locate the CRV Center at the aforementioned location. However, in the event Contractor is unable to site the CRV Center at the specified location for reasons beyond the control of the Contract (including, without limitation, failing to receive the necessary approvals from any and all applicable regulatory authorities), Contractor shall meet and confer with the City and the County to identify alternate locations for the CRV Center.

The CRV Center shall be maintained and operated by the Contractor. The CRV Redemption Center shall be open to the public a minimum of thirty (30) hours per week between the hours of 8:00 am and 5:00 pm and shall be open at least five (5) days per week. Included in the minimum hours, the CRV Redemption Center shall be open at least seven (7) hours on either Saturday or Sunday between the hours of 8:00 am and 5:00 pm.

## **ARTICLE 6: STANDARDS OF PERFORMANCE**

### **6.1 NAME AND OFFICE HOURS**

Contractor shall not use a firm name containing the words “City” or “Fort Bragg” or other words implying City ownership. The Contractor shall establish and maintain a Customer service office where service may be applied for and complaints made within the Franchise Area. Contractor’s Customer service office shall be open to the public from 8:00 a.m. to 4:30 p.m. Monday through Friday. The office may be closed on Saturdays, Sundays, and Holidays. Such office shall be equipped with a listed telephone to which calls from Contractor’s Customers may be placed without payment of a toll charge and shall have a responsible Person in charge or an answering machine in service during normal business hours.

### **6.2 OPERATING HOURS AND SCHEDULES**

Single-Family Dwelling collection hours shall be between 5:00 a.m. and 6:00 p.m., Monday through Friday. Multi-Family Dwelling collection hours shall be between 5:00 a.m. and 6:00 p.m., Monday through Saturday. Commercial collection hours shall be between 5:00 a.m. and 9:00 p.m., Monday through Saturday, and between 6:00 a.m. and 6:00 p.m. on Sunday.

If the day of Collection on any given route falls on a Holiday, Contractor shall provide Collection service for such route on the work day either before or following such Holiday and shall not provide Collection service on such Holiday, and all subsequent Collection days during that Holiday week shall be adjusted at the discretion of Contractor. Contractor shall be responsible for Customer notification of Holiday Collection arrangements.

### **6.3 SERVICE COMPLAINTS**

Customer service complaints may be made directly to the Contractor by telephone or in writing. Contractor is responsible for rectifying the complaints and for maintaining a log of complaints received, date received, actions taken, and date of actions, as specified in Section 5.9.

### **6.4 OVERCHARGE**

All charges or fees for service by a Contractor shall be approved by the City Council, except a lower charge than approved by the City Council may be negotiated (to provide for consideration of the weight of the material collected and/or the distance from the operations yard or transfer station) for Industrial Solid Waste Service as provided in

Section 9.2.F. Any Customer contending they have been required to pay a charge not approved by the City Council, or has in any manner been subject to an overcharge, may file a written complaint with the City setting forth the facts of such alleged mischarge, and the City shall notify the Contractor of the complaint, shall investigate the matter of the complaint, and shall determine the appropriate charge.

## **6.5 COLLECTION STANDARDS**

All Collection equipment shall be designed and operated such that no Solid Waste, Recyclable Material, or Organic Waste is allowed to blow or drop from vehicles during Transport. Adequacy of load covers or control measures shall be determined by the City. All Collections shall be made as quietly as possible, and the use of any unnecessarily noisy trucks or equipment is declared unlawful.

## **6.6 COLLECTION VEHICLE AND EQUIPMENT STANDARDS**

### **6.6.1 General**

All Collections shall be made with a vehicle and equipment of design approved by the City according to industry standards. Contractor shall maintain all of its properties, facilities, and equipment used in providing service under this Agreement in a safe, neat, clean, and operable condition at all times.

### **6.6.2 Cleaning**

Collection vehicles shall be thoroughly washed and thoroughly steam cleaned as necessary, to present a clean appearance of the exterior and interior compartment of the vehicle.

### **6.6.3 Maintenance**

Contractor shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly shall be taken out of service until they are repaired and operate properly. Contractor shall perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule or in accordance with California Highway Patrol standards, whichever are more stringent. All vehicles shall be painted in a uniform manner that does not create a resemblance between Contractor's vehicles and City utility vehicles. Contractor shall keep accurate records of all vehicle maintenance, recorded according to vehicle, date, and mileage, and shall make such records available to the City upon request to the extent necessary to perform the inspections described in Section 6.8.

### **6.6.4 Repairs**

Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown, or any other cause so as to maintain all equipment in a safe and operable condition. Contractor shall maintain



accurate records of repair, which shall include the date/mileage, nature of repair and the signature of a maintenance supervisor that the repair has been properly performed.

### **6.6.5 Shovel, Broom, and Fire Extinguisher**

The Contractor shall equip each Collection vehicle with a shovel, broom, and fire extinguisher of a type approved by the City.

## **6.7 COLLECTION VEHICLES – IDENTIFICATION**

The Contractor shall have printed or stenciled in a prominent place on the exterior of each vehicle used in the Collection of Solid Waste and Recyclable Materials the following information in at least four-inch letters:

Truck# \_\_\_\_\_ Contractor (name) (Telephone number)

## **6.8 COLLECTION VEHICLES AND EQUIPMENT INSPECTION**

At the discretion of the City, all vehicles and equipment of Contractor are subject to inspection at Contractor's place of business or another location within the Franchise Area as designated by the City on an annual basis. Vehicles and equipment shall conform to the requirements of the California Vehicle Code, this Agreement, and rules or regulations of the City Council. City shall give Contractor twenty-four (24) hours verbal notification of inspection.

## **6.9 CONTAINER REQUIREMENTS**

### **6.9.1 Provision of Containers by Contractor and Color Standards**

**A. General.** Contractor shall use the Contractor-provided Collection Containers that are currently located at Customers' Premises or provide Customers with Collection Containers from Contractor's current inventory.

No later than July 1, 2022, Contractor shall provide all Customers with Collection Containers that comply with the Container color requirements specified in this Section or as otherwise specified in 14 CCR Section 18982; 14 CCR, Division 7, Chapter 12, Article 3; or other Applicable Law. If an existing Container breaks or is otherwise rendered non-functional on or after July 1, 2022, the Contractor shall replace the non-functional Container with a Container that complies with the color requirements of this Section. Notwithstanding this Section, the Contractor is not required to replace functional Containers, including Containers purchased prior to January 1, 2022, that do not comply with the color requirements of this Section prior to the end of the useful life of those Containers, or prior to January 1, 2036, whichever comes first.

### **B. Blue Containers (Source Separated Recyclable Materials)**

Option 1: Blue Containers with a lid that is blue in color. Hardware such as hinges and wheels on the Blue Containers may be a different color.

Option 2: Blue Containers with a body that is blue in color, and a lid that is blue, gray, or black in color. Hardware such as hinges and wheels on the Blue Containers may be a different color.

Option 3: Blue Containers with a lid and body that is blue in color. Hardware such as hinges and wheels on the Blue Containers may be a different color.

**C. Green Containers (SSGCOW)**

Option 1: Green Containers with a lid that is green in color. Hardware such as hinges and wheels on the Green Containers may be a different color.

Option 2: Green Containers with a body that is green in color, and a lid that is green, gray, or black in color. Hardware such as hinges and wheels on the Green Containers may be a different color.

Option 3: Green Containers with a lid and body that are green in color. Hardware such as hinges and wheels on the Green Containers may be a different color.

**D. Gray Containers (Gray Container Waste)**

Option 1: Gray Containers with a lid that is gray or black in color. Hardware such as hinges and wheels on the Gray Container may be a different color.

Option 2: Gray Containers with a lid and body that are gray or black in color. Hardware such as hinges and wheels on the Gray Container may be a different color.

**E. C&D Bins and Roll-Off Boxes.** Bins and Roll-Off Boxes for Collection of C&D may be in any color, provided that the colors do not conflict with the Container color requirements of this Section and provided that the C&D Container colors are consistent for all C&D Containers. The C&D Container color shall be reviewed and approved by the City.

**6.9.2 Labeling Requirements**

Option 1: Labels on New Containers or New Lids

Commencing on or before July 1, 2023, Contractor shall place a label on each new Container body or lid that includes language or graphic images, or both, that indicate the primary materials accepted and the primary materials prohibited in that Container. Labels shall clearly indicate items that are Prohibited Container Contaminants for each Container. Prior to ordering labels for Containers, Contractor shall submit a copy of its proposed label, proposed location(s) for placement of labels on each type of Container, and its labeling plan to the City for approval.

Option 2: Imprinted or In-Mold Labels for New Containers or New Lids

On or before July 1, 2022, Contractor shall imprint new Container bodies or lids with text or graphic images that indicate the primary materials accepted and the primary materials prohibited in that Container. Labels shall clearly indicate items that are Prohibited Container Contaminants for each Container. Prior to ordering any Containers or lids with in-mold labels, Contractor shall submit a sample of its proposed label, proposed location(s) for placement of labels on each type of Container, and its labeling plan to the City for approval.

Option 3: Labels for Existing Containers

On or before July 1, 2022, Contractor shall place a label on the body or lid of each Container that has been provided to a Customer that includes language or graphic images, or both, that indicate the primary materials accepted and the primary materials prohibited in that Container. Labels shall clearly indicate items that are Prohibited Container Contaminants for each Container. Prior to ordering labels for Containers, Contractor shall submit a copy of its proposed label, proposed location(s) for placement of labels on each type of Container, and its labeling plan to the City for approval.

Option 4: Imprinted or In-Mold Labels for Existing Containers

On or before July 1, 2022, Contractor shall imprint the bodies or lids of Containers that have been provided to Customers with text or graphic images that indicate the primary materials accepted and the primary materials prohibited in that Container. Labels shall clearly indicate items that are Prohibited Container Contaminants for each Container. Prior to ordering any Containers or lids with in-mold labels, Contractor shall submit a sample of its proposed label, proposed location(s) for placement of labels on each type of Container, and its labeling plan to the City for approval.

### **6.9.3 Container Standards**

Contractor shall provide all Carts, Bins, and Debris Boxes to all Customers as part of its services. Contractor-provided Containers shall be designed and constructed to be watertight and prevent the leakage of liquids. All Containers with a capacity of one cubic yard or more shall meet applicable federal, state, and local regulations for Bin safety and be covered with attached lids. Contractor shall obtain City's written approval of Cart colors before acquisition. The useful life of Carts, Bins, and Debris Boxes provided to Customers shall be equal to or longer than the Term of this Agreement. All Containers, except Carts, shall be painted the Contractor's standard color.

### **6.9.4 Wildlife Resistant Containers**

Garbage must be in suitable containers with tight-fitting, secure lids to reduce litter and odors that attract wildlife.

### **6.9.5 Repair and Replacement of Containers; Inventory**

Contractor shall repair and, if the repair must be performed off of the Premises, replace all Containers damaged by collection operations within a one-week period. If the repair

or replacement cannot be completed within one week, the Contractor shall notify Customer and a Container of the same size or larger shall be made available until the proper Container can be replaced.

At no additional cost, Contractor shall replace Customer Carts that have been stolen or damaged once per year. Contractor shall allow Customer to exchange Containers for a Container of a different size at no additional cost once per year. Contractor shall charge Customers for additional Cart replacements at current City-approved rates.

#### **6.9.6 Container Maintenance, Cleaning, Painting**

All Containers shall be maintained in a safe, serviceable, and functional condition. Contractor shall steam clean and repaint all Containers, except Carts, as necessary, to present a clean appearance. Customers using Carts shall be responsible for cleaning such Carts. If any Cart is impacted by graffiti, Contractor shall replace the cart within 48 hours. If any Containers, except Carts, are impacted by graffiti, Contractor shall either replace the Container with a Container which is free of graffiti or repaint the entire Container with the Contractor's standard color for such Container. Repainting of the Container shall restore the Container's aesthetic values to its condition before it sustained the graffiti damage.

#### **6.9.7 City Ownership of Containers at End of Term**

Upon expiration or early termination of this Agreement (providing said earlier termination is for cause and not by mutual consent or by reason of City's failure to perform), all Containers (for permanent Customers) acquired by or leased by Contractor and put into service at Customer's Premises shall be available to the City, at the City's option, at their fair market value.

At its sole discretion, the City may elect not to exercise its rights with regard to this Section and, in such case, the Containers shall remain the property of the Contractor upon the expiration date of this Agreement or date of earlier termination of this Agreement. In such case, Contractor shall be responsible for removing all Containers in service from Premises and reusing or Recycling such Containers.

#### **6.9.8 City Purchase Option for Equipment and Trucks at End of Term**

Except as set forth in Section 6.9.9, upon expiration or early termination of this Agreement pursuant to Section 11.2 (providing said earlier termination is for cause and not by mutual consent or by reason of City's failure to perform), all trucks and equipment purchased or leased and put into service by Contractor (the "Option Equipment") shall be available to the City, at the City's option, at their fair market value. At its sole discretion, the City may elect not to exercise its rights with regard to this Section and, in such case, all Option Equipment purchased shall remain the property of the Contractor upon the expiration date of this Agreement or date of earlier termination of this Agreement.

### **6.9.9 City Purchase Option for Facilities and Associated Equipment at End of Term**

Upon expiration or early termination of this Agreement pursuant to Section 11.2 (providing said earlier termination is for cause and not by mutual consent or by reason of City's failure to perform), all facilities and associated equipment located within the Fort Bragg City limits or the Franchise Area Coastal Rate Zone, owned by Contractor, operated by Contractor as a Transfer Station, California Redemption Value Center, or Customer Service Center (collectively, the "Option Facilities") shall be available to the City, at the City's option, at their fair market value.

At its sole discretion, the City may elect not to exercise its rights with regard to this Section and, in such case, all Option Facilities and associated equipment purchased shall remain the property of the Contractor upon the expiration date of this Agreement or date of earlier termination of this Agreement. Notwithstanding anything to the contrary in this Section, the City shall not be permitted to exercise the purchase option set forth herein in the event Contractor is utilizing the aforementioned Option Facilities in connection with one or more agreements with other municipalities located within five (5) miles of the coastline of Mendocino County.

### **6.9.10 Coordination between City and County Purchase Options**

The City acknowledges and agrees that the County Franchise Agreement grants to the County an identical option to purchase the Option Equipment and or the Option Facilities. The City agrees that, in the event that either or both the City and the County elect to exercise their respective purchase options for any of the Option Equipment or the Option Facilities, the City and the County shall then be required to meet and confer in good faith to reach a separate written agreement between them as to which of them shall be permitted to purchase the applicable Option Equipment and Option Facilities. The City further agrees that the Contractor shall have no obligation to sell any of the Option Equipment or Option Facilities to either the City or the County (whether pursuant to this Agreement, the City Franchise Agreement or otherwise) unless and until the City and the County jointly instruct the Contractor in writing as to which party (i.e., the City or the County) shall be the party to purchase the applicable Option Equipment and Option Facilities. Upon the purchase of the applicable Option Equipment and Option Facilities by the City or the County, as applicable, the Contractor's obligations to sell the Option Equipment and the Option Facilities to the non-exercising party (i.e., the City or the County, as applicable) hereunder or pursuant to the County Franchise Agreement, as applicable, shall be deemed satisfied and the Contractor shall have no further obligation to such party with regard to the Option Equipment and the Option Facilities.

## **6.10 PERSONNEL**

### **6.10.1 General**

Contractor shall furnish such qualified drivers, mechanical, supervisory, Customer service, clerical and other personnel as may be necessary to provide the services required by this Agreement in a safe and efficient manner.

### **6.10.2 Approval of Management**

Contractor recognizes the importance of establishing a successful relationship between its management and City staff. The City shall have the right to request the Contractor to replace its facility manager, if Liquidated Damages levied for events listed in Exhibit G, with the exception of damages levied for Collection reliability and Collection quality events items 1 through 14 of Exhibit G, in any three month period exceed \$5,000 or if Liquidated Damages levied for Collection reliability and Collection quality events items 1 through 14 of Exhibit G in any three month period exceed \$45,000. If replacement of the facility manager is requested by the City, the Parties shall meet and confer in good faith to discuss the replacement of the facility manager.

### **6.10.3 Provision of Field Supervision**

Contractor shall designate at least one qualified employee as supervisor of field operations. The field supervisor will devote at least fifty percent (50%) of his or her time in the field checking on Collection operations, including responding to complaints.

### **6.10.4 Driver Qualifications**

All drivers shall be trained and qualified in the operation of Collection vehicles, and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles. Contractor shall use the Class II California Department of Motor Vehicles employer "Pull Notice Program" to monitor its drivers for safety.

### **6.10.5 Customer Service Representative Training**

Customer service representatives shall be trained on specific City service requirements, a minimum of once per quarter. A City information sheet shall be provided to each Customer service representative for easy reference of City requirements and general Customer needs. The information sheet, training agenda, and associated documentation shall be forwarded to the City each quarter after the training.

### **6.10.6 Safety Training**

Contractor shall provide suitable operational and safety training for all of its employees who operate Collection vehicles or equipment or who are otherwise directly involved in such Collection, Disposal, or Processing. Contractor shall train its employees involved in Collection to identify, and not to collect, Hazardous Waste or Infectious Waste. Upon the City's request, Contractor shall provide a copy of its safety policy and safety training program, the name of its safety officer, and the frequency of its trainings.

### **6.10.7 No Gratuities**

Contractor shall not permit its employees to demand or solicit, directly or indirectly, any additional compensation, or gratuity from members of the public for Collection services.

### **6.10.8 Employee Conduct and Courtesy**

Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. Contractor shall regularly train its employees in Customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection employees to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by this Agreement, Contractor shall take all appropriate corrective measures. The City may require Contractor to reassign an employee if the employee has conducted himself or herself inconsistently with the terms of this Agreement.

### **6.10.9 Uniforms**

While performing services under this Agreement, all of the Contractor's employees performing field service shall be dressed in clean Uniforms. No portion of this Uniform may be removed while working. For purposes of this Section 6.10.9, the term "Uniform" shall mean, at a minimum, a Contractor-branded shirt and a City-approved badge that includes the employee's name and/or employee number, and Contractor's name.

### **6.11 DIVERSION STANDARD**

The Contractor acknowledges the City seeks to achieve the State's seventy-five percent (75 percent) diversion goal. The Contractor will be responsible for diverting from Disposal a percentage of materials the Contractor collects from all services under this Agreement. The Contractor shall provide a Diversion rate calculation in their monthly Diversion Report as defined in Exhibit H.

## **ARTICLE 7: RECORD KEEPING AND REPORTING**

Contractor shall maintain records and reports in accordance with Exhibit H and shall allow the City to audit and inspect records as described in the Exhibit H.

## **ARTICLE 8: CITY FEES**

### **8.1 FRANCHISE FEE**

#### **8.1.1 Franchise Fee – Amount**

In consideration of the exclusive rights provided herein, Contractor shall pay an Administrative Franchise Fee to the City calculated as ten percent (10%) of the Gross Revenues collected for service. Contractor shall also pay a Caspar Landfill Closing Franchise Fee of ten point nine six percent (10.96%) of Gross Revenues. Contractor shall not make a claim nor be entitled to compensation for the overpayment of Franchise Fees due to the inclusion of other governmental agency's revenues in the Franchise Fee calculations and payments made before the Effective Date.

#### **8.1.2 Franchise Fee – Quarterly Payments and Revenue Statements**

Contractor shall pay the Franchise Fee in quarterly payments due within thirty (30) days after the close of each calendar quarter. Along with the quarterly payment, Contractor

shall include a quarterly revenue statement, certified by an officer of the Contractor that shows the basis for the calculation thereof.

### **8.1.3 Franchise Fee – Deposit**

Franchise fees shall be paid to the City which shall deposit them to the City General Fund and Landfill Closure Fund, respectively.

### **8.1.4 Franchise Fee – Delinquency Penalty**

Payments are delinquent if not received by the City within thirty (30) days as provided above. All fees are subject to a delinquency penalty of ten percent (10%), which attaches on the first day of delinquency, plus an additional ten percent (10%) for each additional month the payment remains delinquent. These penalties are in addition to the franchise termination provisions of Article 11.

### **8.1.5 Refund of Franchise Fees**

Once Franchise Fee payments are made to the City, Contractor may not ask for refund of all or part of Franchise Fees unless such request is based on a mathematical error in its calculation or an inadvertent overpayment.

## **8.2 PROPOSAL DEVELOPMENT FEE**

The Contractor shall pay a one-time Proposal Development Fee of fifty thousand dollars (\$50,000). This fee is due within thirty (30) days after this Agreement is executed.

## **8.3 SB 1383 REGULATORY REIMBURSEMENT**

The Contractor shall pay an SB 1383 Regulatory Reimbursement to City each month during the term of this Agreement. The amount of the SB 1383 Regulatory Reimbursement shall be one thousand dollars (\$1,000) per month in Rate Period One. City shall use the SB 1383 Regulatory Reimbursement to offset expenses, including but not limited to, staffing costs related to City programs, pilot studies, education and outreach campaigns, technical assistance to Customers, reporting, compliance, enforcement, or other activities involved in compliance with SB 1383 Regulations. The City shall retain the sole right to set priorities for the use of its SB 1383 Regulatory Reimbursement. The SB 1383 Regulatory Reimbursement shall be considered an allowable cost of business not subject to profit mark-up and included in the Contractor's Compensation pursuant to Article 9.

The amounts of the SB 1383 Regulatory Reimbursement for subsequent Rate Periods shall be adjusted annually by the same Annual Percentage Change in the CPI-U, calculated in accordance with the adjustment method described in Article 9, or shall be the amount specified by the Jurisdiction.

## **8.4 FOOD RECOVERY PROGRAM CONTRIBUTION**



The Contractor shall provide an annual contribution to the Jurisdiction to support the Jurisdiction's Food Recovery program efforts during the term of this Agreement. The amount of the contribution shall be six thousand dollars (\$6,000) per year in Rate Period One and shall be submitted to the City on a monthly basis in an amount equal to \$500 dollars (\$500). Jurisdiction shall use the Food Recovery contribution to offset expenses, including, but not limited to, staffing costs related to Jurisdiction Food Recovery programs, pilot studies, education and outreach campaigns, technical assistance to Generators, reporting, compliance, enforcement, or other activities involved in Food Recovery efforts to support compliance with SB 1383 Regulations. The Jurisdiction shall retain the sole right to set priorities for the use of the Contractor's Food Recovery program contribution.

The amounts of the Food Recovery program contribution for subsequent Rate Periods shall be adjusted annually by the same Annual Percentage Change in the CPI-U, calculated in accordance with the adjustment method described in Article 9, or shall be the amount specified by the Jurisdiction.

## **ARTICLE 9: COMPENSATION AND RATE REGULATION**

### **9.1 CONTRACTORS RATES**

#### **9.1.1 City's Powers**

The Fort Bragg City Council shall set and regulate all rates and charges assessed by Contractor for any and all services and activities it performs or engages in the Franchise Area, which are covered under this Agreement.

### **9.2 RATE REQUIREMENTS**

A. Contractor shall provide the services described in this Agreement and be compensated by its Customers at the rates specified in Exhibits A, B, and C.

B. The rates specified in Exhibits A, B, and C shall be effective as of July 1, 2022.

C. The rates specified in Exhibits A, B, and C may be modified in accordance with the Rate Adjustments as described in this Agreement.

D. The rates in Exhibits A and B are divided into specific residential, commercial, and industrial rates shall be charged by the Contractor.

E. All charges or fees for service by a Contractor shall be fixed and approved by the City Council.

F. Charges for Industrial Solid Waste removal service may be negotiated between the collector and the Customer. If the negotiated charges are less than the rates specified in Exhibits A and B, Contractor shall notify the City in writing of each Customer that is offered and charged a lower rate. In no event shall the Contractor charge a rate in

excess of those specified in Exhibit B without prior written approval by the City, except for weight overages as provided for in this section.

G. Contractor may not charge residential and commercial Customers at rates other than those specified in Exhibits A and B except that the City may authorize a Customer to receive additional or reduced service for an additional or reduced charge. These authorized reduced or additional charges must be approved by the City Council from time to time and a determination by the City Council that a change is in the public interest and is mutually agreed upon by both Parties.

H. All compensation paid to the Contractor shall be paid by its Customers and the City is in no way obligated to provide the Contractor any compensation for services described in this Agreement.

I. Charges for Industrial Solid Waste Debris Box service includes pull fees and disposal fees as set forth in Exhibit B.

J. Charges for special services, contaminated Recyclables or Green Waste, extra solid waste, replacement of lost or stolen carts, off-day collection, etc. shall be as specified in Exhibits A, B, and C and as they may be modified in accordance with this Agreement.

### **9.3 RATE ADJUSTMENT PROCEDURES**

#### **9.3.1 Pass-Through Rate Adjustment**

A. At any time that the City Council either establishes a City surcharge on Contractor's Customers, increases an existing City surcharge on Contractor's Customers, increases the Franchise Fee rate, increases the Disposal charge at City or City-owned facility, Contractor may apply to the City for a pass-through rate adjustment to offset the new or increased fees. In applying for a pass-through rate adjustment, the Contractor must:

1. Submit a request for the increase, in writing, to the City;
2. Specify the amount of the requested increase for each rate given in Exhibits A and B; and
3. Provide documentation that the specified rate increase calculation is reasonable and appropriate and does not include rate increases for any other reason than to recover direct cost of the additional pass-through expense.

Provided that the City staff have received and considered the request and documentation described above, and have concluded that the requested rate adjustment calculation is reasonable and appropriate and is solely to recover the direct cost of the additional pass-through expense, the rates given in Exhibits A and B shall be amended by the City Council.

B. If a jurisdiction other than the City establishes or increases surcharges or fees that affect Contractor's expenses, the same procedures as described above apply.

C. The timely application and request for a pass-through rate adjustment increase rests solely with the Contractor. There shall be no retroactive increase billing to Customers. The responsibility to implement timely pass-through rate adjustments rests solely with the Contractor in accordance with the procedures outlined in this Agreement. If for any reason the City fails to respond within thirty (30) days to a pass-through rate adjustment request in accordance with the procedures in this Agreement, then the Contractor shall implement such a pass-through rate adjustment unilaterally. **Under no circumstances will the Contractor ever be permitted to retroactively bill Customers for pass-through rate adjustment increases not implemented in a timely manner for any reason.**

D. At any time that the Board either eliminates a City surcharge on Contractor's Customers, decreases an existing County surcharge on Contractor's Customers, decreases the Franchise Fee rate, decreases the Disposal charge at the City or County-owned facilities, City may apply to the Contractor for a pass-through rate adjustment to offset the eliminated or decreased fees. In applying for a pass-through rate adjustment, the City must:

1. Submit a request for the decrease in writing to the Contractor;
2. Specify the amount of the requested decrease for each rate given in Exhibits A, B, and C.
3. Provide documentation that the specified rate decrease is reasonable and appropriate and does not include rate decrease for any other reason than to recover the direct cost of the decreased or eliminated pass-through expense.

Provided that the Contractor has received and considered the request and documentation described above, and have concluded that the requested rate adjustment is solely to offset the direct cost of the decreased or eliminated pass-through expense, the rates given in Exhibits A, B, and C shall be amended by the City Manager or designated City employee.

If for any reason the Contractor fails to respond within thirty (30) days to a pass-through rate adjustment request in accordance with the procedures in this Agreement, then the City shall implement such a pass-through rate adjustment unilaterally.

E. If a jurisdiction other than the City eliminates or decreases surcharges or fees that affect Contractor's expenses, the same procedures as described in (D) above, apply.

F. In the case of a jurisdiction other than the City eliminating or decreasing surcharge or fees that affect Contractor's expenses, Contractor shall be responsible for

notifying the City in writing. If Contractor fails to notify the City of eliminated or decreased surcharges or fees per this section, then the City may apply for and request a retroactive pass-through rate adjustment decrease, but never a retroactive increase for any reason.

### 9.3.2 Cost-of-Living, Fuel Rate, and Commodity Price Adjustments

Every full year of this Agreement effective January 1, beginning on January 1, 2023, the Contractor may apply for a rate adjustment to offset adjustments in the cost of providing services (Cost-of-Living), fuel, recycling market pricing, and organics market pricing. The Contractor shall submit the rate adjustment request no later than November 15 for rates effective the following January 1. The Contractor shall notify the City of the adjustments to take place and shall provide the City with its computations and documentation. **Under no circumstances will the Contractor ever be permitted to retroactively bill Customers for any rate adjustment increases not implemented in a timely manner for any reason.**

For calculation of adjustments, the rates would be divided into three components – fuel, pass-through and all other. The rate adjustment calculation shall be calculated as follows:

Rate Adjustment (%) = COFA + COLA + PTDRA + RCVA + OCVA, whereby

COFA is the cost-of-fuel adjustment

COLA is the cost-of-labor adjustment

PTDRA is the pass-through disposal rate adjustment

RCVA is the pass-through recycling commodity value adjustment

OCVA is the pass-through organics commodity value adjustment

The cost-of-fuel adjustment (COFA) component is calculated from the fuel component multiplied by one hundred percent (100%) of the change in the average monthly value over the last twelve (12) months, compared to the average monthly value for the preceding twelve (12) month period, of the most recently published California index for #2 diesel fuel, compiled and published by the U.S. Energy Information Administration or its successor. The fuel component is derived from the most recent Annual Financial Report and is calculated as the total fuel costs divided by the total operating expenses.

The cost-of-living adjustment (COLA) component is calculated from all other component multiplied by ninety percent (90%) of the change in the value of the most recently published All Urban Consumers Index (CPI-U), all items, for the San Francisco-Oakland-Hayward, CA, Base Period 1982-1984 = 100, not seasonally adjusted, compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor and its value twelve months before. The all other component is derived from the most recent Annual Financial Report and is calculated as the (total operating expenses less disposal costs and fuel costs) divided by total operating expenses.

The pass-through disposal rate adjustment (PTDRA) is calculated as the increase or decrease in surcharges, fees, or disposal tipping fees from the City, other jurisdictions, and Designated or Approved Disposal Facilities (as a percentage) multiplied by their relative cost component based on the Annual Financial Report and tonnage reports.

The pass-through recycling commodity value adjustment (RCVA) is calculated as the increase or decrease in monthly average annual (or pro-rated in the first year) tipping fee at the Designated Source Separated Recyclable Materials Processing Facility (as a percentage) multiplied by their relative cost component based on the Annual Financial Report and tonnage reports.

The pass-through organics commodity value adjustment (OCFA) is calculated as the increase or decrease in the monthly average annual (or pro-rated in the first year) tipping fee at the Designated Organic Waste Processing Facility (as a percentage) multiplied by their relative cost component based on the Annual Financial Report and tonnage reports.

### **9.3.3 Larger Rate Increases**

No sooner than one year after this Agreement becomes effective, and no more frequently than annually thereafter, Contractor may apply for a rate adjustment in excess of the cost-of-living limitation described in Section 9.3.2., above. In applying for such a rate increase the Contractor must:

(1) Notify the City, in writing, of Contractor's intent to seek a rate increase in excess of the cost-of-living limitation;

(2) Obtain and submit to the City an independent financial audit report of Contractor's operations. The City shall select or approve the auditor to perform the audit. The cost of the audit shall be paid by the Contractor. The audit must, at a minimum, determine the profitability of Contractor's operations specific to services provided under this Agreement.

Using information provided in the financial audit, as well as records required to be maintained by Guarantee under Article 7 of this Agreement, the City shall perform a rate setting study to determine appropriate rates based on projected profitability of the Contractor. The appropriate profit margin, and the means of determining profitability, shall be included as part of the rate setting study. The rate setting study shall be conducted by the City, or by a qualified contractor selected by the City. The cost of the rate study shall be paid by the Contractor.

City shall then hold at least one public meeting, at a convenient time and place within the Contractor's Franchise Area, to solicit public comment on the proposed rate increases, as determined by the rate setting study. This public meeting shall be duly noticed and shall be held no less than 14 days before the City Council considers adoption of the rate increases.

Provided that the City has received the required information, as described in (1) and (2), above, has completed the rate setting study, and has held at least one public meeting

and considered public input, the City Council may adopt the new rates by amending Exhibits A, B and C. **Under no circumstances will the Contractor ever be permitted to retroactively bill Customers for any rate adjustment increases not implemented in a timely manner for any reason.**

## **ARTICLE 10: INDEMNITY, INSURANCE, AND PERFORMANCE BOND**

### **10.1 INDEMNIFICATION**

#### **10.1.1 Indemnification of City**

A. Contractor shall defend the City with counsel reasonably acceptable to the City and indemnify the City from and against any and all liabilities, costs, claims and damages to the extent caused by Contractor's negligence or failure to comply with applicable laws and regulations, including but not limited to liabilities, costs, claims and damages described in Section 10.2 below except to the extent such liabilities, costs, claims or damages are due to the negligence or willful acts of the City, its officers, employees, agents or contractors.

B. Contractor agrees that it shall protect and defend the City with counsel reasonably acceptable to City, indemnify and hold harmless City, its officers, employees and agents from and against any and all losses, liabilities, fines, penalties, claims, damages, liabilities or judgments (including reasonable attorney's fees), to the extent arising out of or resulting in any way from Contractor's negligence, willful misconduct or breach of the provision of this Agreement, except to the extent such claim is due to the negligence or willful acts of the City, its officers, employees, agents or contractors, or from City's grant of this Agreement to Contractor.

C. In addition, Contractor shall defend the City with counsel reasonably acceptable to the City, indemnify and hold the City harmless from any and all litigation and claims, damages and liabilities arising therefrom, brought to enforce or to challenge this Agreement and/or Contractor's exclusive rights granted thereunder with respect to the services provided hereunder; provided, however, that Contractor's obligations hereunder extend only to actions brought against or by Persons not parties to this Agreement.

D. Providing City complies with all applicable laws concerning the setting of rates under this Agreement as such laws are reasonably interpreted to apply to City, Contractor shall defend the City with counsel reasonably acceptable to the City, indemnify and hold the City harmless from any and all litigation and claims, damages and liabilities arising from the City's setting of rates for service under this Agreement or in connection with the application of California Constitution, Article XIII C and Article XIII D to the imposition, payment or collection of rates and fees directly related to services provided by Contractor under this Agreement. Notwithstanding the above, this indemnity shall not extend to any rates that are not associated with the charges by the Contractor for providing service under this Agreement, including but not limited to Franchise and governmental fees and charges.

Providing City has complied with all applicable laws, the City shall not be in default of this Agreement, if it is determined by a court of competent jurisdiction that it lacks the authority to set rates and/or increase rates for charges related to providing service pursuant to this Agreement. If the City is unable to set rates as provided for herein, the City agrees that Contractor shall be allowed to set said rates in accordance with the procedures defined in Section 9.2 of this Agreement and all other provisions of this Agreement shall remain in full force and effect. Should a court of competent jurisdiction determine that the City lacks authority to set and/or increase rates for charges related to Franchise and governmental fees and charges, then Contractor shall reduce the rates it charges customers a corresponding amount, providing said fees, rates and/or charges disallowed by the court are not related to the cost of providing service hereunder and had already been incorporated in the rates charged by Contractor to its customers.

Nothing herein is intended to imply that California Constitution, Articles XIIC or XIID, apply to the setting of rates for the services provided under this Agreement; rather this section is provided merely to allocate risk of loss as between the Parties.

### **10.1.2 Indemnification of Contractor**

A. Except as provided by Section 10.1.3, the City shall defend, with counsel reasonably acceptable to Contractor, indemnify and hold Contractor harmless from any and all fines, penalties and assessments levied against or threatened to be levied against the City and/or Contractor for the City's failure to meet the requirements of AB 939, its amendments or any successor legislation and/or all rules and regulations promulgated thereunder to the extent said failure is due to the negligence or misconduct of the City, including but not limited to the City's failure to adopt Source Reduction and Recycling Elements mandated under AB 939.

B. In the event that the City directs the Contractor to Dispose of or Transport Solid Waste, Recyclable Materials, and/or Green Waste to a specific facility, the Contractor shall not be held liable for damages at that facility, unless the damages are caused by the willful or negligent acts of the Contractor.

### **10.1.3 AB 939 Indemnification**

Contractor shall defend with counsel reasonably acceptable to the City, indemnify and hold the City harmless from any and all fines, penalties and assessments levied against or threatened to be levied against the City for the City's failure to meet the requirements of AB 939, with respect to the Waste Stream under Contractor's control, its amendments or any successor legislation and/or all rules and regulations promulgated thereunder if said failure results from Contractor's failure to comply with this Agreement and/or Contractor's failure to comply with said laws, rules or regulations, including but not limited to failing to timely supply to the City the reports and information required by the City in order to comply with AB 939.

## **10.2 INSURANCE REQUIREMENTS**

Insurance policies are to be secured by the Contractor and remain in full force and effect at all times to provide protection against liability for damages which may be imposed for the negligence of the Contractor or their Persons, employees or agents, including, but not limited to, general liability and automobile liability insurance. Contractor shall also provide liability coverage under California Workers' Compensation laws. The amounts of insurance required are to be established herein. Said amounts shall not be construed to limit the Contractor's liability.

The insurance requirements provided herein may be modified or waived in writing by the City Council, provided the City Council determines that such waiver or modification does not unreasonably increase the risk of exposure to the City, including the fact that the parent of Contractor may be self-insured up to a certain acceptable amount.

(1) Workers' Compensation Insurance. Contractor shall obtain and maintain in full force and effect throughout the entire term of this Agreement full Workers' Compensation Insurance in accord with the provisions and requirements of the Labor Code of the State of California. Endorsements that implement the required coverage shall be filed and maintained with the City throughout the term of this Agreement.

(2) Comprehensive General Liability. Contractor shall obtain and maintain in full force and effect throughout the entire term of this Agreement a Broad Form Comprehensive General Liability (occurrence) policy with a minimum limit of TWO MILLION DOLLARS (\$2,000,000.00) aggregate and ONE MILLION DOLLARS (\$1,000,000.00) per occurrence for bodily injury and property damage. Said insurance shall protect Contractor and City from any claim for damages for bodily injury, including accidental death, as well as from any claim for property damage which may arise from operations performed pursuant to this Agreement, whether such operations be by Contractor itself, or by its agents, employees and/or Sub Contractors. Copies of the policies or endorsements evidencing the above-required insurance coverage shall be filed with the City. Endorsements are required to be made a part of all of the following insurance policies required by this Section:

a. "The City, its employees, agents, and officers, are hereby added as insureds as respects liability arising out of activities performed by or on behalf of Contractor."

b. "This policy shall be considered primary insurance as respects any other valid collectible insurance the City may possess including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance and shall not contribute with it."

c. "This policy shall act for each insured, as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

d. "Prior written notice in accordance with the applicable policy provisions by certified mail, return receipt requested, shall be given to the City in the event



of suspension, cancellation, and reduction in coverage or in limits or non-renewal of this policy for whatever reason. Such notice shall be sent to the City.”

(3) Vehicle Liability. Contractor shall obtain and maintain in full force and effect throughout the entire term of this Agreement a vehicle liability policy with a minimum limit of ONE MILLION DOLLARS (\$1,000,000.00) per occurrence for bodily injury and ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) per occurrence for property damage. Said insurance shall protect Contractor and City from any claim for damages for bodily injury, including accidental death, as well as from any claim for property damage which may arise from operation of owned and non-owned vehicles. Copies of the policies or endorsements evidencing the above-required insurance coverage shall be filed with the City.

The limits of such insurance coverage, and companies, shall be subject to review and approval by the City every year and may be increased at that time and match the coverage provided by the City’s own liability insurance policy. The City shall be included as a named insured on each of the policies, or policy endorsements.

### **10.3 PERFORMANCE BOND**

A performance bond or letter of credit is required from the Contractor within thirty (30) calendar days from the date the City Council approves the Franchise Agreement. The performance bond shall be in an amount of Two Hundred Fifty Thousand Dollars (\$250,000). The City may waive this bond based on vendor prior performance.

The performance bond shall be executed by a surety company licensed to do business in the State of California; having a rating of, or equivalent to “A: VII” by A.M. Best & Company, approved by the City; and included on the list of admitted surety companies approved by the Treasurer of the State of California.

After July 1, 2025, and annually thereafter, Vendor may request in writing that the City allow the performance bond to be reduced to fifteen percent (15 percent) of the Vendor’s prior annual Gross Revenues. The City shall, at the sole option of the City, respond to the request in writing within forty-five (45) days of receipt of the written request. Nothing in the Franchise Agreement shall require that the City approve the request of the Vendor nor shall the City have any obligation to provide Vendor with its reasoning for approving or denying the request.

The performance bond is included in Exhibit I.

## **ARTICLE 11: DEFAULT AND REMEDIES**

### **11.1 EVENTS OF DEFAULT**

Each of the following shall constitute an event of default (“Event of Default”) hereunder:

(1) Contractor has demonstrated an inability to properly perform the franchised activity, failed to comply with one or more of the terms or conditions of this Agreement, or

future amendment(s) to this Agreement, failed to comply with any material federal, state or local laws, ordinances, rules or regulations pertaining to the franchised activity, or when the franchised activity has become a nuisance or is detrimental to the public health, safety or welfare. If Contractor does not perform franchise services for a period in excess of fifteen (15) days, this Agreement may be terminated by the City. Contractor shall not be in default of this Agreement if Contractor commences such action required to cure the particular breach within seven (7) calendar days after such notice, and it continues such performance diligently until completed.

(2) Any representation, warranty, or disclosure made to City by Contractor in connection with or as an inducement to entering into this Agreement or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation, warranty, or disclosure appears as part of this Agreement;

(3) There is a seizure or attachment (other than a pre-judgment attachment) of, or levy affecting possession on, the operating equipment of Contractor, including without limit its vehicles, maintenance or office facilities, or any part thereof of such proportion as to substantially impair Contractor's ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within forty-eight (48) hours excluding weekends and Holidays;

(4) Contractor files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of equipment no longer useful to Contractor or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) of the Contractor for any part of Contractor's operating assets or any substantial part of Contractor's property, or shall make any general assignment for the benefit of Contractor's creditors, or shall fail generally to pay Contractor's debts as they become due or shall take any action in furtherance of any of the foregoing;

(5) A court having jurisdiction shall enter a decree or order for relief in respect of the Contractor, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Contractor shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Contractor or for any part of the Contractor's operating equipment or assets, or orders the winding up or liquidation of the affairs of Contractor;

(6) If Contractor (i) is the subject of any labor unrest including work stoppage or slowdown, sick-out, picketing or other concerted job action; (ii) appears in the reasonable judgment of City to be unable to regularly pay its bills as they become due; or (iii) is the subject of a civil or criminal judgment or order entered by a federal, state, regional or local agency for violation of an Applicable Law, and the City believes in good faith that Contractor's ability to perform under this Agreement has thereby been placed in

substantial jeopardy, the City may, at its option and in addition to all other remedies it may have, demand from Contractor reasonable assurances of timely and proper performance of this Agreement, in such form and substance as the City believes in good faith is reasonably necessary in the circumstances to evidence continued ability to perform under this Agreement. If Contractor fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by City, such failure or refusal shall be an event of default.

(7) Failure to Comply with Requirements of SB 1383, AB 341 and AB 1826 and Corresponding Regulations. Contractor fails to comply with other requirements of this Agreement including public education, reporting, contamination monitoring, recordkeeping, or other obligations of this Agreement that delegate City's responsibility and/or authority under SB 1383, AB 341 and AB 1826 and corresponding Regulations to Contractor. Contractor shall not be in default of this Agreement if Contractor commences such action required to cure the particular breach within seven (7) calendar days after notice by City, and it continues such performance diligently until completed.

## **11.2 RIGHT TO TERMINATE UPON DEFAULT**

Upon an "Event of Default" by Contractor, the City may suspend, amend, or terminate this Agreement.

Prior to suspending, amending, or terminating this Agreement granted by the City Council, the City shall provide the Contractor with written notice of the proposed action and the reasons for it. The notice shall state that prior to the suspension, amendment or revocation, the Contractor is entitled to a hearing before the City if the Contractor requests such a hearing in writing and the request is received by the City not more than ten (10) days after notice of the proposed action has been mailed to the Contractor.

If the City does not receive a written request for a hearing within the time period prescribed above, the Contractor is deemed to have waived the right to a hearing and the City may immediately suspend, amend, or terminate this Agreement on the terms specified in the notice.

In the event of a serious violation, as determined by the Department, or in the event of repeated violations of this Agreement, this Agreement shall be terminated by the Board.

## **11.3 SUSPENSION OR REVOCATION – EQUIPMENT USE BY CITY**

In the event of suspension or revocation of this Agreement (providing said suspension or revocation is for cause and not by mutual consent or by reason of City's failure to perform), the City shall have the right forthwith to take possession of all trucks and other equipment of the Contractor for the purpose of Collecting and Disposing of the Solid Waste and performing all other duties which the Contractor is obligated to perform. The City shall have the right to retain possession of such trucks and equipment until other suitable trucks and equipment can be purchased or otherwise acquired by the City for such purpose. The City shall pay the Contractor a reasonable rental for the use of such trucks and equipment. Should the City exercise its right to take temporary possession of

Contractor's trucks and equipment used in providing service under this Agreement, City shall recognize Contractor's obligations to provide service in accordance with other agreements and shall cooperate with Contractor in its efforts to provide such other service using the Contractor's trucks and equipment in the City's temporary possession, which City shall use its best efforts to locate replacement within six (6) months following the suspension or revocation of this Agreement.

#### **11.4 FRANCHISE REVOCATION – EMERGENCY ACTIONS**

Notwithstanding provisions of this Agreement to the contrary, the City may temporarily suspend this Agreement, without prior notice and a hearing, whenever an emergency exists which poses an immediate threat to the public health, safety, or welfare. In such a case, the City shall attempt to notify the Contractor at least twenty-four (24) hours prior to the proposed action. A hearing shall be held within seventy-two (72) hours of the action taken to suspend the franchise.

#### **11.5 LABOR DISPUTE – CITY ASSUMPTION OF DUTIES – AUTHORIZED**

In the event the refuse Collection of Contractor is interrupted by a labor dispute and scheduled Collections are discontinued for more than seventy-two (72) hours, the City shall have the right to forthwith take temporary possession of all facilities and equipment of the Contractor for the purpose of continuing the service which the Contractor has agreed to provide in order to preserve and protect the public health and safety. The City shall have the right to retain possession of such facilities and equipment and to render the required service, until the Contractor can demonstrate to the satisfaction of the City that required services can be resumed by the Contractor; provided, however, that such temporary assumption of the Contractor's obligations under this Agreement shall not be continued by the City for more than one hundred twenty (120) days from the date such operations were undertaken. Should the Contractor fail to demonstrate to the satisfaction of the City that required services can be resumed by the Contractor prior to the expiration of the aforementioned one hundred twenty (120) days, the rights and privileges granted to the Contractor may be forfeited and the franchise granted herein may be terminated.

Should the City exercise its right to take temporary possession of Contractor's facilities and equipment used in providing service under this Agreement, City shall recognize Contractor's obligations to provide service in accordance with other agreements and shall cooperate with Contractor in its efforts to provide such other service using the Contractor's facilities and equipment in the City's temporary possession. City shall use its best efforts to locate replacement equipment within six (6) months following the City's taking temporary possession.

#### **11.6 LABOR DISPUTE – CITY ASSUMPTION OF DUTIES – USE OF REVENUE**

During any period in which the City has temporarily assumed the obligations of the Contractor under this Agreement, the City shall be entitled to the Gross Revenues attributable to operations during such period and shall pay therefrom only those costs and expenses, including a reasonable rental for use of trucks and equipment, applicable or allocable to the period. The excess, if any, of revenue over applicable or allocable costs and expenses during such period shall be deposited

in the treasury of the City to the credit of the General Fund. Final adjustment and allocation of Gross Revenues, costs and expenses to the period during which the City temporarily assumed the obligations of the Contractor shall be determined by an audit, by a certified public accountant or licensed public accountant, and prepared in report form with that person's unqualified opinion annexed thereto.

## **11.7 LABOR DISPUTE – CITY ASSUMPTION OF DUTIES – EMPLOYEES**

Except as set forth in Section 12.10.4, employees of the Contractor may be employed (providing employee consents) by the City during any period in which the City temporarily assumes the obligations of the Contractor under this Agreement; provided, however, that the rate of compensation to be paid the employees, or any other employees, shall be the rate or rates in effect at the time the Contractor's service was interrupted by the labor dispute, and the terms and conditions of employment shall be the same as provided by the Contractor.

## **11.8 COORDINATION BETWEEN CITY AND COUNTY TEMPORARY POSSESSION OPTIONS**

The City acknowledges and agrees that the County Franchise Agreement grants to the County identical options with regard to the Contractor's facilities, equipment and employees as granted to the City in Sections 5.13, 11.3, 11.5 and 11.7 (the "Temporary Possession Options"). The City agrees that, in the event that either or both the City and the County elect to exercise their respective Temporary Possession Options for any of Contractor's facilities, equipment and/or employees, the City and the County shall then be required to meet and confer in good faith to reach a separate written agreement between them as to which of them shall be permitted to exercise their respective Temporary Possession Options. The City further agrees that the Contractor shall have no obligation to permit either the City or the County to use Contractor's facilities, equipment and/or employees pursuant to the Temporary Possession Options unless and until the City and the County jointly instruct the Contractor in writing as to which party (i.e., the City or the County) shall be permitted to exercise its Temporary Possession Options and thus be the party to use Contractor's facilities, equipment and/or employees. Upon the written instruction to the Contractor as to which of the City and the County shall be permitted to exercise its Temporary Possession Options and use Contractor's facilities, equipment and/or employees, the Contractor's obligations to permit the non-exercising party (i.e., the City or the County, as applicable) to use the Contractor's facilities, equipment and employees pursuant to the Temporary Possession Options hereunder or pursuant to the County Franchise Agreement, as applicable, shall be deemed satisfied and the Contractor shall have no further obligation to the County or the City, as applicable, with regard to the Temporary Possession Options.

## **11.9 LIQUIDATED DAMAGES**

### **11.9.1 General**

The City and Contractor find that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall

be incurred by City as a result of a breach by Contractor of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of this Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that exclusive services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

### **11.9.2 Service Performance Standards; Liquidated Damages for Failure to Meet Standards**

The Parties further acknowledge that consistent, reliable Solid Waste and Recyclable Materials Collection service is of utmost importance to City and that City has considered and relied on Contractor's representations as to its quality of service commitment in awarding this Agreement to it. The City and Contractor recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The City and Contractor further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and its residents and businesses will suffer damages, and that it is, and will be, impractical and extremely difficult to ascertain and determine the exact amount of damages which City will suffer. Therefore, without prejudice to City's right to treat such non-performance as an event of default under this Section, the City and Contractor agree that the Liquidated Damages amounts established in Exhibit G of this Agreement and the following Liquidated Damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective Date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical.

Contractor agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth in the Schedule of Liquidated Damages, Exhibit G.

City may determine the occurrence of events giving rise to Liquidated Damages through the observation of its own employees or representative or investigation of complaints by Customers, Owners, and Generators.

Liquidated Damages will only be assessed after Contractor has been given the opportunity but failed to rectify the damages as described in this Agreement. City shall give Contractor notice of its intention to assess Liquidated Damages. The notice will include a brief description of the incident(s) and non-performance. The City may review (and make copies at its own expense) all information in the possession of Contractor

relating to incident(s) and non-performance. City may, within 10 calendar days after issuing the notice, request a meeting with Contractor. City may present evidence of non-performance in writing and through testimony of its employees and others relevant to the incident(s) and non-performance. City will provide Contractor with a written explanation of its determination on each incident(s) and non-performance prior to authorizing the assessment of Liquidated Damages. The decision of City shall be final, and Contractor shall not be subject to, or required to exhaust, any further administrative remedies.

### **11.9.3 Amount**

City may assess Liquidated Damages for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement in the amounts specified in Exhibit G subject to annual adjustment described below. If the amount of Liquidated Damages for any three-month period exceeds the thresholds established in Section 6.10, the City shall have the right to request replacement of the Contractor's facility manager as described in Section 6.10.

The amount of Liquidated Damages specified in Exhibit G shall be adjusted annually on the first day of the Rate Period. The adjustment shall be rounded to the nearest cent. Liquidated Damage amounts shall be adjusted to reflect seventy-five percent (75%) of the changes in the All Urban Consumers Index (CPI-U), all items, for the San Francisco-Oakland-Hayward, CA, Base Period 1982 - 1984 = 100, not seasonally adjusted, compiled and published by the U. S. Department of Labor, Bureau of Labor Statistics or its successor agency, using the method following:

Adjusted Liquidated Damage Amount = Then-current Liquidated Damage Amount x most current CPI-U/previous 12-month CPI-U

For example:

Current Liquidated Damage Amount= \$150.00

Most recently published index (Aug 2021) = 311.167

Index published twelve months prior to most recently published index (Aug 2020)  
= 300.182

Adjusted Liquidated Damage Amount= \$150.00 x (311.167/300.182) = \$155.49

If the CPI-U is discontinued or revised during the Term by the United States Department of Labor, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised.

### **11.9.4 Timing of Payment**

Contractor shall pay any Liquidated Damages assessed by City within ten (10) calendar days of the date the Liquidated Damages are assessed. If they are not paid within the 10-

day period, and providing Contractor has exhausted its right to administrative review in accordance with this Section, City may proceed against the performance bond required by this Agreement, request replacement of Contractor's general manager, order the termination of the exclusive Collection rights granted by this Agreement, or all of the above.

## **ARTICLE 12: OTHER AGREEMENTS OF THE PARTIES**

### **12.1 RELATIONSHIP OF PARTIES**

It is understood and agreed that nothing herein contained is intended or should be construed as in any way establishing a partnership relationship between the Parties hereto, or as constituting the Contractor as the agent, representative, or employee of the City for any purpose whatsoever. The Contractor is to be and shall remain an independent contractor with respect to all services performed under this Agreement.

### **12.2 COMPLIANCE WITH CITY CODE**

Contractor shall comply with those provisions of the City Code which are applicable, and with any and all amendments to such applicable provisions during the term of this Agreement.

### **12.3 GOVERNING LAW**

The laws of the State of California and Code and Ordinances of the City shall govern the validity, construction, and effect of this Agreement. The venue for any claims, litigation, or causes of action between Parties shall be in the Superior Court of the State of California for Mendocino County.

### **12.4 BINDING ON SUCCESSORS**

This Agreement shall inure to the benefit of and shall be binding upon the Contractor, the City, and their respective successors and assigns, subject, however, to the limitations contained in this Agreement.

### **12.5 REPRESENTATIONS**

The persons signing this Agreement on behalf of the City warrant that they have been authorized to do so by the City Council. The Contractor shall provide to the City written authorization by the appropriate officer that the Contractor is authorized by the governing body of the corporation to enter into this Agreement and be bound by its terms and obligations. In addition, the City represents, warrants to Contractor and covenants and agrees as follows:

(1) The City validly exists as a political subdivision under the laws of the State of California. The City has full power and authority to enter into this Agreement and to fully perform all of its duties and obligations hereunder. The Fort Bragg City Council has duly authorized the execution and delivery of this Agreement and the City's performance



of all its duties and obligations contained herein, and this Agreement constitutes a valid and legally binding obligation of the City, enforceable in accordance with its terms. Notwithstanding the foregoing, the City may take any further actions it deems necessary to approve, adopt, enter, and perform this Agreement.

(2) The City is not aware of any additional consents of approvals required to enter or perform this Agreement by the City. Furthermore, the City is not aware of any statute, rule, regulation, ordinance, agreement, instrument, judgment, decree, or order to which the City is a party or by which the City or its assets is bound that conflicts with entering into or performance of this Agreement.

(3) To the best of the City's knowledge and belief, there is no action, suit, judgment, consent order or investigation or proceeding pending or threatened, relating to this Agreement. The City will notify the Contractor promptly if any such action, suit, investigation, or proceeding is instituted or threatened. The City will notify the Contractor promptly upon receipt of any complaint or notice of non-compliance with all applicable federal, state, and local laws, rules, regulations, orders, ordinances, judgments, permits, licenses, approvals, and variances.

## **12.6 EMERGENCIES, DISASTERS – MAJOR SERVICE DISRUPTION**

This section applies in the event of an emergency or disaster causes a major disruption to the Contractor's ability to maintain standard levels of service in the performance of its obligations under this Agreement. Such events may include, but are not limited to, a severe storm, high wind, earthquake, flood, hazardous material release, transportation mishap, loss of any utility service, fire, terrorist activity or any combination of the above. In such an event:

(1) The City shall notify the Contractor of the emergency of disaster, describing the relevant circumstances arising from the event, and request emergency and priority services from the Contractor.

(2) Upon such notice from the City, the Contractor shall consult and work with the City to develop strategies and tactics to manage the emergency and provide services to restore the City to normal operating conditions as soon as reasonably possible. Certain disaster scenarios will be modeled and planned for in advance, to the extent possible. The Contractor shall exercise its commercially reasonable efforts in providing the emergency and priority services as requested by the City in as timely a manner as possible.

(3) The Contractor shall use commercially reasonable efforts to make the City's customers its first priority, and its efforts to provide City's customers with emergency and priority services shall, to the extent commercially reasonable, not be diminished as a result of the Contractor providing service to other customers.

(4) If the Contractor is unable to respond in the time requested by the City, the Contractor shall respond as soon as practical. The Contractor shall immediately assist the City to the extent reasonable in providing services, which may include offering the

City substitutions, provided that the Contractor obtains prior approval from the City for the substitutions.

(5) The City shall compensate the Contractor for performing emergency and priority services under this section in a manner consistent with the compensation provisions of this Agreement, and any additional collections performed by Contractor shall be paid at the Special Collection Rate or as otherwise specified in the Contingency Plan.

The City and Contractor shall work in good faith to develop a mutually acceptable Contingency Plan addressing the above.

## **12.7 NOTICE PROCEDURES**

All notices, demands, requests, proposals, approvals, consents, and other communications which this Agreement requires, authorizes, or contemplates shall be in writing and shall either be personally delivered to a representative of the Parties at the address below or deposited in the United States mail, first class postage prepaid, addressed as follows:

If to City:

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

If to Contractor:

Redwood Waste Solutions, Inc.  
P.O. Box 60  
3515 Taylor Drive  
Ukiah, CA 95482  
Attention: District Manager

With a copy to:

Waste Connections US Holdings, Inc.  
3 Waterway Square Place, Suite 110  
The Woodlands, TX 77380  
Attention: Legal Department

The address to which communications may be delivered may be changed from time to time by a notice given in accordance with this Section.

All notices required or given pursuant to this title shall be deemed properly served on the day it is personally delivered or three business days after deposited, postage prepaid, in the United States mail, addressed to the address provided to the City.

## **12.8 APPEALS**

Any Person who is dissatisfied with any decision or ruling of the City on or with the directives or decisions of the City, may appeal to the City Council, which shall have the power to hear and determine such appeal. Said appeal shall be taken by filing with the City Clerk a Notice of Appeal within ten (10) days after the date of such decision or ruling. The notice shall be signed by the appellant or his/her attorney and shall be sufficient if it states in substance that the appellant appeals from a specified decision or ruling. A Notice of Appeal shall be liberally construed in favor of its sufficiency. No later than thirty (30) days after receipt of said Notice of Appeal, the City Council shall set the matter for public hearing and shall cause public notice of such public hearing to be published once in a newspaper of general circulation in the City at least ten (10) days before the date of said hearing stating the time and place of hearing, the decision or ruling appealed from and the name of the appellant or appellants. At said hearing, the appellant shall present a statement of the grounds for appeal and evidence in support of the appeal in such form as the City may require. Appeals filed pursuant to this section shall be accompanied by a fee in the amount set by resolution of the City Council.

## **12.9 COURT COSTS AND ATTORNEY FEES**

In the event legal action is instituted by either Party to enforce this Agreement, the prevailing Party shall be entitled to reasonable attorney fees and actual costs in connection with such action.

## **ARTICLE 13: MISCELLANEOUS AGREEMENTS**

### **13.1 PRIVACY**

Contractor shall use its best efforts to observe and protect the rights of privacy of Customers. Information identifying individual Customers, or the composition of a particular Customer's Solid Waste, Recyclable Materials, or Green Waste materials shall not be revealed to any Person, private agency or company, unless upon request of federal, state, or local law enforcement personnel, the authority of a court of law, a statute, or upon valid authorization of the Customer. This provision shall not be construed to preclude Contractor from preparing, participating in, or assisting in the preparation of waste characterization studies or Waste Stream analysis which may be reasonably necessary to comply with AB 939 or any other reports requested by the City under this Agreement or required or requested by any governmental agency.

Contractor shall not market or distribute outside the normal course of its business, mailing lists with the names and addresses of Customers.

### **13.2 PUBLIC RECORDS ACT**

The Contractor understands that any records (including but not limited to proposal submittals, this Agreement, and any other agreement materials) it submits to the City, or that are used by the City even if the Contractor possesses the records, are public records under California State law. Public records must be promptly disclosed upon request

unless a statute exempts them from disclosure. The Contractor also understands that even if part of a record is exempt from disclosure, the rest of that record generally must be disclosed.

The contractor must separate and clearly mark as “proprietary” information all records related to this Agreement or the performance of this Agreement that the Contractor believes are exempt from disclosure. The Contractor is to be familiar with potentially applicable public disclosure exemptions and the limits of those exemptions and will mark as “proprietary” only information that the Contractor believes legitimately fits within an exemption and will state the statutory exception upon which it is relying.

The City will provide the Contractor notice of a public records request relating to the Contractor and/or this Agreement. It is the Contractor’s responsibility to make a determination if any responsive records are exempt from disclosure. If the Contractor desires to enjoin disclosure, the Contractor must promptly initiate litigation, specifically naming the requesting party as a real party in interest. It is the Contractor’s discretionary decision whether to file the lawsuit. If the Contractor does not timely obtain and serve an injunction, the Contractor is deemed to have authorized releasing the record.

Notwithstanding the above, the Contractor must not take any action that would affect (a) the City’s ability to use goods and services provided under this Agreement or (b) the Contractor’s obligations under this Agreement.

The Contractor will fully cooperate with the City in identifying and assembling records in case of any public records request.

### **13.3 ENTIRE AGREEMENT**

This Agreement, including the exhibits, represents the full and entire Agreement between the City and Contractor with respect to the matters covered herein.

### **13.4 FORCE MAJEURE**

Neither Party shall be in default under this Agreement in the event, and for so long as, it is impossible or extremely impracticable for it to perform its obligations due to any of the following reasons: riots, wars, sabotage, civil disturbances, insurrection, explosion, natural disasters such as floods, earthquakes, landslides, fires, and volcanic eruptions, epidemics and pandemics (and restrictions imposed by governmental authorities in response thereto), strikes, lockouts and other labor disturbances or other catastrophic events which are beyond the reasonable control of Contractor. Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by Contractor’s employees or directed at Contractor is not an excuse from performance and Contractor shall be obligated to continue to Collect and Dispose of Solid Waste, notwithstanding the occurrence of any or all of such events; provided, however, that labor unrest or job action directed at a third party over whom Contractor has no control, shall excuse performance.

A Party claiming excuse under this Section must (i) have taken reasonable precautions to avoid being affected by the cause, and (ii) notify the other Party in writing within five (5) days after the occurrence of the event specifying the nature of the event, the expected length of time that the Party expects to be prevented from performing, and the steps which the Party intends to take to restore its ability to perform.

### **13.5 INDEPENDENT CONTRACTOR**

Contractor is an independent contractor and not an officer, agent, servant, or employee of City. Contractor is solely responsible for the acts and omissions of its officers, agents, employees, Contractors and Sub Contractors, if any. Nothing in this Agreement shall be construed as creating a partnership or joint venture between City and Contractor. Neither Contractor nor its officers, employees, agents, or Sub Contractors shall obtain any rights to retirement or other benefits which accrue to City employees.

### **13.6 ROADWAY DAMAGE**

Contractor shall be responsible for any extraordinary damage (not including normal wear) caused by Contractor's negligence or willful misconduct to City's driving surfaces, whether or not paved. Except in the case of Contractor's negligence or willful misconduct, Contractor shall not be liable for any damages to City-owned pavement, curbing, or other driving surface resulting from the weight of its vehicles and equipment. This Agreement does not purport to affect, in any way, Contractor's civil liability to any third parties.

### **13.7 PROPERTY DAMAGE**

Any physical damage caused by the negligent or willful acts or omissions of employees, Contractors or Sub Contractors of the Contractor to private or public property shall be repaired or replaced by Contractor, at Contractor's sole expense.

### **13.8 INTERPRETATION**

This Agreement shall be interpreted as a whole to carry out its purposes. This Agreement is an integrated document and contains all the promises of the Parties; no earlier oral understandings modify its provisions.

In the event of conflict between contract documents and applicable laws, codes, ordinances, or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this Agreement to afford the City the maximum benefits.

No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of both Parties to this Agreement.

### **13.9 AMENDMENT**

No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of both Parties to this Agreement.

### **13.10 SEVERABILITY**

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Agreement or any part thereof is, for any reason, held to be illegal, such decision shall not affect the validity of the remaining portions of this Agreement or any part thereof.

### **13.11 INCORPORATION OF CONTRACTOR'S PROPOSAL**

The Contractor's proposal, dated August 3, 2021, submitted in response to the City's Request for Proposals, is fully incorporated by this reference, including but not limited to collection vehicles, containers, performance systems and approach, outreach and assistance staffing and approach, customer service approach and response, and other commitments made in the Contractor's proposal and all associated clarifications and supplemental proposal materials or attachments. In the case of conflict between the Contractor's proposal and this Agreement, the provisions of this Agreement shall prevail.

### **13.12 EXHIBITS**

Exhibits A through H are attached hereto and incorporated herein by reference.

[SIGNATURES OF THE PARTIES ON NEXT PAGE]

“CITY”

CITY OF FORT BRAGG

“CONTRACTOR”

REDWOOD WASTE SOLUTIONS, INC.

\_\_\_\_\_  
Bernie Norvell  
Mayor

\_\_\_\_\_  
Dan Schooler

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

THE FOREGOING AGREEMENT HAS  
BEEN REVIEWED AND APPROVAL IS  
RECOMMENDED:

\_\_\_\_\_  
Tabatha Miller  
City Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
John Shea  
Secretary

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
Jurisdiction Business License #

\_\_\_\_\_  
Keith F. Collins  
City Attorney

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
June Lemos, CMC  
City Clerk

\_\_\_\_\_  
Date

Resolution \_\_\_\_\_ Adopted by  
Fort Bragg City Council on \_\_\_\_\_

# Exhibit A – Single Family Services

## A.1 Source Separated Recyclable Materials Collection (Blue Container Collection)

Contractor shall Collect Source Separated Recyclable Materials placed in Contractor-provided Blue Carts (or otherwise placed in accordance with this Section) one (1) time per week from Single-Family Customers and shall Transport all Source Separated Recyclable Materials to the Designated or Approved Source Separated Recyclable Materials Processing Facility for Processing.

**Containers:** Carts

**Container Sizes:** 96-gallon Blue Carts

Contractor shall provide Single-Family Customers with one (1) Blue Container.

**Container Type:** Single compartment

**Service Frequency:** One (1) time per week on the same day as SSGCOW and Gray Container Waste Collection services.

**Service Location:** Curbside

**Acceptable Materials:** Source Separated Recyclable Materials

**Prohibited Materials:** Materials designated for the Gray Container, materials designated as acceptable SSGCOW, Excluded Waste

## A.2 SSGCOW Collection (Green Container Collection)

Contractor shall Collect SSGCOW placed in Contractor-provided Green Carts (or otherwise placed in accordance with this Section) one (1) time per week from Single-Family Customers and Transport all SSGCOW to the Approved Organic Waste Processing Facility for Processing.

**Containers:** Carts

**Container Sizes:** 96-gallon Green Carts

Contractor shall provide Single-Family Customers with one (1) Green Container.

**Container Type:** Single compartment

**Service Frequency:** One (1) time per week on the same day as Source Separated Recyclable Materials and Gray Container Waste Collection service.

**Service Location:** Curbside

**Acceptable Materials:** SSGCOW (including Yard Trimmings and Food Waste)

**Prohibited Materials:** Materials designated as acceptable Source Separated Recyclable Materials, materials designated for the Gray Container, Excluded Waste



**Other Requirements:** Size requirements: SSGCOW placed for Collection may not exceed six (6) inches in diameter and three (3) feet in length and must fit in the provided Cart.

### A.3 Gray Container Waste Collection (Gray Container Collection)

Contractor shall Collect Gray Container Waste placed in Contractor-provided Gray Carts one (1) time per week from Single-Family Customers and Transport all Gray Container Waste to the Approved Disposal Facility for Disposal.

**Containers:** Carts

**Container Sizes:** 20-, 32-, 64-, and 96-gallons Gray Carts (or comparable sizes approved by the City) as requested by Customer

Standard Container is a 64-gallon Cart, unless Customer requests an alternative size.

Contractor shall provide Single-Family Customers with one (1) Gray Container.

**Container Type:** Single compartment

**Service Frequency:** One (1) time per week on the same day as Source Separated Recyclable Materials and SSGCOW collection service or one (1) time every-other-week (EOW) on the same day as Source Separated Recyclable Materials and SSGCOW collection service.

**Service Location:** Curbside

**Acceptable Materials:** Gray Container Waste

**Prohibited Materials:** Materials designated as acceptable Source Separated Recyclable Materials, materials designated for acceptable SSGCOW, Excluded Waste

**Other Requirements:** None

## A.4 Residential Rates

<b>Service Rates Single Family Residential</b>		
<b>Effective 07/01/2022</b>		
<b>Weekly Single-Family Residential Service</b>	<b>Rate</b>	<b>Billing Frequency</b>
20-gal	\$22.01	per month
32-gal	\$33.11	per month
64-gal	\$66.22	per month
96-gal	\$99.36	per month
<b>Additional Carts</b>		
20-gal	\$16.51	per month
32-gal	\$24.83	per month
64-gal	\$49.67	per month
96-gal	\$74.52	per month
<b>Animal Resistant Cart Service</b>		
32-gal ( <b>Animal resistant Carts:</b> 32-gal trash, 32-gal recycle & 32-gal organics)	Call for Quote (posted service size rate plus additional cost of Animal Resistant cart(s) requested)	per month
64-gal ( <b>Animal resistant Carts:</b> 64-gal trash, 64-gal recycle & 64-gal organics)	Call for Quote (posted service size rate plus additional cost of Animal Resistant cart(s) requested)	per month
96-gal ( <b>Animal resistant Carts:</b> 96-gal trash, 96-gal recycle & 96-gal organics)	Call for Quote (posted service size rate plus additional cost of Animal Resistant cart(s) requested)	per month
<b>Additional Services/Charges</b>		
Additional recycling cart (after first two)	\$15.00	per month
Additional Organics Cart (after first two)	\$15.00	per month
Cart delivery	\$45.00	per occurrence
Cart removal	\$45.00	per occurrence
Cart exchange	\$55.00	per occurrence
<b>Residential Cart Replacement Fee</b>		
20-gal (after one per year)	\$100.00	per occurrence
32-gal (after one per year)	\$105.00	per occurrence
64-gal (after one per year)	\$110.00	per occurrence
96-gal (after one per year)	\$115.00	per occurrence
Contamination Fee	\$25.00	per occurrence
Bulky Item (First two no charge)	\$45.00	per occurrence
Driving/Backyard Services - less than 100 feet	\$15.00	per occurrence
Extra Residential Pickup	\$12.00	per occurrence
Extra Bag on Service Day - up to 20lbs	\$8.00	per occurrence
Overflowing Cart Fee	\$8.00	per occurrence
Return Check Fee	\$25.00	per occurrence
Late Fee/Finance Charge	1.50%	per month

# Exhibit B – Multi-Family and Commercial Services

## B.1 Source Separated Recyclable Materials Collection (Blue Container Collection)

A. Contractor shall Collect Source Separated Recyclable Materials placed in Contractor-provided Blue Containers from Multi-Family and Commercial Customers and shall Transport all Source Separated Recyclable Materials to the Approved Source Separated Recyclable Materials Processing Facility for Processing. Contractor shall provide service at the frequency requested by Customers, up to the maximum service frequency. Source Separated Recyclable Materials Collection services shall be provided by Contractor to Multi-Family and Commercial Customers that enroll for Gray Container Collection service.

**Containers:** Carts, Bins, Drop Boxes, Compactors

**Container Sizes:** Sizes described in Rate Sheets included in Section B.4.  
Contractor shall provide Multi-Family and Commercial Premises with Container(s) consistent with the Customer's Service Level.

**Container Type:** Single compartment

**Service Frequency:** For Carts, one (1) time per week for each Customer. If the Customer requires more frequent service, Contractor shall provide the Customer with a larger container that only requires service one (1) time per week. The Contractor shall provide the specific Collection frequency within this range as requested by Customer and as shown on Rate Sheets in Section B.4.

**Service Location:** Curbside or other Customer-selected service location (including but not limited to an on-site enclosure) at the Multi-Family or Commercial Premises; Contractor shall charge City -approved Rates if the service location is greater than ten (10) feet from the nearest point that a Collection vehicle can access from a paved surface.

Contractor shall provide on-Premises service at no additional charge for Multi-Family Customers with two (2) or more dwelling units.

**Acceptable Materials:** Source Separated Recyclable Materials

**Prohibited Materials:** Materials designated for the Gray Container, materials designated as acceptable SSGCOW, Excluded Waste

**Other Requirements:** New service: Contractor shall make contact with each and every Multi-Family and Commercial Customer in advance of the commencement of new Recyclable Material Collection Service to determine appropriate Container sizes and service frequency. New service shall be initiated for all

Customers unless said Customers received de minimis waivers or physical space waivers.

**Service Level Assessment:** If Contractor observes a situation in which a Service Level adjustment may be warranted for a Customer's needs, compliance with SB 1383 Regulations, or to manage environmental impacts associated with Collection efficiency, Contractor may recommend a Service Level adjustment for the Customer to the City. The City will review the Customer's Service Level and engage with the Customer to make a final determination of appropriate Service Levels. If Service Level changes are warranted, Contractor shall adjust Service Levels within fourteen (14) days of request.

**Container access:** Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and service Containers, and shall charge City-approved Rates for such service. A push/pull of Containers up to ten (10) feet from the enclosure/Container location to the Collection vehicle and push/pull of the Container to its original location will be provided at no additional charge to the Customer.

**Contamination:** Contractor may refuse to Collect a Blue Container that contains Prohibited Container Contaminants if Contractor complies with the contamination noticing process described in Section 5.2 of this Agreement. For Customers with repeated incidents of contamination, Contractor may assess a contamination processing fee in accordance with Section 5.2 of this Agreement.

## B.2 SSGCOW Collection (Green Container Collection)

Contractor shall Collect SSGCOW in Contractor-provided Green Containers not less than one (1) time per week from Multi-Family and Commercial Customers and shall Transport all SSGCOW to the Approved Organic Waste Processing Facility for Processing. Contractor shall provide service at the frequency requested by Customers, up to the maximum service frequency. SSGCOW Collection services shall be provided by Contractor to Multi-Family and Commercial Customers that enroll in Gray Container Collection service at no additional charge to Customer or at City-approved Rates.

**Containers:** Carts, Bins, Drop Boxes

**Container Sizes:** Sizes described in Rate Sheets included in Section B.4.  
Contractor shall provide Multi-Family and Commercial Premises with Container(s) consistent with each Customer's Service Level.

**Container Type:** Single compartment

**Service Frequency:** For Carts, one (1) time per week for each Customer. If the Customer requires more frequent service, Contractor shall provide the Customer with a larger container that only requires service one (1) time per week. The Contractor shall provide the specific Collection frequency within this range as requested by Customer and as shown on Rate Sheets in Section B.4.

**Service Location:** Curbside or other Customer-selected service location at the Multi-Family or Commercial Premises; Contractor shall charge an additional City-approved Rate if the service location is greater than ten (10) feet from the nearest point that a Collection vehicle can access from a paved surface.

Contractor shall provide on-Premises service at no additional charge for Multi-Family Customers with two (2) or more dwelling units.

**Acceptable Materials:** SSGCOW (including Yard Trimmings and Food Waste)

**Prohibited Materials:** Materials designated as acceptable Source Separated Recyclable Materials, materials designated for the Gray Container, Excluded Waste

**Other Requirements:** New Service: Contractor shall make contact with each and every Multi-Family and Commercial Customer in advance of the commencement of new SSGCOW Collection Service to determine appropriate Container sizes and service frequency. New service shall be initiated for all Customers unless said Customers received de minimis waivers or physical space waivers.

**Service Level Assessment:** If Contractor observes a situation in which a Service Level adjustment may be warranted for a Customer's needs, compliance with SB 1383 Regulations, or to manage environmental impacts associated with Collection efficiency, Contractor may recommend a Service Level adjustment for the Customer to the City. The City will review the Customer's Service Level and engage with Customer to make a final determination of appropriate Service Levels. If Service Level changes are warranted, Contractor shall adjust Service Levels within fourteen (14) days of request.

**Size requirements:** SSGCOW placed for Collection may not exceed six (6) inches in diameter and three (3) feet in length and must fit in the provided Cart or Bin.

**Container access:** Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and empty Containers, and shall charge the City -approved Rates for such service. A push/pull of Containers up to ten (10) feet from the enclosure/Container location to the Collection vehicle

and push/pull of the Container to its original location will be provided at no additional charge to the Customer.

Contamination: Contractor may refuse to Collect a Green Container that contains Prohibited Container Contaminants if Contractor complies with the contamination noticing process described in Section 5.2 of this Agreement. For Customers with repeated incidents of contamination, Contractor may assess a contamination processing fee in accordance with Section 5.2 of this Agreement.

### B.3 Gray Container Waste Collection (Gray Container Collection)

Contractor shall Collect Gray Container Waste placed in Contractor-provided Gray Containers not less than one (1) time per week from Multi-Family and Commercial Customers and Transport all Gray Container Waste to the Approved Disposal Facility for Disposal. Contractor shall provide service at the frequency requested by Customers, up to the maximum service frequency.

**Containers:** Carts, Bins, Drop Boxes, Compactors

**Container Sizes:** Sizes described in Rate Sheets included in Section B.4.

Contractor shall provide Multi-Family and Commercial Premises with Container(s) consistent with each Customer's Service Level.

**Container Type:** Single compartment

**Service Frequency:** For Carts, one (1) time per week for each Customer. If the Customer requires more frequent service, Contractor shall provide the Customer with a larger container that only requires service one (1) time per week. The Contractor shall provide the specific Collection frequency within this range as requested by Customer and as shown on Rate Sheets in Section B.4.

**Service Location:** Curbside or other Customer-selected service location at the Multi-Family or Commercial Premises; Contractor shall charge additional City-approved Rates if the service location is greater than ten (10) feet from the nearest point that a Collection vehicle can access from a paved surface.

Contractor shall provide on-Premises service at no additional charge for Multi-Family Customers with two (2) or more dwelling units.

**Acceptable Materials:** Gray Container Waste

**Prohibited Materials:** Materials designated as acceptable Source Separated Recyclable Materials, materials designated as acceptable SSGCOW, Excluded Waste

**Additional Service:** Special pick-ups: Special pick-ups requested by a Customer, on days other than their regularly scheduled Collection day, shall be provided by Contractor at a City-approved Rate.

**Other Requirements:** New service: Contractor shall make contact with each and every Multi-Family and Commercial Customer in advance of the commencement of new Collection Service to determine appropriate Container sizes and service frequency. New service shall be initiated for all Customers.

Service Level Assessment: If Contractor observes a situation in which a Service Level adjustment may be warranted for a Customer's needs, compliance with SB 1383 Regulations, or to manage environmental impacts associated with Collection efficiency, Contractor may recommend a Service Level adjustment for the Customer to the City. The City will review the Customer's Service Level and engage with Customer to make a final determination of appropriate Service Levels. If Service Level changes are warranted, Contractor shall adjust Service Levels within fourteen (14) days of request.

Container access: Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and service Containers, and shall charge the City -approved Rates for such service. A push/pull of Containers up to ten (10) feet from the enclosure/Container location to the Collection vehicle and push/pull of the Container to its original location will be provided at no additional charge to the Customer.

## B.4 Multi-Family Dwelling, Commercial and Industrial Rates

Service Rates Multi-family and Commercial							
Effective 07/01/2022							
Collection Frequency							
Service	1/week	2/week	3/week	4/week	5/week	Flat Cost	Billing Frequency
<b>Multi-Family Dwelling and Commercial Trash (Includes 96-gal Recycling and 96-gal Organics)</b>							
32-Gallon Cart	\$39.99						per month
64-Gallon Cart	\$79.96						per month
96-Gallon Cart	\$119.95						per month
1 CY Bin	\$240.78	\$343.06	\$456.69				per month
1.5 CY Bin	\$322.90	\$507.96	\$666.03				per month
2 CY Bin	\$416.68	\$679.08	\$882.14	\$1,144.37	\$1,264.10		per month
3 CY Bin	\$488.97	\$868.85	\$1,248.50	\$1,628.32	\$2,008.13		per month
4 CY Bin	\$761.88	\$1,367.78	\$1,746.70	\$2,352.14	\$2,957.91		per month
2 CY Compactor	\$678.17	\$1,171.41					per month
3 CY Compactor	\$739.41	\$1,233.50					per month
4 CY Compactor	\$874.20	\$1,659.80					per month
<b>Multi-Family Dwelling and Commercial Recycling Only</b>							
96-Gallon Cart	\$59.97						per month
1 CY Bin	\$120.39	\$171.53	\$228.34				per month
1.5 CY Bin	\$161.45	\$253.98	\$333.02				per month
2 CY Bin	\$208.34	\$339.54	\$441.07	\$572.18	\$632.05		per month
3 CY Bin	\$244.48	\$434.43	\$624.25	\$814.16	\$1,004.07		per month
4 CY Bin	\$380.94	\$683.89	\$873.35	\$1,176.07	\$1,478.95		per month
2 CY Compactor	\$339.90	\$585.71					per month
3 CY Compactor	\$369.71	\$616.75					per month
4 CY Compactor	\$437.10	\$829.90					per month
<b>Multi-Family Dwelling and Commercial Organics Only</b>							
96-Gallon Cart	\$89.96						per month
1 CY Bin	\$180.59	\$257.30	\$342.52				per month
1.5 CY Bin	\$242.18	\$380.97	\$499.52				per month
2 CY Bin	\$312.51	\$509.31	\$661.61	\$858.27	\$948.07		per month
3 CY Bin	\$366.73	\$651.64	\$936.37	\$1,221.24	\$1,506.10		per month
4 CY Bin	\$571.41	\$1,025.84	\$1,310.03	\$1,764.10	\$2,218.43		per month
<b>Temporary Services</b>							
Special Pick-up up to 3-cubic yards						\$150.00	per occurrence
Additional Standby and Loading Time						\$55.00	per hour
<b>Temporary Bins</b>							
3 Cubic Yard Temporary Bin Delivery, Removal, and up to 7 days rental						\$195.00	per occurrence
3 Cubic Yard Temporary Bin - each additional pick up						\$95.00	per occurrence
4 Cubic Yard Temporary Bin Delivery, Removal, and up to 7 days rental						\$275.00	per occurrence
4 Cubic Yard Temporary Bin - each additional pick up						\$145.00	per occurrence



## B.4 Multi-Family Dwelling, Commercial and Industrial Rates (continued)

Service Rates Multi-family and Commercial							
Effective 07/01/2022							
Service	Collection Frequency					Flat Cost	Billing Frequency
	1/week	2/week	3/week	4/week	5/week		
<b>Other Services</b>							
Locking Bin, Lock on Gate						\$12.50	per occurrence
Trip Charge/Dry Run						\$125.00	per occurrence
Delivery Charge						\$85.00	per occurrence
Delivery Charge Commercial Carts						\$45.00	per occurrence
<b>Roll-Off Containers</b>							
10 CY container per pull						\$425.00	per pull + disposal & FF
20 CY container per pull						\$425.00	per pull + disposal & FF
30 CY container per pull						\$425.00	per pull + disposal & FF
40 CY container per pull						\$425.00	per pull + disposal & FF
<b>Additional Services</b>							
Cart Contamination Fee (First time warning, no charge)						\$30.00	per occurrence
Bin Contamination Fee (First time warning, no charge)						\$125.00	per occurrence
Exchange - Cart. One free each year						\$65.00	per occurrence
Exchange -Bin. One free each year						\$150.00	per occurrence
Compactor Cleaning (2, 3, & 4 cy)						\$450.00	per occurrence
Container Cleaning						\$225.00	per occurrence
Overflowing Cart Fee						\$10.00	per occurrence
Overflowing Bin Fee						\$38.60	per occurrence per 1/2 yard
Locking Bar Installation with Lock/Key						\$125.00	per occurrence
Replacement Key						\$15.00	per occurrence
Pal Out Charge Container						\$95.00	per occurrence
Per Day Temp Bin Rent after 7 days						\$15.00	per occurrence
Roll off Compactor Charge per Pull (20 & 30 cy)						\$525.00	per pull + disposal & FF
Roll off Relocation						\$50.00	per occurrence
Return Check Fee						\$25.00	per occurrence
Late Fee/Finance Charge						1.5%	per month

# Exhibit C – Other Special Services

## C.1 Emergency Services Rates

EMERGENCY-RELATED DEBRIS DISPOSAL AT UKIAH TRANSFER STATION OR REDWOOD WASTE SOLUTIONS TRANSFER FACILITIES				
	<i>Tier 1</i>	<i>Tier 2</i>	<i>Tier 3</i>	<i>Tier 4</i>
Tons per Day (TPD)	1 - 100	101 - 200	201 - 500	501 +
<b>After Hours Daily Fee*</b>	\$ 1,500.00	\$ 1,000.00	\$ 750.00	\$ -
<i>* after 4:00pm weekdays and on weekends/holidays</i>				
<b>Tip Fees per Ton</b>				
<i>Concrete</i>	posted gate rate	posted gate rate	posted gate rate	posted gate rate
<i>C&amp;D mixed</i>	posted gate rate	posted gate rate	posted gate rate	posted gate rate
<i>Vegetative</i>	posted gate rate	posted gate rate	posted gate rate	posted gate rate
<i>White Goods</i>	posted gate rate	posted gate rate	posted gate rate	posted gate rate
<i>Metal/Vehicles</i>	no charge	no charge	no charge	no charge
<i>Non-Recyclable Disaster Debris</i>	posted MSW rate	posted MSW rate	posted MSW rate	posted MSW rate
Tip fees include equipment, operators, mobilization and de-mobilization of personnel and equipment, traffic control, security, fuel, disposal fees, and all on-going costs associated with disaster debris reduction, recycling and disposal. No unpermitted material or special waste (e.g. ash) accepted at transfer stations/facilities.				

EMERGENCY-RELATED ROLL OFF BINS - AFTER HOURS	
<b>After 4pm weekdays or on weekends/holidays</b>	\$120.00 per pull in addition to current debris box rates

SKID STEERS FOR EMERGENCY RELATED OPERATIONS	
<b>Daily Rental Rate (including operator)</b>	\$760.00 per day

# Exhibit D – Processing, Transfer, and Disposal Services

In the event the City does not provide the Contractor a Designated Facility, Contractor shall select and arrange for Discarded Materials to be transported to Approved Facilities for Transfer, Processing, and/or Disposal in accordance with this Exhibit. The Approved Facilities shall comply with the standards specified in this Exhibit and with all applicable State statutes, including, but not limited to, AB 901, AB 939, SB 1016, AB 341, AB 1594, AB 1826, and SB 1383, and corresponding regulations. In the event the City does not provide the Contractor a Designated Facility, if the Contractor does not own or operate one or more Approved Facilities, Contractor shall enter into an agreement with the owner or Facility operator of such Approved Facility(ies). Such agreement shall ensure compliance with all applicable standards, statutes and regulations listed above.

## D.1 General Requirements

- A. **Overview.** Contractor agrees to Transport Discarded Materials it Collects in the City to an appropriate Designated or Approved Facility(ies) for Transfer, Processing, or Disposal, as applicable for each type of Discarded Material. As of the Commencement Date of this Agreement, the Designated or Approved Facilities, which were selected by Contractor and reviewed and approved by the City, are listed in the table on the following page and in the definitions in Article 1 of this Agreement. Contractor will perform all Transfer, Processing, and Disposal services at Approved Facilities in accordance with Applicable Law, standard industry practice, and specifications and other requirements of this Agreement.
- B. **Facility Approval Process.** In the event the City does not provide the Contractor a Designated Facility, Contractor shall submit in writing to City a proposal for an Approved Facility for Transfer, Processing, and/or Disposal of Discarded Materials. In the proposal, Contractor shall include the following information:
- a. Facility's site information, including name and contact information of Operator, SWIS number, and State permit status.
  - b. Current disposal fee charged by the Facility and fee adjustment protocols.
  - c. Facility's capacity to Transport, Process and Dispose of Discarded Materials.
  - d. Assurances of the Facility's compliance with the standards specified in this Exhibit and with all applicable State statutes, including, but not limited to, AB 901, AB 939, SB 1016, AB 341, AB 1594, AB 1826, and SB 1383, and corresponding regulations.

Upon receipt of the written proposal for an Approved Facility from Contractor, City shall have fourteen (14) calendar days to review the proposal and either approve or deny the request in writing.

C. **Facility Capacity Guarantee.** In the event the City does not provide the Contractor a Designated Facility, Contractor shall guarantee sufficient capacity over the remaining Term of this Agreement to Transport, and Process all Source Separated Recyclable Materials, Yard Trimmings, Food Waste, SSGCOW, and C&D Collected under this Agreement and to Transport, and Dispose all Gray Container Waste Collected under this Agreement. Contractor shall cause the Approved Facility(ies) to recover or Process the Discarded Materials as appropriate; market the Source Separated Recyclable Materials, SSGCOW, Yard Trimmings, Food Waste, and C&D recovered from such operations; and Dispose of Residue. Contractor shall cause Approved Facility(ies) for Disposal to Dispose of Gray Container Waste. Contractor shall provide the City, upon request, with documentation demonstrating the availability of such Transport, Processing, and Disposal capacity.

D. **Equipment and Supplies.** In the event the City does not provide the Contractor a Designated Facility, Contractor shall ensure Facility operator equips and operates the Approved Facilities in a manner to fulfill Contractor's obligations under this Agreement, including achieving all applicable standards for records, inspections, investigations, Landfill Disposal reduction, Recycling, recovery, Diversion, Residue amount and content, and final product quality standards.

E. **Facility Permits.** Contractor shall ensure Facility operator keeps all existing permits and approvals necessary for use of the Approved Facility(ies), in full regulatory compliance. Contractor, or Facility operator, shall, upon request, provide copies of permits or other approvals and/or notices of violation of permits to the City.

## Designated Facilities

Material Type	Designated Facility (Processing and/or Disposal Facility)
Source Separated Recyclable Materials	<p>Designated Source Separated Recyclable Materials Processing Facility:</p> <p>Willits Solid Waste Transfer Station and Recycling Center, SWIS 23-AA-0038, Solid Waste of Willits, 350 Franklin Avenue, Willits, CA (Until December 3, 2024, which is the current expiration date of the Agreement between the City and Solid Wastes of Willits, Inc., or as otherwise extended by amendment or new agreement)</p>
SSGCOW	<p>Designated Organic Waste Processing Facility:</p> <p>Cold Creek Compost, Inc., SWIS 23-AA-0029, 6000 Potter Valley Road, Potter Valley, CA (Until December 31, 2022, which is the current expiration date of the Agreement between the City and Cold Creek Compost, Inc., or as otherwise extended by amendment or new agreement)</p>
Gray Container Waste	<p>Designated Disposal Facility:</p> <p>Willits Solid Waste Transfer Station and Recycling Center, SWIS 23-AA-0038, Solid Waste of Willits, 350 Franklin Avenue, Willits, CA ( Until December 3, 2024 which is the current expiration date of the Agreement between the City and Solid Wastes of Willits, Inc., or as otherwise extended by amendment or new agreement)</p>

F. **Contractor-Initiated Change in Facility(ies).** In the event the City does not provide the Contractor a Designated Facility, Contractor may change its selection of one or more of the Approved Facility(ies) following City's written approval, which may be conditioned on various factors including, but not limited to: the performance of the current versus proposed Facility, the permitting status of and LEA inspection records related to the proposed Facility, the distance of the Facility from the City, and any other factor that may reasonably degrade the value received by the City. If Contractor elects to use a Facility(ies) that is(are) not listed on the then-current list of Approved Facility(ies) in this Exhibit, it shall submit a written request for approval to the City fourteen (14) days prior to the desired date to use the Facility and shall obtain the City's written approval prior to use of the Facility. Contractor's compensation and Rates shall not be adjusted for a Contractor-initiated change in Facilities.

- G. Notification of Emergency Conditions.** Each Approved Facility shall notify the City of any unforeseen operational restrictions that have been imposed upon the Facility by a regulatory agency or any unforeseen equipment or operational failure that will temporarily prevent the Facility from Processing the Discarded Materials Collected under this Agreement. Contractor shall notify the City in accordance with Section 5.7.2 of the Agreement.
- H. Approved Facility Unavailable/Use of Alternative Facility.** If Contractor is unable to use a Designated or Approved Facility due to a sudden unforeseen closure of the Facility or other emergency condition(s) described in this Exhibit, Contractor may use an Alternative Facility provided that the Contractor provides verbal and written notice to the City and receives written approval from the City at least twenty-four (24) hours prior to the use of an Alternative Facility to the extent reasonably practical given the nature of the emergency or sudden closure. The Contractor's written notice shall include a description of the reasons the Designated or Approved Facility is not feasible and the period of time Contractor proposes to use the Alternative Facility. As appropriate for the type of Discarded Materials to be delivered to the Alternative Facility, the Alternative Facility shall meet the applicable Facility standards in this Agreement and shall be sent to: (i) an allowable Facility, operation, or "Organic Waste Recovery Activity" as defined in 14 CCR Section 18982(a)(49) and not subsequently used in a manner deemed to constitute Landfill Disposal pursuant to 14 CCR Section 18983.1(a); (ii) a Transfer Facility; or, (iii) a Disposal Facility. If Contractor is interested in using a Facility or activity not listed above and not specifically identified in 14 CCR Section 18983.1(b), the Contractor shall be responsible for securing the approvals from CalRecycle pursuant to 14 CCR Section 18983.2 that the Facility's Process or technology constitutes a reduction of Landfill Disposal pursuant to 14 CCR Section 18983.1(a) prior to the City's final approval of such Facility or activity.

If any Designated Facility specified in this Exhibit becomes unavailable for use by Contractor for Discarded Materials Collected in the City for a period of more than two (2) days, City may designate an Alternative Facility pursuant to Section 4.4 of this Agreement. The Parties agree that an Designated or Approved Facility shall only be deemed to be "unavailable" if one or more of the following has occurred: (i) a Force Majeure event as described in Article 13 of this Agreement has occurred; (ii) a Facility has lost one or more permits to operate; (iii) a Facility has exhibited a pattern of violation through the receipt of repeated notices of violation from one or more regulatory agencies. Further, the Parties agree that a Facility shall only be deemed to be "unavailable" if the lack of availability of the Facility is not due to Contractor's negligence, illegal activity, neglect, or willful misconduct. At City's request, Contractor shall research and propose Alternate Facility(ies) for the impacted Discarded Material(s), and shall submit a written analysis and recommendation to the City within seven (7) days concerning the cost for use of Alternative Facility(ies) and any logistical changes that would be required to utilize such Alternative Facility(ies). City and Contractor will discuss the advantages and disadvantages of use of the potential Alternative Facility(ies) and City will designate the approved Alternative Facility(ies). The decision of the City shall be final. The change in Facility shall be treated as City - directed change in scope pursuant to Section 4.4 of this Agreement.

In the event an Approved Facility becomes unavailable due to the negligence, illegal activity, neglect, or willful misconduct of Contractor, Contractor shall bear all additional costs for use of an Alternative Facility including increased Processing costs, Disposal Costs, Transportation costs, Transfer costs, and all other costs.

The table listing Approved Facilities in this Exhibit shall be modified accordingly to reflect the new City -Approved Facility(ies).

If Contractor is not the owner of the new Approved Facility, Contractor shall enter into an agreement with the Facility operator of the new Approved Facility to require compliance with the requirements of Section 5.1 of this Agreement and this Exhibit unless City waives one or more requirements.

- I. **Discarded Materials Monitoring/Waste Evaluation Requirements.** Contractor shall conduct material sampling, sorting, and waste evaluations of various material streams as further described in this Exhibit D, Section D.6 to meet or exceed SB 1383 Regulatory requirements.
- J. **Compliance with Applicable Law.** Contractor warrants throughout the Term that any Approved Facilities are respectively authorized and permitted to accept Discarded Materials in accordance with Applicable Law and are in full compliance with Applicable Law.
- K. **Records and Investigations.** Contractor shall maintain accurate records of the quantities of Discard Materials Transported to and Accepted at the Designated or Approved Facility(ies) and shall cooperate with City and any regulatory authority in any audits or investigations of such quantities.
- L. **Inspection and Investigations.** Contractor shall ensure an authorized City employee or agent shall be allowed to enter each Approved Facility during normal working hours in order to conduct inspections and investigations in order to examine Facility operations; Processing activities; contamination monitoring; material sampling and sorting activities, including inspection of end-of-line materials after sorting; and records pertaining to the Facility in order to assess compliance with this Agreement, to understand protocols and results, and conduct investigations, if needed. Contractor shall ensure City or its agent will be permitted to review or copy, or both, any paper, electronic, or other records required by City.

## D.2 Processing Standards

- A. **Recovery Required.** Contractor agrees to Transport and deliver all Source Separated Recyclable Materials, SSBCOW, and SSGCOW Collected under this Agreement to a Designated or Approved Facility for Processing as applicable for each material type.

### B. Separate Handling Requirements

- 1. Contractor shall keep Source Separated Recyclable Materials, SSBCOW, and SSGCOW separate from each other and separate from other any other material streams.

2. Pursuant to 14 CCR Section 17409.5.6(a)(1), Remnant Organic Material separated from the Gray Container Waste for recovery can be combined with Organic Waste removed from the SSGCOW for recovery once the material from the SSGCOW has gone through the Organic Waste recovery measurement protocol described in 14 CCR Sections 17409.5.4 and 17409.5.5.
3. Pursuant to 14 CCR Section 17409.5.6(b), SSBCOW, SSGCOW, and Organic Waste removed from Mixed Waste for recovery shall be:
  - a. Stored away from other activity areas in specified, clearly identifiable areas as described in the Facility Plan or Transfer/Processing Report (which are defined in 14 CCR); and,
  - b. Removed from the Facility consistent with 14 CCR Section 17410.1 and either:
    - i. Transported only to another Facility or operation for additional Processing, composting, in-vessel digestion, or other recovery as specified in this Exhibit, Section D.2.E; or,
    - ii. Used in a manner approved by local, State, and federal agencies having appropriate jurisdiction.

### **C. Source Separated Recyclable Materials Processing Standards**

Contractor shall arrange for Processing of all Source Separated Recyclable Materials at a Facility that recovers materials designated for Collection in the Blue Container and in a manner deemed not to constitute Landfill Disposal pursuant to 14 CCR Section 18983.1(a), which states that Landfill Disposal includes final deposition of Organic Waste at a Landfill or use of Organic Waste as Alternative Daily Cover (ADC) or Alternative Intermediate Cover (AIC).

### **D. SSGCOW Processing Standards**

1. In the event the City does not provide the Contractor a Designated Facility, Contractor shall arrange for Processing of all SSGCOW at a Facility that recovers Source Separated Organic Waste and in a manner deemed not to constitute Landfill Disposal pursuant to 14 CCR Section 18983.1(a) which states that Landfill Disposal includes final deposition of Organic Waste at a Landfill or use of Organic Waste as Alternative Daily Cover (ADC) or Alternative Intermediate Cover (AIC). Contractor's compliance with the ADC and AIC prohibition shall occur no later than January 1, 2020, in recognition of AB 1594, under which Yard Trimmings and green material used ADC shall not constitute diversion as of that date.
2. In the event the City does not provide the Contractor a Designated Facility, Contractor shall arrange for SSGCOW Processing at an Approved Organic Waste Processing Facility that meets one or more of the following criteria, and



such Facility or operation is capable of and permitted to accept and recover the types of Organic Wastes included in the SSGCOW:

- a. A “Compostable Material Handling Operation or Facility” as defined in 14 CCR Section 17852(a)(12); small composting facilities that are otherwise excluded from that definition; or Community Composting as defined in 14 CCR Section 18982(a)(8). The compostable materials handling operation or Facility shall, pursuant to 14 CCR Section 17867(a)(16), demonstrate that the percentage of Organic Waste in the materials sent to Disposal is:
  - i. On and after January 1, 2022, less than 20 percent (20%); and,
  - ii. On and after January 1, 2024, less than 10 percent (10%).
- b. An “In-vessel Digestion Operation or Facility” as defined in 14 CCR Section 17896.5. The in-vessel digestion facility or operation shall, pursuant to 14 CCR Section 17896.44.1, demonstrate that the percentage of Organic Waste in the materials sent to Disposal is:
  - i. On and after January 1, 2022, less than 20 percent (20%); and,
  - ii. On and after January 1, 2024, less than 10 percent (10%).
- c. A “Biomass Conversion Operation” as defined in Section 40106 of the California Public Resources Code.
- d. Soil amendment for erosion control, revegetation, slope stabilization, or landscaping at a Landfill, that is defined as a reduction in Landfill Disposal pursuant to 14 CCR Section 18983.1(b)(5).
- e. Land application of compostable materials consistent with 14 CCR Section 17852(a)(24.5) and subject to the conditions in 14 CCR Section 18983.1(b)(6).
- f. Lawful use as animal feed, as set forth in California Food and Agricultural Code Section 14901 et seq. and Title 3, Division 4, Chapter 2, Subchapter 2 commencing with 14 CCR Article 1, Section 2675.
- g. Other operations or facilities with processes that reduce short-lived climate pollutants that are approved by the State in accordance with 14 CCR Section 18983.2.

If Contractor is interested in using an operation, Facility, or activity not expressly identified above and not specifically identified in 14 CCR Section 18983.1(b) for SSGCOW Processing, Contractor shall be responsible for securing the necessary approvals from CalRecycle, pursuant to 14 CCR Section 18983.2, that the Facility’s Process or technology constitutes a reduction in Landfill Disposal pursuant to 14 CCR Section 18983.1(b)(8) prior to the City’s final approval of such operation, Facility, or activity.

- E. Disposal of Source Separated Recyclable Materials and SSGCOW Prohibited.** With the exception of Processing Residue, Source Separated Recyclable Materials, and SSGCOW collected under this Agreement may not be Disposed of in lieu of Recycling, Processing, or marketing the material, without the expressed written approval of the City.

If for reasons beyond its reasonable control, Contractor believes that it cannot avoid Disposal of the Source Separated Recyclable Materials and SSGCOW Collected in the City, then it shall prepare a written request for City approval to Dispose of such material. Such request shall contain the basis for Contractor's belief (including, but not limited to, supporting documentation), describe the Contractor's efforts to arrange for the Processing of such material, the period required for such Disposal, and any additional information supporting the Contractor's request.

In addition, the request shall describe the Contractor's proposed interim plans for implementation while the City is evaluating its request. If the City objects to the interim plans, the City shall provide written notice to the Contractor and request an alternative arrangement. The City shall consider the Contractor's request and inform Contractor in writing of its decision within fourteen (14) days. Depending on the nature of the Contractor's request, City may extend the fourteen (14) day period, at its own discretion, to provide more time for evaluation of the request and negotiation of an acceptable arrangement with the Contractor.

### D.3 Gray Container Waste Disposal Standards

- A. Disposal of Gray Container Waste Collected.** Contractor shall Transport all Gray Container Waste Collected under this Agreement to a Designated or Approved Disposal Facility.
- B. Disposal at Approved Facility.** Contractor shall not Dispose of Gray Container Waste or Residue by depositing it on any public or private land, in any river, stream, or other waterway, or in any sanitary sewer or storm drainage system or in any other manner which violates Applicable Laws.
- C. Disposal Services.** In the event the City does not provide the Contractor a Designated Facility, Contractor shall provide Disposal services at an Approved Disposal Facility that include, but are not limited to:
1. Operating, managing, and maintaining the Solid Waste fill areas, including the placement, burying, and compaction of Solid Waste in the refuse fill areas; stockpiling, placement, and compaction of daily cover, and if applicable, Alternative Daily Cover, Alternative Intermediate Cover, and final cover; management of fill operations with regard to fill sequencing, side slopes configuration, and working face location and configuration;
  2. Providing, operating, and maintaining all equipment, rolling stock, and supplies necessary for operations, closure, post-closure, and environmental monitoring; and,

3. Operating, maintaining, and managing leachate and Landfill gas management systems, groundwater monitoring and management systems, storm water drainage and control systems, treatment facilities, buildings, on-site roadways, utilities, and any other required facility elements.

#### D.4 Weighing of Discarded Materials

- A. **Maintenance and Operation.** This Section D.4 applies to motor vehicle scales used at the Approved Facilities. Approved Facilities shall be equipped with one or more State-certified motor vehicle scales in accordance with Applicable Law. Upon request, Contractor shall arrange for Facility operator to provide documentary evidence of such scale certification within ten (10) days of City's request during the Term. Licensed weigh master(s) shall operate those scales to weigh all inbound and outbound Collection vehicles Transporting Discarded Materials and all Transfer vehicles Transporting materials to another site. Contractor shall arrange for Facility operator to provide City with access to weighing information at all reasonable times with 36-hour notice and permission from facility operator, and copies thereof within three (3) Business Days following the City's request. Exceptions to weighing requirements are specified in this Exhibit, Section D.4.G.
- B. **Vehicle Tare Weights for Approved Facility(ies).** Within thirty (30) days prior to the Commencement Date, Contractor shall coordinate with the Facility operator(s) to ensure that all Collection vehicles used by Contractor to Transport Discarded Materials to Designated or Approved Facilities are weighed to determine unloaded ("tare") weights. Contractor shall work with Facility operator(s) to electronically record the tare weight, identify vehicle as Contractor's, and provide a distinct vehicle identification number for each vehicle. Contractor shall provide City with a report listing the vehicle tare weight information upon request. Contractor shall promptly coordinate with Facility operator to weigh additional or replacement Collection vehicles prior to Contractor placing them into service. Contractor shall check tare weights at least annually, or within fourteen (14) days of a City request, and shall retare vehicles immediately after any major maintenance service that could impact the weight of the vehicle by more than fifty (50) pounds.
- C. **Substitute Scales.** If any scale at a Designated or Approved Facility is inoperable, being tested, or otherwise unavailable, Contractor shall use reasonable business efforts to weigh vehicles on certified operating scale(s).
- D. **Estimates.** Pending substitution of portable scales or during power outages, Facility operator shall estimate the Tonnage of the Discarded Materials Transported to and accepted at the Approved Facilities by utilizing the arithmetic average of each vehicle's recorded Tons of Discarded Materials delivered on its preceding three (3) deliveries.

During any period of time the scales are out of service, Facility operator shall continue to record all information required by this Exhibit, Section D.4, for each delivery of Discarded Materials to the Approved Facilities and each load of material Transferred to another Approved Facility(ies).

- E. **Weighing Standards and Procedures.** At the Designated or Approved Facilities, Contractor shall ensure all vehicles delivering Discarded Materials are weighed and inbound weights recorded when the vehicles arrive at the Facility.
- F. **Records.** Contractor shall maintain scale records and reports that provide information including date of receipt, inbound time, inbound and outbound weights (or tare weights) of vehicles, vehicle identification number, jurisdiction of origin of materials delivered, and type of material.
- G. **Exceptions to Weighing Requirements.** If a Designated or Approved Facility does not have motor vehicle scales to weigh Contractor's vehicles and Discarded Materials delivered to the Facility, Contractor shall obtain a receipt for delivery of the Discarded Materials that identifies the date and time of delivery, the type of material delivered, and the vehicle number. Contractor or Facility operator shall estimate the Tonnage of material delivered for each load based on the volumetric capacity of the vehicle and material density factors (e.g., pounds per cubic yard) approved by or designated by the City.
- H. **Upon-Request Reporting.** If vehicle receiving and unloading operations are recorded on video cameras at the Approved Facilities, Contractor shall ensure Facility Operator will make those videos available for City review during the Approved Facilities' operating hours, upon request of the City, and provide the name of the driver of any particular load if available.

#### D.5 Excluded Waste

- A. **Inspection.** Contractor will use standard industry practices to detect Excluded Waste and will not knowingly transport Excluded Waste to Designated or Approved Facility(ies).
- B. **Excluded Waste Handling and Costs.** Contractor will arrange for or provide handling, Transportation, and delivery to a Recycling, incineration, or a Disposal facility permitted in accordance with Applicable Law of all Excluded Waste detected at the Designated or Approved Facility(ies). Contractor is solely responsible for making those arrangements or provisions and all costs thereof. Nothing in this Agreement will excuse the Contractor from the responsibility of handling Excluded Wastes that Contractor inadvertently accepts in a lawful manner and of arranging for the disposition of that Excluded Waste in accordance with Applicable Law.

#### D.6 Discarded Materials Evaluations at Approved Facilities

- A. **General.** Contractor shall conduct the following "evaluations" at Designated or Approved Facilities if required by Applicable Law referenced below:
  - 1. Gray Container Waste Evaluations.

If applicable pursuant to 14 CCR Section 17409.5.7, Contractor shall conduct waste evaluations of Gray Container Waste at the Approved Processing Facilities that receives Gray Container Waste in accordance with 14 CCR

17409.5.7.

2. Organic Waste Recovery Efficiency Evaluations. If applicable pursuant to 14 CCR Sections 17409.5.1 to 17409.5.5 and 17409.5.8, Contractor shall conduct waste evaluations at Approved Processing Facility(ies) in accordance with 14 CCR Sections 17409.5.1 to 17409.5.5 and 17409.5.8.
3. Evaluation of Organic Waste in Residuals. If applicable pursuant to 14 CCR Sections 17409.5.3, 17409.5.5, 17867, and/or 17896.44.1, Contractor shall conduct compliance evaluations of Organic Waste to determine the level of Organic Waste in materials sent for Disposal in accordance with 14 CCR Sections 17409.5.3 (transfer/processor for Mixed Waste), 17409.5.5 (transfer/processor for SSGCOW/SSBCOW), 17867 (Compost operations and facilities), and 17896.44.1 (In-vessel digestion operations and facilities).

**B. Record Keeping and Reporting.** For the evaluations described above, Contractor shall maintain all records and submit reports to CalRecycle as described in 14 CCR Division 7, Chapter 3, Article 6.3; 14 CCR Division 7, Chapter 3.1, Article 8; and 14 CCR Division 7, Chapter 3.2, Article 4; and, 14 CCR Sections 18815.5 and 18815.7, as applicable. Contractor shall report this information to the City on a monthly basis in accordance with Exhibit H.

**C. Scheduling of Evaluations.** Contractor shall schedule evaluations during normal working hours. Contractor shall provide City notice of its intent to conduct evaluations at the Designated or Approved Facility(ies) at least ten (10) days in advance of the evaluations.

**D. Observance of Study by City and/or CalRecycle.** Contractor acknowledges that, upon request, a representative of the City, the LEA, and/or CalRecycle may oversee its next scheduled quarterly sampling and evaluation of any of the evaluations described in this Exhibit, Section D.6.A, conducted at the Designated or Approved Facility(ies).

# Exhibit E – Public Education and Community Outreach Programs

## Education and Outreach Plan

Redwood Waste Solutions (RWS) recognizes that increasing recycling and diversion participation, and minimizing contamination, are key goals of the City. This should be an important measure of success for the new contractor. To that end, RWS intends that education efforts will be at the forefront of our customer contacts, whether it be during a customer call or web inquiry, a contact at a waste audit or community event, or at a school or civic group presentation.

In order to achieve City goals, we will utilize the following tools to outreach to customers:

- Provide waste audits and technical assistance to meet recycling and waste diversion goals
- Develop graphic based and bilingual signage
- Assure proper signage is in place on containers
- Residential route audits for service verification
- Perform curbside material inspection to distribute positive or educational cart tags
- Conduct onsite visits to MFD and Commercial accounts
- Promote mandatory commercial recycling and organics programs such as AB 341, AB 1826 and SB 1383
- Twice per year bilingual newsletters to promote services and reinforce recycling messages
- Develop and maintain social media tools to outreach to customers who sign up for service and recycling reminders
- Bill inserts promoting upcoming holiday schedule or special collections
- Company website to reinforce waste diversion opportunities and requirements as well as providing rate information, services offered, and the ability to communicate inquiries and service changes to the Company
- Presentations to schools, civic and business groups
- Tracking customer contacts and changes in service, areas of concern, and positive outcomes
- Coordinate with staff to identify City priorities

Our Diversion Coordinator will work in tandem to encourage waste reduction and recycling, reduce contamination and increase diversion in the City.

## **Waste Diversion Coordinator**

RWS will hire a Waste Diversion Coordinator (Coordinator) to fulfill the obligations under the City's Franchise Agreement. The Coordinator will work collaboratively with the City, as well as the Mendocino Solid Waste Management Authority, to assure consistent messaging and mutual program support in achieving diversion goals.

The Coordinator will be responsible for:

- Implementing transition education activities and materials
- Spearheading innovative and comprehensive recycling, waste reduction and contamination management programs throughout the City including written materials, social media management, waste audits, and community outreach
- Collaborating with customers and route personnel to provide appropriate service levels, and to address contamination or other service issues in a timely manner
- Tracking outreach efforts to measure success of outreach campaigns, and to develop the most effective strategies for each sector to achieve diversion goals
- Production of educational and outreach printed materials
- Waste assessments
- Regular visits to commercial and multifamily accounts
- Presentations to City staff, civic organizations and schools
- Directing tours of Company facilities
- Preparation of reports to the City
- Answering customer inquiries regarding recycling and waste diversion
- Monitoring market trends and new opportunities for waste diversion
- Advising on compliance with current and proposed regulations

At the start date, the Coordinator will begin outreach to all multifamily complexes, businesses, schools, and facilities in both jurisdictions. Introductory materials will be provided and will also be posted on the Company website for easy download.

Pursuant to the Collection Services Agreement, the Coordinator will meet monthly with City staff over the course of the 1<sup>st</sup> year of service to review diversion efforts, program performance and customer service communications.

Our Diversion Coordinator will educate and work with the various categories of service recipient as follows:

### ➤ **Single Family**

- Prepare a simple menu of service options to allow SFD customers to right-size their cart selection to maximize both diversion and savings
- Distribute bilingual outreach materials that identify collection options, on-call services and diversion strategies available in print and on online. Additional information may include Bulky Item collection, cart exchange and other special services per the terms of each jurisdiction’s Franchise Agreement
- Provide clear and frequent education about contamination in recyclable material and organic waste with an emphasis on compliance over immediate enforcement & stiff penalties
- Targeted campaigns about desirables in the blue and green cans (what TO put in the can) using direct mail, bill inserts, newsletter, websites, social media, advertising, cart hangers, etc.
- Targeted campaigns about undesirables in blue and green cans (e.g. top “offenders” as what NOT to put in the can) using direct mail, bill inserts, newsletter, websites, social media, advertising, cart hangers, etc.
- “Guide to Diversion” online at [NAMETBD.com](http://NAMETBD.com) and in print

➤ **Multi-Family and Commercial**

- Prepare a simple menu of service options to allow MFD customers to right-size their bin and cart selection in order to maximize both diversion and savings
- Aggressive education campaign about contamination for property owners and managers that detail Best Management Practices around waste reduction to meet the City’s diversion goals
- Site visits & stakeholder meetings (e.g. property managers, tenants, etc.) to advise appropriate personnel on methods to increase recycling and decreasing landfilling as well as recommendations to reduce contamination of Recyclable Material and Organic Waste
- Communication via door-to-door outreach, direct mail, bill inserts, newsletters, website, social media, advertising, cart hangers, posters, signage, etc. designed specifically for tenants
- Targeted campaigns about desirables in the blue and green cans (what TO put in the can).
- Targeted campaigns about undesirables in blue and green cans (e.g. top “offenders” as what NOT to put in the can)
- “Guide to Diversion” online at [RedwoodRecycles.com](http://RedwoodRecycles.com) and in print



## City Interface

- Educate City staff at standing meetings about regulatory compliance concerning AB 341, AB 1826, AB 1594 and SB 1383 as well as proposed legislation that may impact City operations or services
- Site visits to City offices and yards to advise appropriate personnel on methods to increase recycling and decreasing landfilling as well as recommendations to reduce contamination of Recyclable Material and Organic Waste
- Aggressive education campaign about contamination for City management and staff that detail Best Management Practices around waste reduction to meet the City's diversion goals
- Provide educational materials focused on increased recycling and decreasing landfilling

## Other Outreach Activities and Tools

### ➤ **New Customer Welcome**

RWS will mail customer packets to new accounts that sign up for service during the course of the Agreement. It will include a copy of the current newsletter, recycling guide, information about available services including explaining the environmental and cost benefits of recycling, and customer service contact information.

In addition, recycling information will be provided to multifamily and commercial property managers for distribution to new tenants, including a sample "contract" that managers can use as a model to encourage buy-in to the recycling and waste diversion programs offered.

### ➤ **Newsletters and Annual Notices**

RWS will publish and mail two (2) bilingual newsletters each year during the life of the jurisdiction's Franchise Agreement. Newsletters will be structured around a "spring" and "fall" schedule and will include pertinent information about rates, services (regular or special), and contact information. Recycling participation will be emphasized and include "how to" guides, as well as clear descriptions of what materials are prohibited in recycling carts or bins.

Redwood Waste Solutions will publish and mail an Annual Collection Notice that outlines the services available to each service category, as well as a

recycling guide, and customer service contact information. This notice may be included as an insert in the regular newsletter.

Newsletters will be subject to the City's approval as appropriate.

### **Outreach Materials**

In addition to regular communications via mail, collateral materials help further drive messaging and could include:

- Bilingual fliers/posters for commercial businesses to direct diversion
- Bilingual cart hangers that thank and congratulate customers for proper recycling
- Bilingual cart and bin labels with clear images for diversion
- Bilingual cart hangers that explains what improvements are necessary to reduce contamination
- Bilingual cart hangers that notify customers of non-collection due to contamination
- Bilingual mini-guides specifically for SFD, MFD and COM service recipients
- Bilingual coloring & activity books for schools, community events, etc.
- Print and digital ads in City news sources specific to events or recycling requests

Outreach materials will be subject to the City's approval as appropriate.

### **Website/Social Media/Digital Tools**

Multiple mediums are required to communicate with the public about services, recycling and diversion. RWS is proud to offer an interactive, mobile-friendly, **cloud-based diversion tool** for the City at RedwoodRecycles.com. Community members are often confused and frustrated by the lack of consistent, clear information regarding what is recyclable and what is not. Keeping information simple, accessible and consistent is the key to desired customer choices in generating and disposing of waste.

This online tool and is a solution that will help the City move towards meeting established State waste diversion goals. In addition to being able to quickly search any item to learn which bin it goes in, users can sign up for collection reminders as well as a monthly e-newsletter. Tech-savvy customers won't have to wait for a quarterly newsletter for community cleanup information and won't have to call customer service to determine how to dispose of a light bulb. Most importantly, Redwood Waste Solutions and the City can take a proactive approach to diversion using responsive, modern technology.

Additionally, the Company will utilize jurisdiction-specific Company social media platforms such as Facebook to “promote” posts that provide recycling tips, offer diversion opportunities to City residents and businesses, promote various services offered, stress keeping waste stream free of contamination, and fun facts about recycling and relevant environmental topics.

## **Site Visits**

### **➤ Multifamily (MFD)**

During the course of the Agreement, the Coordinator will work with property managers and tenants to establish successful recycling programs and work to implement mandated recycling programs. Site visits may include:

- Assessing and installing proper signage
- Recommending any needed service changes
- Working with property manager to meet implement mandatory recycling and food waste programs
- Developing “tool kit” for managers to alert tenants about recycling program and expectations
- Performing annual waste audits and service level evaluation
- Obtaining unit addresses for residents in order to direct mail newsletters and recycling promotional materials to tenants
- Directing and door-to-door contact with all multifamily accounts
- Establishing program to engage youth at the complex where possible to get buy-in to recycling programs and to reinforce messaging they receive at school
- Identifying one or more “champions” to help monitor the progress of programs as they are implemented, and who can report quickly if there are problems or needed service changes
- Working with managers to identify optimal sizes and placement for food scrap collection program to meet requirements of AB 1826

### **➤ Commercial**

Redwood Waste Solutions will conduct regular site visits to each commercial account, and will work with business owners and property managers to encourage that commercial tenants understand and comply with recycling programs and mandates.

- New signups will receive site visits from the Coordinator
- Direct and door-to-door contact with all commercial accounts

- Work with property managers for support in educating tenants with shared service
- Annual waste audits and service level evaluation
- Assess and recommend proper signage
- Work with property manager to meet implement mandatory recycling and food waste programs
- Make recommendations for appropriate indoor containers to make it easier to recycle than to discard

### **City Outreach**

The Waste Diversion Coordinator (Coordinator) will perform the following tasks:

- Annual waste audits and service level evaluation
- Identify City staff to champion increased participation in recycling and waste reduction programs
- Provide updates on current and pending legislation, how it affects City residents and businesses, and how that information will be incorporated into education and outreach efforts to City service recipients
- Work with City management to recognize and reward employees that change behaviors and increase personal recycling
- During outreach visits, the Coordinator will track information in order to implement service level changes and customize education efforts, as well as to provide a means for evaluating effectiveness of outreach efforts

### **Community Outreach**

The Waste Diversion Coordinator will staff public information tables periodically at City and community gatherings such as Zero Waste Events, Visit Fort Bragg Street Fairs, Paul Bunyan Days, National Night Out, and selected Earth Day events.

Company personnel will be available to make presentations to jurisdictions' staff, schools and civic organizations (e.g. Rotary Clubs), business associations (e.g. Chambers of Commerce) and Mobile Home Parks. Tours of Company facilities will be available as well.

### **Diversion Campaign**

Various communication methods and physical materials would be employed throughout the campaign. This campaign is a critical component in preparation for a contamination prevention and enforcement effort.

## ➤ **Contamination Control – Curbside Feedback**

It is well understood that in today's environment, recycling Processors are demanding cleaner loads from collectors. Recyclables that have excess contaminants are subject to rejection by Processors and rejected loads are costly to reprocess.

RWS intends to implement an aggressive education campaign that includes direct outreach staff, drivers, and customer service staff. To that end, RWS will perform annual route audits and container inspections with MFD and Commercial as part of standard outreach efforts over the first four years of the Agreement.

Routes or accounts with regular contamination will be targeted for additional outreach. Route drivers will be alerted to pay special attention to those accounts, and to both tag bins or carts, and to alert customer service and outreach staff who will follow up with a call and/or visit to the customer.

The following outlines the enforcement structure for contamination, however during the first six months, contaminated carts or bins will not be removed so as to provide ample opportunity to communicate expectations with customers.

- **Residential (SFD)**

If contamination appears to be a problem across multiple residential accounts on a route, RWS will deploy route auditors to walk routes prior to collection. These auditors will “tag” contaminated cans in advance of the arrival of the collection truck and a notice tag will be left with the customer. In the case of repeated contamination, a route supervisor will call the customer to discuss the situation.

In addition, residential collection vehicles will be outfitted with cameras in the hopper that will help drivers identify addresses and routes with contamination. Customers will receive a phone call from customer service when contamination is observed, and will be subject to additional scrutiny on subsequent collection days.

For SFD accounts, on the 1<sup>st</sup> instance where contamination is found in recycling and/or organics' carts, collection will be made and an “Oops! Tag” (Notice) will be left on the cart. The Notice will indicate the type of contaminants found. Customer Service will follow-up with a phone call to the customer. Customer Service will also mail or email an educational brochure to the customer, and will refer the customer to the Waste Diversion Coordinator as appropriate.

After three (3) instances of courtesy pickup notices, collection will not be made and a contamination processing fee will be assessed. A Notice will be left on the cart indicating the contaminants found and the amount of fee assessed. Customer

Service will contact the customer by phone, mail a second educational brochure and notify the City of the account(s) in its monthly report.

During the transition period, and for six months following assumption of service, Contractor shall not assess contamination processing fees so as to provide ample opportunity to communicate expectations to customers.

- **Commercial and Multifamily Accounts (COM & MFD)**

Route drivers will alert the Waste Diversion Coordinator (Coordinator) of commercial accounts with ongoing contamination issues. In addition, as part of regular outreach efforts to commercial and multifamily accounts, the Coordinator will conduct regular audits of collection containers. Where contamination is identified, an aggressive outreach effort will be initiated. Where there are multiple commercial tenants with shared service, waste audits will be utilized to identify the source of the contamination, and appropriate education efforts will be conducted, including contacting the property manager(s), and offering training to onsite staff, or door-to-door outreach as appropriate.

Where COM or MFD customers pay directly for their own collection service, the same penalty structure as SFD customers will apply.

COM or MFD accounts with shared service will be resolved on a case by case basis, but subject to the same penalty structure as outlined in SFD above.

The Coordinator will directly contact multifamily and commercial account managers or owners when contamination is observed.

After three (3) instances of courtesy pickup notices, collection will not be made and a contamination processing fee will be assessed. A Notice will be left on the cart indicating the contaminants found and the amount of fee assessed. Customer Service will contact the customer by phone, mail a second educational brochure and notify the City of the account(s) in its monthly report.

During the transition period, and for six months following assumption of service, Contractor shall not assess contamination processing fees so as to provide ample opportunity to communicate expectations to customers.



# Exhibit F – Fort Bragg Solid Waste Refuse Collection Area Map



1 inch = 2,000 feet

## Fort Bragg City Limits/Solid Waste Franchise Area



# Exhibit G – Schedule for Liquidated Damages

City may assess Liquidated Damages pursuant to this Agreement if Contractor fails to fulfill its obligations with regards to the events listed in this Exhibit in accordance with the terms and conditions of the Agreement with regards to the time frame for accomplishing each event and nature of the responsibility associated with the event unless otherwise stated in this Exhibit.

## COLLECTION RELIABILITY

	Event of Non-Performance	Liquidated Damage
1	<b>Maintain Collection Services.</b> For each failure over five (5) during any rate period to Collect from all Customers on a route on the scheduled day (unless non-collection was warranted pursuant to this Agreement).	\$25/Container
2	<b>Start New Customer.</b> For each failure over five (5) during Rate Period to commence service to a new Customer within seven (7) calendar days after order received and account number established.	\$150/event
3	<b>Missed Pick-Ups.</b> For each failure over fifteen (15) during Rate Period to Collect Solid waste or Recyclable Materials which has been properly set out for Collection by a Customer on a scheduled Collection day.	\$150/event
4	<b>Consecutive Missed Pick-ups.</b> For each failure to Collect Solid Waste, Organic Waste, or Recyclable Materials which has been properly set out for Collection, from the same Customer on two (2) consecutive scheduled pick-ups.	\$150/event

## COLLECTION QUALITY

	Event of Non-Performance	Liquidated Damage
5	<b>Leaks, Litter, or Spills.</b> For each occurrence over five (5) during the Rate Period of unreasonable leaks, litter, or spills of Solid Waste, Organic Waste, or Recyclable Materials near Container or on public streets and failure to pick up or clean up such material immediately.	\$300/event
6	<b>Improper Container Placement.</b> For each occurrence over twelve (12) during the Rate Period of failure to replace Containers in original position, upright, with lids attached to or on Carts or Bins.	\$150/event
7	<b>Care of Private Property.</b> For each failure over twenty-four (24) during the Rate Period of not closing a Customer’s gate, crossing planted areas, or damaging private property (including private vehicles)	\$300/event



	<b>Event of Non-Performance</b>	<b>Liquidated Damage</b>
8	<b>Repair of Private Property.</b> For each occurrence over five (5) during the Rate Period of failure to repair damage to property within thirty (30) days of the date the damage was reported.	\$250/event
9	<b>Unauthorized Collection or Sweeping Hours.</b> For each occurrence over five (5) during the Rate Period of Collecting Solid Waste, Organic Waste, and Recyclable Materials during unauthorized hours.	\$300/event
10	<b>Excessive Noise.</b> For each occurrence over twelve (12) during the Rate Period of excessive noise.	\$300/event
11	<b>Non-Collection Tags.</b> For each failure over twelve (12) during the Rate Period of not tagging Containers which have not been Collected explaining the reason for non-Collection.	\$150/event
12	<b>Cleaning Collection Vehicles.</b> For each occurrence over five (5) during the Rate Period of failure to clean Collection vehicles at least one time per week.	\$150/event
13	<b>Discourteous Behavior.</b> For each occurrence of discourteous behavior by Collection vehicle personnel, Customer service personnel, or other employees of the Contractor	\$500/event
14	<b>Injuries to Others.</b> For each incident of personal injury to a Person requiring medical treatment or hospitalization, where the negligence of the Contractor or its personnel was a contributing factor to the injury.	\$5,000/incident

## CUSTOMER SERVICE RESPONSIVENESS

	<b>Event of Non-Performance</b>	<b>Liquidated Damage</b>
15	<b>Call Responsiveness.</b> For each failure to answer the telephone during business hours specified in the Agreement or failure for answering machine to record call during non-business hours specified in the Agreement.	\$300/event
16	<b>30-Second Call Hold Time.</b> Failure to answer 90 percent of calls received during office hours within thirty (30) seconds.	\$1,000/quarter
17	<b>3-Minute Call Hold Time.</b> Failure to answer 100 percent of calls received during office hours within three (3) minutes.	\$1,000/quarter
18	<b>After-Hours Call Returns.</b> Failure to return 100 percent of calls received on Grantee's answering machine before noon of the following business day.	\$1,000/quarter
19	<b>Compliant Level.</b> Failure to maintain Compliant level below 0.005% where the percent is calculated equal to the number of complaints divided by the total service opportunities (the total residential stops and commercial lifts performed in the reporting period).	\$1,000/quarter

	<b>Event of Non-Performance</b>	<b>Liquidated Damage</b>
20	<b>Respond to Compliant or Service Request.</b> For each failure to inform Customer, within one business day of receipt of the compliant or service request of the action Contractor will take to remedy a complaint or to respond to a service request.	\$300/event
21	<b>Resolve Complaint or Service Request.</b> For each failure to resolve or remedy a complaint or service request within five business days of receipt of complaint or service request with the exception of missed pick-ups which are addressed below.	\$300/event
22	<b>Collection of Missed Pick-Ups.</b> For each failure to Collect missed Containers within twenty-five (25) hours of receipt of the complaint.	\$300/event

## REPORTING

	<b>Event of Non-Performance</b>	<b>Liquidated Damage</b>
23	<b>Monthly Reports.</b> Failure to submit monthly report in the timeframe specified in this Agreement.	\$100/day report is overdue
24	<b>Annual Reports.</b> Failure to submit annual reports in the timeframe specified in this Agreement.	\$300/day report is overdue
25	<b>Report Hazardous Waste.</b> For each failure to notify the appropriate authorities of known reportable quantities or Hazardous Waste within one business day.	\$500/event
26	<b>Failure to Submit Reports or Allow Access to Records.</b> For each failure to submit any individual report or provide access to records in compliance with and in the timeframe specified in this Agreement. Incomplete and/or inaccurate reports shall be considered a failure to submit until such time as all information in the report has been provided in a complete and accurate form. In the event City determines an errant or incomplete report more than ten (10) Business Days after submittal by Contractor, Contractor shall be given ten (10) Business Days to complete and correct and any pending Liquidated Damages shall be tolled during that period.	\$100/event

## PUBLIC EDUCATION

	<b>Event of Non-Performance</b>	<b>Liquidated Damage</b>
27	Failure to prepare and distribute to resident's door hanger, flyer, or mailer to Customers regarding their specific Collection day and observed Holidays	\$150/day for each day until mailer is sent
28	Failure to conduct community presentations targeted at residents	\$150/event

	<b>Event of Non-Performance</b>	<b>Liquidated Damage</b>
29	Failure to prepare and mail quarterly newsletter to all residents by the end of each quarter	\$150/day for each day until mailer is sent
30	Failure to develop outreach program for individual Commercial sectors	\$150/day
31	Failure to prepare and during Rate Period update a recycling resource guide	\$150/day

### SB 1383 COMPLIANCE

	<b>Event of Non-Performance</b>	<b>Liquidated Damage</b>
32	<b>Failure to Perform Contamination Monitoring Requirements.</b> Option 1: For each failure to conduct Hauler Route contamination monitoring in accordance with Section 5.2 of this Agreement. Option 2: For each failure to conduct waste evaluations in accordance with Section 5.2 of this Agreement.	\$500/event
33	<b>Failure to Comply with Container Labeling and Colors.</b> For each occurrence of Contractor's failure to comply with Container labeling and color requirements pursuant to Section 6.9 of this Agreement.	\$100/container
34	<b>Failure to Conduct Compliance Tasks.</b> For each failure to conduct any compliance review, Discarded Materials evaluations pursuant to Section D.6 of Exhibit D, and/or other inspection required by this Agreement.	\$100/event
35	<b>Failure to Issue Contamination Notices.</b> For each failure of Contractor Collection personnel to issue contamination notices and contamination Processing fee notices and maintain documentation of issuance as required by Section 5.2 of this Agreement.	\$100/event

### OTHER

	<b>Event of Non-Performance</b>	<b>Liquidated Damage</b>
36	<b>Disposal of Organic Waste or Recyclables.</b> For each ton of Organic Waste or Recyclable Materials Disposed of without written approval of the City.	\$250/ton
37	<b>Use of Unauthorized Facilities.</b> For each ton of Solid Waste, Organic Waste, or Recyclable Materials Disposed or Processed at a facility not approved for use under the provisions of this Agreement.	\$250/ton
38	<b>Failure of Other Obligations.</b> Failure to perform any of the obligations set forth in this Agreement not specifically stated above	\$150/for each obligation per day

	<b>Event of Non-Performance</b>	<b>Liquidated Damage</b>
	and not corrected or proceeding in good faith to correct within twenty-four (24) hours upon twenty-four (24) hour notification by City.	until obligation is performed.

# Exhibit H – Record Keeping and Reporting

## H.1 General

Contractor shall maintain such accounting, statistical, and other records related to its performance under this Agreement as shall be necessary to develop the reports required by this Agreement or City Code. Contractor agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with applicable laws and regulations and to meet the reporting and Discarded Materials Collection, Processing, and Disposal program management needs of the City. At the written direction or approval of City, the records and reports to be maintained and provided by Contractor in accordance with this Exhibit and other Articles of the Agreement may be adjusted in number, format, and frequency, if required to comply with State or federal regulatory or reporting requirements.

Information from Contractor's records and reports can be used to, among other things:

- Determine and set Rates and evaluate the financial efficacy of operations;
- Evaluate past and expected progress toward achieving the Contractor's Diversion goals and objectives;
- Provide concise and comprehensive program information and metrics for use in fulfilling reporting requirements under Applicable Law;
- Determine needs for adjustment to programs;
- Evaluate Customer service and Complaints; and,
- Determine Customer compliance with AB 341, AB 1826, and SB 1383 statutes and corresponding regulations; and, any subsequent State-mandated Landfill Disposal reduction, Recycling, recovery, or Diversion statutes, regulations, or other requirements.

## H.2 Record Keeping

A. **General.** Contractor shall maintain Customer contact data, Customer service, accounting, statistical, operational, and other records related to its performance as shall be necessary to provide reporting required by this Agreement and Applicable Law and to demonstrate compliance with this Agreement and Applicable Law (such as, but not limited to, AB 939, AB 341, AB 1826, AB 876, AB 901, and SB 1383 statutes and corresponding regulations).

Record keeping and reporting requirements specified in this Agreement shall not be considered a comprehensive list of reporting requirements. In particular, this Exhibit H is intended to highlight the general nature of records and reports and their minimum

content and is not meant to comprehensively define the scope and content of the records and reports that Contractor is required to maintain and report by Applicable Law or this Agreement. Upon written direction or approval of City, the records and reports required by Contractor in accordance with this and other Articles of the Agreement shall be adjusted in number, format, or frequency.

Contractor shall maintain adequate records, and corresponding documentation, of information required by Sections H.3 and H.4 of this Exhibit, such that the Contractor is able to produce accurate monthly and annual reports, and is able to provide records to verify such reports. Contractor will make these records available and provide to the City any record or documentation necessary for the City to fulfill obligations under Applicable Law including, but not limited to, AB 939, AB 341, AB 1826, AB 876, AB 901, and SB 1383 statutes and corresponding regulations; and, other current or future federal, State, or local statutes and regulations, as amended. Upon request by the City, Contractor shall provide access to Contractor's requested records in a timely manner, not to exceed ten (10) Business Days from the time of City's request to Contractor.

- B. Record Retention and Security.** Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed, pursuant to this Exhibit. Contractor's records shall be stored in one central location, physical or electronic, that can be readily accessed by Contractor. Unless otherwise required in this Exhibit, Contractor shall retain all records and data required to be maintained by this Agreement for the Term of this Agreement plus five (5) years after its expiration or earlier termination.

Records and data shall be in chronological and organized form and readily and easily interpreted. Contractor shall maintain adequate record security to preserve records from events that can be reasonably anticipated such as a fire, theft, and an earthquake. Electronically-maintained data and records shall be protected and backed-up. To the extent that Contractor utilizes its computer systems to comply with record keeping and reporting requirements under this Agreement, Contractor shall, on a monthly basis, save all system-generated reports supporting those record keeping and reporting requirements in a static format in order to provide an audit trail for all data required.

- C. Maintenance of Financial and Operational Records.** Contractor shall maintain accurate and complete accounting records containing the underlying financial and operating data related to and showing the basis for computation of all costs associated with providing services. The accounting records shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP) consistently applied.

- D. **CERCLA Defense Records.** City views its ability to defend itself against Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and related litigation as a matter of great importance. For this reason, the City regards its ability to prove where Solid Waste collected are taken for transfer or disposal, as well as where they are not taken, to be matters of concern. Contractor shall maintain, retain and preserve records which can establish where Solid Waste collected were disposed (and therefore establish where they were not). This provision shall survive the expiration or earlier termination of this Agreement. Contractor shall maintain these records for a minimum of ten (10) years beyond expiration or earlier termination of the Agreement. Contractor shall provide these records to City (upon request or at the end of the record retention period) in an organized and indexed manner rather than destroying or disposing of them.
- E. **Compilation of Information for State Law Purposes.** Contractor shall maintain accurate records for its operation, including, but not limited to, Discarded Materials quantities Collected and quantities Transported to or Transferred to each Approved/Designated Facility, listed separately by material type, Customer type, and Facility. Records shall be maintained in such form by methods that facilitate the use of data for the production of reports as needed. Contractor will make these records available and provide to the City any record or documentation necessary for the City to fulfill obligations under Applicable Law including, but not limited to, AB 939, AB 341, AB 1826, AB 876, AB 901, AB 1595, and SB 1383 statutes and corresponding regulations; and, other current or future local, federal or State statutes and regulations, as amended.

### H.3 Audits and Inspection by City

At a mutually agreed upon time during normal business hours, but within seven (7) work days of a written request, Contractor shall make available to the City for examination at reasonable locations within the City the Contractor's data and records with respect to the matters covered by this Agreement and the City Code. Contractor shall permit the City, or its designee, to audit, examine, and make excerpts or transcripts from such data and records, and make audits of all data relating to all matters covered by this Agreement and the City Code. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than three (3) years following the City's receipt of final payment under this Agreement unless the City agrees in writing to an earlier disposition. The City or its designee, shall maintain the confidentiality of the Contractor's Customer list and other proprietary information, to the extent allowed by law.

## H.4 Reporting

### H.4.1 General

- A. **General Purpose.** Reports are intended to compile recorded data into useful forms of information that can be used by the City. All reports shall be adequate to meet City's current and future reporting requirements to CalRecycle, including AB 939, AB 341, AB 1826, and SB 1383 statutes and corresponding regulations, or any other State or federal agency statutes and regulations throughout the Term of this Agreement.
- B. **Failure to Report.** Failure of Contractor to comply with the reporting requirements as set forth in this Section may result in an assessment of Liquidated Damages in accordance with the Liquidated Damages provision in Section 11.9 of this Agreement and Exhibit G. Contractor's repeated failure to submit reports, and/or failure to submit reports on time, may be deemed an event of default which must be cured within fourteen (14) business days or may result in the termination of the Agreement at the discretion of the City, in accordance with Article 11 of this Agreement.
- C. **Submittal Process.** All reports shall be submitted to the City. Reports shall be submitted electronically via email or uploaded to a document sharing platform agreed upon by the Parties. City reserves the right to require the Contractor to maintain records and submit the reports required herein through use of a City-selected web-based software platform, at the Contractor's expense.

Monthly reports shall be submitted within thirty (30) days after the end of the reporting month and annual reports shall be submitted within sixty (60) days after the end of the reporting year. If third party information is unavailable, reports shall be submitted based on information available and reports shall be amended at a later date if additional information is received.

### H.4.2 Monthly Reports

Monthly reports shall be submitted by Contractor to City and shall include the following information pertaining to the most recently completed calendar month. In addition, each monthly report shall include a year-to-date summary page that includes the data submitted from the monthly report(s) submitted in the calendar year prior to the submittal of the current monthly report. Contractor shall report the information included in the following subsections.

#### A. Tonnage Report



1. Contractor shall report the total quantities in Tons of Discarded Materials Collected, Transferred, Processed, and Disposed by the Contractor, all of which shall be based on actual certified scale weights for each load, if available, or similarly accurate methodology pursuant to weighing protocols in Section D.4 of Exhibit D. Tonnage shall be reported separately by:
  - a. Material type, which shall include, at a minimum, separate reporting of Source Separated Recyclable Materials, SSGCOW, Gray Container Waste, and any other type of Discarded Material separately Collected by Contractor (including, but not limited to: Bulky Items, used oil, mixed C&D, dirt, rock, metals, cardboard, wood waste, Reusable Items, Salvageable Materials, etc.);
  - b. Customer/sector type; and,
  - c. Approved Facility and Facility type.
2. Report Residue level and Tonnage for all Discarded Materials processed, listed separately by material type Collected and Approved Facility(ies) used.
3. Source Separated Recyclable Materials Tonnage Marketed, by commodity, and including average commodity value for each, and Processing Residue Tonnage Disposed, listed separately by material type Collected and Approved Facility(ies) used.
4. Documentation of all Discarded Materials exported out of State, as provided in 14 CCR Sections 18800 through 18813.
5. Tonnage Collected by month separately for each Approved C&D Project Site and other data as it relates to the C&D services described in Exhibit D.

## **B. Diversion Report**

Contractor shall report the Diversion rate for each month and the cumulative year-to-date Diversion rate, where Diversion rate shall be calculated as follows:

$$\text{Diversion Rate} = \frac{\text{Total Tons of Source Separated Materials}}{\text{Total Tons of Solid Waste Disposed} + \text{Total Tons of Source Separated Materials} + \text{Total Tons of other Recyclable Materials Processed}}$$

## **C. Collection and Subscription Report**

1. Number of Containers at each Service Level by Customer Type and program, including:
  - a. A summary of the total gallons of Cart service, cubic yards of Bin service, and pulls; and cubic yards or Tons of Drop Box and Compactor service by

Customer Type.

- b. Calculation of the average volume of service received per: Single-Family Dwelling Unit (separately identifying Dwelling Units in a duplex, triplex, or fourplex); Multi-Family Dwelling Unit; and, Commercial Customer.
2. A summary of Customer subscription data, including the number of accounts; the number of Customers subscribing to each Cart, Bin, and Roll-Off Service Level listed separately for Single-Family, Multi-Family, and Commercial and separately for each type of Discarded Material; and the number of Bulky Items Collections performed.
3. List of all Commercial and Multi-Family Customers with a Gray Container Waste Service Level of two (2) cubic yards of service capacity per week or more. Such list shall include each such Customer's service address and Gray Container Waste, Source Separated Recyclable Materials, and SSGCOW Service Levels.
6. The total number of de minimis waivers, physical space constraint waivers, and Collection frequency waivers granted in the month, including the Generator name and address for each waiver.
7. The number of waiver reverifications performed by the Contractor pursuant to Section 5.6.5 of this Agreement in the month, if any, including a copy of documentation for each reverification inspection, which shall include, at a minimum: the Generator's name, address, and Generator type; the type of waiver being verified; any photographic or other evidence collected during the inspection; and the resulting recommended conclusion by the Contractor regarding the validity of the waiver. The Contractor shall provide a summary of recommendations to the City of all waivers which the Contractor concludes to no longer be warranted.
8. Number of Bulky Item/Reusable Materials Collection events by Customer Type.

**D. Contamination Monitoring Report**

Option 1: Hauler Route Reviews

The Contractor shall submit the following information regarding contamination monitoring Hauler Route reviews conducted pursuant to Section 5.2 of this Agreement:

1. The number of Hauler Route reviews conducted pursuant to Section 5.2 of this Agreement;
2. Description of the Contractor's process for determining the level of contamination;
3. Summary report of non-Collection notices, courtesy Collection notices, and/or

contamination processing fee assessment notices issued, which for each notice shall include the date of issuance, Customer name, and service address.

4. A record of each inspection and contamination incident, which shall include, at a minimum:
  - a. Name of the Customer
  - b. Address of the Customer
  - c. The date the contaminated Container was observed
  - d. The staff who conducted the inspection
  - e. The total number of violations found and a description of what action was taken for each
  - f. Copies of all notices issued to Generators with Prohibited Container Contaminants
  - g. Any photographic documentation or supporting evidence.
5. Documentation of the total number of Containers Disposed of due to observation of Prohibited Container Contaminants;
6. A list of all Customers assessed contamination Processing fees, pursuant to Section 6.2 of this Agreement, reported separately by Single-Family, Multi-Family, and Commercial Customers and including the Customer name, Customer address, and reason for the assessment of the contamination Processing fee, and the total number of instances contamination Processing fees were assessed in the month and the total amount of fees collected in the month.
7. Any other information reasonably requested by the City or specified in contamination monitoring provisions of this Agreement.

#### Option 2: Waste Evaluations

The Contractor shall submit the following information regarding waste evaluations conducted pursuant to Section 5.2 of this Agreement:

1. A description of the Contractor's process for conducting waste evaluations.
2. Documentation of the results of the waste evaluation studies, including information on and the number of targeted Hauler Route reviews conducted as a result of the waste evaluations. The documentation shall at a minimum include: dates of the studies; the location of the Facility where the study was performed; Hauler Routes from which samples were collected, and number of Generators on those Hauler Routes; the source sector (Customer type) of the material (Single-Family, Multi-

Family, or Commercial); number of samples collected; total sample size (in pounds); weight of Prohibited Container Contaminants (in pounds); ratio of Prohibited Container Contaminants to total sample size; and, any photographic documentation taken or other physical evidence gathered during the process

3. Copies of all notices issued to Generators with Prohibited Container Contaminants.
4. Documentation of the number of loads or Containers where the contents were Disposed due to observation of Prohibited Container Contaminants, including the total weight of material disposed, and proof of consent from the City to dispose of such material if given in a form other than this Agreement.
5. Any other information reasonably requested by the City, or specified in contamination monitoring provisions of this Agreement.

#### **E. Customer Service Report**

1. Number of Customer calls listed separately by complaints and inquiries (where inquiries include requests for service information, Rate information, etc.). For Complaints, list the number of calls separately by category (e.g., missed pickups, scheduled cleanups, billing concerns, damage claims). These complaints and inquiries shall be documented and reported separately from SB 1383 Regulatory non-compliance complaints or other regulatory non-compliance complaints.
2. Number of missed or incomplete Collections reported in total, and per one thousand (1,000) Service Opportunities in the City, presented in a graph format, which compares total missed Collections in the City during the current report period to total missed Collections in the City in past reporting periods.
3. Number of new service requests for each Customer type and requested service(s).
4. Contractor shall maintain a record of all SB 1383 Regulatory non-compliance complaints and responses pursuant to Section 5.9 of this Agreement and submit the following information:
  - a. Total number of complaints received and total number of complaints investigated
  - b. Copies of documentation recorded for each complaint received, which shall at a minimum include the following information:
    - i. The complaint as received;
    - ii. The name and contact information of the complainant, if the complaint is not submitted anonymously;
    - ii. The identity of the alleged violator, if known;
    - iii. A description of the alleged violation; including location(s) and all

- other relevant facts known to the complainant;
  - iv. Any relevant photographic or documentary evidence submitted to support the allegations in the complaint; and,
  - v. The identity of any witnesses, if known.
- c. Copies of all complaint reports submitted to the City, pursuant to Section 5.9.1 of this Agreement.
- d. Copies of all investigation reports submitted to the City pursuant to Section 5.9.2 of this Agreement, which shall include at a minimum:
- i. The complaint as received;
  - ii. The date the Contractor investigated the complaint;
  - iii. Documentation of the findings of the investigation;
  - iv. Any photographic or other evidence collected during the investigation; and,
  - v. Contractor's recommendation to the City on whether or not the entity investigated is in violation of SB 1383 Regulations based on the Contractor's investigation.

#### **F. Generator Waivers**

Contractor shall provide a report that documents each Generator waiver request reviewed by Contractor, which are required by Section 5.6. Identify in the report the Generator name and service address, the type of waiver requested, the status of the waiver (accepted, denied, pending), and other information reasonably requested by the City.

#### **G. Education Program Report**

The monthly status of activities identified in the annual public education plan described in Section 5.3 of this Agreement.

#### **H. Discarded Materials Evaluation Reports**

In accordance with this Exhibit, Contractor shall provide reports of evaluations of Discarded Materials conducted at Approved Facilities.

#### **H.4.3 Annual Reports**

In addition to the monthly reporting requirements in this Exhibit H, Section H.4.2, the Contractor shall provide an Annual Report, covering the most recently-completed

calendar year, in accordance with the format and submittal requirements of this Exhibit. The Annual Report shall include the information in the following subsections.

#### **A. Collection and Subscription Report**

1. A summary of all data provided in the Tonnage report and Diversion report sections, including quarterly and annual totals and averages.
2. The type(s) of Collection service(s) provided, a list of all Hauler Routes serviced, and a record of the addresses served on each Hauler Route.
3. A summary of Customer subscription data, including the number of accounts; the total number of Generators enrolled with Contractor for service, listed separately by service level and Container type (Cart, Bin, and Roll-Off service), separately by Single-Family, Multi-Family, and Commercial Customers, and separately for each type of Discarded Material; and the number of Bulky Items Collections performed.
4. A detailed list of Single-Family, Multi-Family, and Commercial Customer information, including Gray Container Waste, Source Separated Recyclable Materials, and SSGCOW Service Levels, Customer type, and Customer service addresses reflecting Customer Service Levels as of December 1 (for the year in which the report is submitted)

#### **B. Processing Facility Report**

1. Temporary Equipment or Operations Failure: If the Contractor is granted a processing facility temporary equipment or operational failure waiver, in accordance with Section 5.7 of the Agreement, the Contractor shall include the following documents and information:
  - a. The number of days the Processing Facility temporary equipment waiver or operation failure waiver was in effect;
  - b. Copies of any notifications sent to the City pursuant to Section 5.7.2 of the Agreement, and copies of City notices to Contractor pursuant to Section 5.7.2 of the Agreement;
  - c. Documentation setting forth the date of issuance of the waiver, the timeframe for the waiver; and,
  - d. A record of the tons of Organic Waste, Source Separated Recyclable Materials, SSGCOW, Mixed Waste, and/or Gray Container Waste redirected to an Alternative Facility or Disposed at an Approved Disposal Facility as a result of the waiver, recorded by Collection vehicle or transfer vehicle number/load, date, and weight.

2. Quarantined Organic Waste: A record of all compliance agreements for quarantined Organic Waste that are Disposed of, including the name of Generator, date issued, location of final disposition, and the amount of quarantined Organic Waste that was required to be Disposed at a Landfill, pursuant to Section 5.7.4 of the Agreement.

### **C. Public Education and Outreach Report**

1. A copy of all education and outreach materials provided to Generators, or otherwise used for education and outreach efforts in accordance with Section 5.3 of the Agreement, including, but not limited to: flyers, brochures, newsletters, invoice messaging/billing inserts, and website and social media postings.
2. A record of the date and to whom the information was disseminated or direct contact made, in the form of a list that includes: the Generator's name or account name, the type of education or outreach received; the distribution date, and the method of distribution.
3. For any mass distribution through mailings or bill inserts, the Contractor shall maintain a record of the date, a copy of the information distributed, and the type and number of accounts that received the information.
4. A copy of electronic media, including the dates posted of: social media posts, e-mail communications, or other electronic messages.
5. A summary of the status of the annual education plan of the reporting year, including activities conducted and the quantitative and/or qualitative results of those activities.
7. The annual public education plan required by Section 5.3 of the Agreement for the upcoming then-current calendar year. For example, Contractor submittal of a 2022 annual report in February 2023 shall include Contractor submittal of the annual public education plan for calendar year 2023.
8. Contractor shall maintain a record of all technical assistance efforts conducted pursuant to Section 5.3 of the Agreement, including:
  - a. The name and address of the Customer/Generator receiving technical assistance, and account number, if applicable.
  - b. The date of any technical assistance conducted and the type of technical assistance, including, but not limited to: waste assessments, compliance assessments, direct outreach, workshops, meetings, events, and follow-up communications.
  - c. A copy of any written or electronic educational materials distributed during the technical assistance process.

#### **D. Compliance Monitoring and Enforcement Report**

1. A summary of the total number of SB 1383 Regulatory non-compliance complaints that were received and investigated, and the number of Notices of Violation issued based on investigation of those complaints, in accordance with Section 5.9 of the Agreement and Exhibit H, Section H.4.2.D.
2. The total number of Hauler Route reviews conducted pursuant to Section 5.2 of the Agreement.
3. The number of inspections conducted by type for Commercial Edible Food Generators, and Commercial Businesses.
4. A copy of written or electronic records and documentation for all audits, studies, compliance reviews, and all other inspections conducted pursuant to Section 5.2 of the Agreement.
5. The number of Commercial Businesses that were included in a compliance review performed by the Contractor, and the number of violations found and corrected through compliance reviews, if different from the number reported in subsections D.6 and D.7 of this Section; including a list with each Generator's name or account name, address, and Generator type.
6. The total number of Notices of Violation issued, categorized by type of Generator.
7. The number of violations that were resolved, categorized by type of Generator.
8. Copies of all Notices of Violation and educational materials issued to non-compliant Generators.

#### **E. Food Recovery Program Support**

1. The total number of Generators classified as Tier One and Tier Two Commercial Edible Food Generators located within the City.

#### **F. Vehicle and Equipment Inventory**

1. A list of all vehicles used in performing services under this Agreement including the license plate number, VIN, make, model, and model year.

#### **G. Customer Revenue and City Fee Payment Report**

Provide a statement detailing gross receipts from all operations conducted or permitted pursuant to this Agreement and report of all City fees paid in accordance with Article 8 of this Agreement. Provide a list of Customers that are forty five (45) or more days past due and include the following information for each delinquent account: name; service address; contact information; number of days the account is delinquent;



and method(s) the Contractor has used to attempt collection of the bad debt, including date of such attempt(s).

## **H. Annual Financial Report**

Contractor shall maintain accounting records specific to the Fort Bragg Franchise Area, separate from activities in other counties and separate from activities in the unincorporated area of Mendocino County and other cities within Mendocino County.

Contractor shall, at its own expense, be required to annually provide the Department with a copy of a compiled financial statement, beginning the first full fiscal year for which Contractor maintained Franchise specific record keeping. The financial statement shall be prepared by a certified public accountant.

The annual financial statement must include, but is not limited to an Income Statement for the Franchised Area within the City of Fort Bragg. The Income Statement should disclose revenue by line of business and expenses by line of business and detail expense descriptions.

In addition, the Contractor shall make available to the City, or its designee, upon request:

1. Supporting documentation to determine the reasonableness of revenues (e.g., average number of monthly residential, industrial, and commercial Customers and average monthly rates for each type of Customer service).
2. Supporting documentation (invoices and descriptive schedules) for major expense line items including but not limited to depreciation, salaries, repair and maintenance, equipment rental, and Disposal expense.
3. Supporting documentation for all transactions with affiliated companies.
4. Any other information specifically related to the Agreement, which is reasonably required by City staff for review of rate adjustment requests.

In the event of the failure of the Contractor to provide any such report, the Department may employ a qualified accountant or consultant or City staff to prepare the report, and the Contractor shall be liable for and pay the associated costs and expenses of the accountant or City staff.

## **I. Annual Operations Report**

The Contractor shall submit a written annual report, in a form approved by the Department, including but not limited to:

1. Information as required pursuant to Section H.4.2, summarized for the preceding four quarters.
2. Identification of severe market depressions for Recyclable Materials and contingency plans for such events in the future.
3. Summary assessment of the overall Solid Waste, Recyclable Material, and Organic Waste programs from Contractor's perspective, including but not limited to, (i) highlights of significant accomplishments, (ii) problems, and (iii) recommendations and plans to improve the programs.
4. A revenue statement, showing quarterly Franchise Fee payments and a summary of corresponding quarterly revenue.
5. Contractor shall report any events of non-compliance with any provisions of the Mendocino City Code, state and federal law, regulatory orders, and regulations imposed by other regulatory agencies, and the conditions contained in the Agreement during the prior 12-month period.

#### **H.4.4 Additional Reports**

- A. **Upon Incident Reporting.** City reserves the right to request additional reports or documents in the case of unforeseen events or additional requirements imposed upon the City. The Contractor shall provide the requested reports, documents, or information within ten (10) Business Days upon receipt of the request or within a timeframe determined by the City, which shall not to exceed ten (10) days.
- B. **AB 901 Reporting.** At City's option, City may require that Contractor provide the City copies of Contractor's AB 901 reports on a regular basis (such as monthly, quarterly, or annually) or within ten (10) Business Days of the request.
- C. **CALGreen Code Compliance.** Contractor shall maintain records of any information or documentation required to demonstrate compliance with the California Green Building Standards Code (CALGreen Code). City may request that this information be included in the monthly or annual report(s), as it pertains to the services provided under this Agreement. City shall notify the Contractor of this request within ten (10) Business Days prior to the submittal deadline of the monthly and/annual report where the information is to be included.
- D. **Facility Capacity Planning Information.** City may require Contractor to provide City with information of available Organic Waste Processing capacity for any Approved Processing Facilities, where available capacity may include identification of monthly Tons of additional Organic Waste such Approved Facilities have the ability to receive within permitted limits. Contractor shall respond to City within 60 days of City's request for information regarding available new or expanded capacity, and, at City's option,

may be required to submit reports on a more regular basis. The annual Facility capacity planning report shall comply with the following:

1. Include reports of current throughput and permitted capacity and available capacity for SSBCOW and SSGCOW Processing for any Approved Facility in the City that processes SSBCOW and/or SSGCOW. Existing capacity may include identification of monthly Tons of additional Source Separated Recyclable Materials, SSGCOW, SSBCOW, and/or Gray Container Waste capacity such Facility has the ability to receive within permitted limits.
2. Include description of potential new or expanded Processing capacity at Approved Facilities, operations, and activities for Processing of SSBCOW and/or Organic Materials, including information about throughput and permitted capacity necessary for planning purposes.
3. Be submitted using a form or format approved by the City.

#### **E. Disclosure Statement**

Contractor shall file a disclosure statement which contains the following information:

1. A listing of all Sub Contractors to this Agreement (including the name, address, and social security or tax identification number of the Sub Contractor);
2. A listing of all felony convictions or pleas of nolo contendere of the Contractor or Sub Contractor by final judgment in any state or federal court within the preceding three years;
3. A listing of any instances in which a permit or contract held by the Contractor or Sub Contractor was terminated by a final judgment in any state or federal court within the preceding three years;
4. A listing of all final adjudications finding the Contractor or Sub Contractor in contempt of any state or federal court order enforcing any state and federal law within the preceding three years;
5. A listing of all final convictions or pleas of nolo contendere of the Contractor or Sub Contractor, under state or local laws governing safety of operations, compliance with environmental and other franchise requirements in the City, whether misdemeanors or infractions.

If the Contractor or Sub Contractor is a chartered lending institution or a publicly held company or a wholly-owned subsidiary of such a company required to file annual or quarterly reports under the Securities and Exchange Act of 1934, the Contractor or Sub Contractor may provide the above required information by submitting quarterly or annual reports for the preceding three years. If these reports are incomplete or if they fail to contain the information requested in items 1, 2, 3, 4, and 5 herein, the

Contractor or Sub Contractor shall make such information available to City. The City may also require, at Contractor's expense, preparation and submittal of a Dunn and Bradstreet, or comparable, report.

If Contractor or Sub Contractor has filed a disclosure statement, it shall file a supplemental disclosure statement only to the extent that its status or events differ from those covered by the original disclosure statement.

- F. **Customized Reports.** City reserves the right to request Contractor to prepare and provide customized reports from records Contractor is required to maintain.

#### **H.4.5 Reporting Requirements**

Contractor may propose report formats that are responsive to the objectives and audiences for each report. The format of each report shall be approved by the City. Contractor will provide a certification statement, under penalty of perjury, by the responsible Contractor official, that the report being submitted is true and correct to the best knowledge of such official after their reasonable inquiry.

Monthly reports shall be submitted within thirty (30) days after the end of the reporting month and annual reports shall be submitted within sixty (60) days after the end of the reporting year. If third party information is unavailable, reports shall be submitted based on information available and reports shall be amended at a later date if additional information is received.

Unless otherwise approved by City, Contractor shall submit all reports to:

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

#### **H.4.6 False or Misleading Representations**

Any materially false or misleading statement or representation made knowingly by the Contractor in such report shall be deemed a material breach of the Agreement, and shall subject the Contractor to all remedies, legal or equitable, which are available to the City under the Agreement or otherwise.

# Exhibit I – Performance Bond

In accordance with Section 10.3 of this Agreement, a performance bond or letter of credit is required from the Contractor within thirty (30) calendar days from the date the City Council approves this Franchise Agreement. The performance bond shall be in an amount of Two Hundred Fifty Thousand Dollars (\$250,000).



## CITY OF FORT BRAGG

*Incorporated August 5, 1889*  
416 N. Franklin Street  
Fort Bragg, California 95437  
tel. 707.961.2823  
[www.fortbragg.com](http://www.fortbragg.com)

# MEMORANDUM

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**DATE:** October 29, 2021  
**TO:** Tabatha Miller, City Manager  
**FROM:** Heather Gurewitz, Associate Planner  
**SUBJECT:** City of Fort Bragg Solid Waste Franchise Agreement CEQA Exemption Class 1 Existing Facility, Class 8 Actions Taken by Regulatory Agencies for the Protection of the Environment, and 15061(b)(3) Common Sense Exemption.

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### Project Background

On June 14, 2021, the City Council approved issuing a Joint County of Mendocino and City of Fort Bragg RFP for Solid Waste Refuse Collections. On June 15, 2021, the Joint RFP was issued with a closing date of August 3, 2021. As expected, the City and the County received three responses from:

- C&S Waste Solutions of California, Inc. (C&S)
- Solid Waste of Willits, Inc. (SWOW)
- Waste Management Collection and Recycling, Inc. (WM)

The City Council Solid Waste Franchise Agreement Ad Hoc Committee, comprised of Mayor Bernie Norvell, Councilmember Lindy Peters and the City Manager, reviewed the responses and rated each proposal based on predetermined criteria. On September 27<sup>th</sup>, the Committee recommended that the City Council authorize the City Manager to enter into negotiations with C&S Waste Solutions of California, Inc. for residential and commercial garbage, recyclable materials and organic waste collection under an exclusive 10-year Franchise Agreement, which was approved.

The proposal from which the City will negotiate proposes the provision of “like-for-like” services for the collection, transportation, and management of solid waste for the City of Fort Bragg, with the exception that, the proposal selected for further negotiation and potential award includes the following changes:

- Provision of carts and bins made from 20% post-consumer recycled content

- Purchase of new California Air Resources Board (CARB) compliant vehicles including seven split-body design trucks that will reduce the number of trips to each neighborhood for the collection of waste.
- Outreach and education regarding waste collection, diversion, and reduction

The potential siting of a new transfer station is not identified within the terms of the Franchise Agreement and is a distinct and separate action. The City has received and is processing an application for the siting of a new transfer station within city limits. The siting of a new transfer station in City limits is subject to a Use Permit, which is a discretionary action, and is subject to the California Environmental Quality Act (CEQA). As part of the transfer station application review and processing a CEQA analysis will be completed and brought forward for consideration by decision makers prior to acting on the Use Permit.

### **Project Description**

The proposed project consists of the potential award for a Franchise Agreement to provide waste collection and hauling services using CARB compliant vehicles, and cars and bins made from 20% post-consumer recycled content. Awarding a contract for a Franchise Agreement is a discretionary action and subject to review under CEQA. As documented herein award of the Franchise Agreement and subsequent waste collection and hauling service is eligible for one or more CEQA exemption.

### **Applicable Exemptions**

The City of Fort Bragg has reviewed the proposed change in service provider for solid waste collection and transportation. The awarding of a new Franchise Agreement will not result in significant environmental impacts and is categorically exempt from CEQA under Section 15301 Class 1 Existing “Facilities,” Section 15308 Class 8 “Actions By Regulatory Agencies for Protection of the Environment,” and 15061(b)(3) the common sense exemption because the change in Franchise Agreement is essentially a “like-for-like” service provided by a different organization.

#### 15301 Existing Facilities

The 15301(b) of the Class 1 categorical exemption which includes existing facilities of both investor and publicly owned utilities used to provide electrical power, natural gas, sewerage, or other public utility services. The project is a new Franchise Agreement for the collection and transfer of solid waste, recycling, and organic material for the City of Fort Bragg. It will be the same accounts as currently exist and the processing locations in Willits and Ukiah will be the same. Therefore, the awarding of the new Franchise Agreement to a different operator does not expand or materially change the current operation of solid waste collection and transportation and it is exempt as an existing “facility.”

There are no applicable exceptions to this exemption.

#### 15308 Actions By Regulatory Agencies For Protection of the Environment

Class 8 Actions Taken by Regulatory Agencies for Protection of the Environment includes action by regulatory agencies, *“as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for the protection of the environment.”*

The California Integrated Solid Waste Management Act of 1989 (AB 9369) requires cities to permit and regulate solid waste handling and declares that there is an urgent need for regulation to avoid an adverse environmental impact from the amount of waste generated in the state. Several subsequent bills have been passed to address other environmental issues including AB 341, AB 1826, AB 1594, and SB 1383, and the California Electronic Waste Recycling Act of 2003. The Franchise Agreement requires the franchisee to comply with both State and local regulations for hauling and disposing of waste. The City’s action assures the protection of the environment since the Agreement contains several regulatory mandates for complying with state law for the disposal of multiple waste streams in a manner that ensures the protection of the environment.

There are no applicable exceptions to this exemption.

#### 15061(b)(3) Common Sense Exemption

The project is exempt under the “Common Sense” exemption Section 15061(b)(3). The collection and disposal of solid waste is not only mandated and regulated by state law, but an essential service for the public health, safety, and welfare. The proposed change in service providers or awarding of a new franchise agreement for existing services. This change in service provider will not result in significant impacts on the environment and is eligible for the common sense exemption.

Furthermore , the Franchise Agreement qualifies for a CEQA exemption because it will have no environmental impacts individually or cumulatively:

#### Aesthetics

The project will not impact the aesthetics of the community because the community already uses waste bins and the proposed provider is not proposing a significant visual change to the waste bins. Additionally, there are already solid waste, recycling, and organic waste collection trucks and as noted in the proposal submitted, the only visible change to the public will be “the color of the trucks,” which is not a significant aesthetic impact.

#### Air Quality, Energy, Transportation, Greenhouse Gas Emissions, Noise

The proposed project is a change in the service provider for solid waste collection and transportation. All locations in the City that will be served by the new provider are already served by the current provider. The services are essentially “like for like,” except that the new service provider is proposing to purchase all new collection trucks with the highest tiered engines available to meet CARB compliance, increase fuel efficiency and



lower emissions. The new trucks will be “split body” trucks that can collect both waste and recycling in one trip, which reduces the number of vehicle trips.

The proposed “split-body” vehicles will reduce the overall number of trips made to each neighborhood for residential collection of solid-waste and recycling. The current provider has nine solid waste routes, nine recycling routes, and nine green waste routes. The proposal is that the new trucks would only do one trip for solid waste and recycling which would reduce the number of collection trips from 27 by the current provider to 18 by the new provider.

The current provider estimates that they can collect 77 containers per hour. There are an estimated 1,851 accounts in Fort Bragg spread over an approximate 27 miles of roads. Based on these numbers, it is possible to estimate that it takes the current provider an estimated 53 minutes to collect solid waste and 53 minutes to collect recycling on each of the nine routes with an average of 3 miles each. During that time, the trucks are either driving or idling which results in emissions. Because the trucks are running the whole time it is important to consider the idling time as well as the actual vehicle miles traveled (VMT) to determine whether there will be significant impacts.

Based on 77 containers per hour, the “split-body” trucks will reduce total trips from 27 to 18. It takes the current provider a total of 24 hours to cover the 1,851 residential accounts in the City of Fort Bragg. If the new provider covers the same 1,851 accounts with split body vehicles also collecting 77 containers/hour there would be an associated reduction in VMT, emissions, greenhouse gases, and energy usage, and noise generated by large diesel trucks in neighborhoods.

Using the information provided by the current provider and the proposed provider, the new Franchise Agreement would result in a reduction in the number of trips to each neighborhood resulting in a reduction in time that waste hauling vehicles are operating and creating emissions and noise by an estimated 30%. Therefore, the new Franchise Agreement will result in no impacts to air quality, energy, transportation, greenhouse gas emissions, or noise.

### Biological

The proposed service provider will be using the same kind of covered waste, recycling, and organic waste bins as are currently used and will provide the same kind of collection service as is currently provided. The collection and transfer of waste, recycling, and organics by the new provider will have no impact on biological resources.

### Cultural, and Tribal Cultural Resources, Geology and Soils, Hydrology and Water Quality, Land Use and Planning, Mineral Resources, Recreation, and Wildfire

The new Franchise Agreement does not involve construction, ground disturbance, or any physical changes to the land and the service provided will be the same as what is currently provided. Therefore, it will have no impact on these resources.

### Hazards and Hazardous Materials

The proposed project is for a new Franchise Agreement. The new service provider will not handle hazardous waste. The management protocols outlined in their proposal states:

“Route collectors who observe hazardous waste (including u-waste and e-waste) in bins or carts will be instructed to leave containers unemptied, leave a notice for the customer indicating why it was not collected, and contact the Route Supervisor. The Route Supervisor will attempt to determine the generator of the material and return these improper materials to the appropriate person.”

Additionally, the proposed service provider will offer a robust education and public outreach plan to help customers understand what can be disposed of in which type of bin. The service provider currently offers an interactive, mobile-friendly, cloud-based diversion tool for Mendocino County and the City of Fort Bragg at RedwoodRecycles.com. The tool allows customers to look up the appropriate disposal option for the item in question and should reduce issues with improper placement of waste.

The proposed service provider is offering a service that is comparable as “like-for-like” to the existing service provider and has precautions in place to prevent impacts from hazards and hazardous waste. Therefore, the change in service provider will have no impacts on the environment in relation to hazards or hazardous material.

### Population and Housing

The change in provider of solid waste collection and hauling services will not result in increased population growth or displacement of people. The proposed service provider is planning to recruit as many existing employees of the current provider as possible to prevent the displacement of local residents working for the current provider. The project is essentially a “like for like” service that will not induce any unplanned substantial growth either directly or indirectly. Therefore, the change in solid waste collection and transportation service providers will have no impacts on population or housing.

### Public Services, Utilities and Service Systems

The proposal for the new Franchise Agreement states that the operator, C&S Waste Solutions already holds the California permits necessary for the collection, processing, and marketing of materials including permits for volume transfer station, recycling processing, green waste composting, small volume wood debris chipping and grinding, construction and demolition waste processing, and compostable materials processing.

The same sites in Willits and Ukiah are used by both C&S Waste Solutions and the current service provider for waste diversion and inland transfer of waste. These sites include Solid Waste of Willits in Willits, Pacific Recycling Solutions in Ukiah, and Pacific Organic Solutions in Ukiah. Because they are the same sites and processors that will be used, the new Franchise Agreement will not impact public services, utilities and service systems.

Notice of Exemption

Appendix E

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044
County Clerk
County of: Mendocino
501 Low Gap Rd.
Ukiah, CA 95482

From: (Public Agency): City of Fort Bragg
430 N. Franklin St.
Fort Bragg, CA 95437
(Address)

Project Title: Franchise Agreement for Residential and Commercial Garbage, Recyclable Material, and Organic Waste Collection Services.

Project Applicant: City of Fort Bragg

Project Location - Specific:

Citywide

Project Location - City: Fort Bragg Project Location - County: Mendocino

Description of Nature, Purpose and Beneficiaries of Project:

The proposed project consists of the potential award for a Franchise Agreement to provide waste collection and hauling services using CARB compliant vehicles, and cars and bins made from 20% post-consumer recycled content. Awarding a contract for a Franchise Agreement is a discretionary action and subject to review under CEQA. As documented herein award of the Franchise Agreement and subsequent waste collection and hauling service is eligible for one or more CEQA exemption.

Name of Public Agency Approving Project: City of Fort Bragg, CA

Name of Person or Agency Carrying Out Project: City of Fort Bragg

Exempt Status: (check one):

- Ministerial (Sec. 21080(b)(1); 15268);
Declared Emergency (Sec. 21080(b)(3); 15269(a));
Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
[X] Categorical Exemption. State type and section number: 15061, 15301, 15308
Statutory Exemptions. State code number:

Reasons why project is exempt:

The City of Fort Bragg has reviewed the proposed change in service provider for solid waste collection and transportation. The awarding of a new Franchise Agreement will not result in significant environmental impacts and is categorically exempt from CEQA under Section 15301 Class 1 Existing "Facilities," Section 15308 Class 8 "Actions By Regulatory Agencies for Protection of the Environment," and 15061(b)(3) the common sense exemption because the change in Franchise Agreement is essentially a "like-for-like" service provided by a different organization.

Lead Agency
Contact Person: Heather Gurewitz Area Code/Telephone/Extension: (707) 961-2827x118

If filed by applicant:

- 1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature: [Handwritten Signature] Date: 11/2/2021 Title: Assoc Planner

Signed by Lead Agency Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code. Date Received for filing at OPR:
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

# Document Root (Read-Only)

## Selected Document

### **(New SCH Number) - NOE - Franchise Agreement for Residential and Commercial Garbage, Recyclable Material, and Organic Waste Collection Services**

City of Fort Bragg  
Created - 11/3/2021 | Submitted - 11/3/2021  
Heather Gurewitz

## Document Details

## Attachments

## Contacts

## Regions

## Counties

## Cities

## Location Details

## Notice of Exemption

## County Clerk(s)

---

Signature

---

Title

---

Date



## CITY OF FORT BRAGG

*Incorporated August 5, 1889*

416 N. Franklin Street

Fort Bragg, California 95437

tel. 707.961.2823

[www.fortbragg.com](http://www.fortbragg.com)

### ENVIRONMENTAL CHECKLIST FORM

Project title: Change in Solid Waste Services Provider

Lead agency name and address:

City of Fort Bragg

Community Development Department

416 N. Franklin St.

Fort Bragg, CA 95437

Contact person and phone number:

Heather Gurewitz, MCRP

(707) 961-2827x118

Project location: City of Fort Bragg (citywide)

Project sponsor's name and address:

City of Fort Bragg

416 N. Franklin St.

Fort Bragg, CA 95437

General Plan Designation: Industrial

Zoning: Light Industrial

Surrounding land uses and setting: The City is served by one solid waste collection and transportation provider. The new franchise agreement will effect waste hauling for the whole City.

Other public agencies whose approval is required: none

Have California Native American tribes traditionally and culturally affiliated with the project area requested consultation pursuant to Public Resources Code section 21080.3.1? If so, is there a plan for consultation that includes, for example, the determination of significance of impacts to tribal cultural resources, procedures regarding confidentiality, etc.?

Native Pomo lived along the Mendocino Coast for thousands of years prior to European settlement. The change in Franchise Agreement should not impact local tribes. That said, when a new site is reviewed for the transfer station, consultation will take place.

Description of project:

On June 14, 2021, the City Council approved issuing a Joint County of Mendocino and City of Fort Bragg RFP for Solid Waste Refuse Collections. On June 15, 2021, the Joint RFP was issued with a closing date of August 3, 2021. As expected, the City and the County received three responses from:

- C&S Waste Solutions of California, Inc. (C&S)
- Solid Waste of Willits, Inc. (SWOW)
- Waste Management Collection and Recycling, Inc. (WM)

The City Council Solid Waste Franchise Agreement Ad Hoc Committee, comprised of Mayor Bernie Norvell, Councilmember Lindy Peters and the City Manager, reviewed the responses and rated each proposal based on predetermined criteria. On September 27<sup>th</sup>, the Committee recommended that the City Council authorize the City Manager to enter into negotiations with C&S Waste Solutions of California, Inc. for residential and commercial garbage, recyclable materials and organic waste collection under an exclusive 10-year Franchise Agreement, which was approved.

The proposal from which the City will negotiate proposes the provision of “like-for-like” services for the collection, transportation, and management of solid waste for the City of Fort Bragg, with the exception that, the proposal selected for further negotiation and potential award includes the following changes:

- Provision of carts and bins made from 20% post-consumer recycled content
- Purchase of new CARB compliant vehicles including seven split-body design trucks that will reduce the number of trips to each neighborhood for the collection of waste.
- Outreach and education
- The siting of a new transfer station in the City limits

There is a proposed location for the new transfer station which will require a Use Permit. As the proposed franchise agreement is not contingent on the Use Permit approval. A Use Permit is a discretionary permit and there is no guarantee of approval, therefore the two activities are separate projects. A CEQA compliant environmental review of the proposed transfer site will take place when the application is complete.

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a “Potentially Significant Impact” as indicated by the checklist on the following pages.

- Aesthetics
- Agriculture and Forestry Resources
- Air Quality

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Biological Resources      | <input type="checkbox"/> Cultural Resources       | <input type="checkbox"/> Energy                             |
| <input type="checkbox"/> Geology /Soils            | <input type="checkbox"/> Greenhouse Gas Emissions | <input type="checkbox"/> Hazards & Hazardous Materials      |
| <input type="checkbox"/> Hydrology / Water Quality | <input type="checkbox"/> Land Use / Planning      | <input type="checkbox"/> Mineral Resources                  |
| <input type="checkbox"/> Noise                     | <input type="checkbox"/> Population/Housing       | <input type="checkbox"/> Public Services                    |
| <input type="checkbox"/> Recreation                | <input type="checkbox"/> Transportation           | <input type="checkbox"/> Tribal Cultural Resources          |
| <input type="checkbox"/> Utilities Service Systems | <input type="checkbox"/> Wildfire                 | <input type="checkbox"/> Mandatory Findings of Significance |

DETERMINATION:

On the basis of this initial evaluation:

I find that the proposed project is **categorically exempt** from CEQA based on Section 15301(b) Class 1 Existing “Facilities,” Section 15308 Class 8 “Actions By Regulatory Agencies for Protection of the Environment,” and 15061(b)(3) the common sense exemption because the change in Franchise Agreement is essentially a “like-for-like” service provided by a different organization which proposes practices that will reduce environmental impacts. There are no exceptions from the exemptions that apply.

I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

I find that the proposed project MAY have a “potentially significant impact” or “potentially significant unless mitigated” impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or



NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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## Aesthetics

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>I. AESTHETICS.</b> Except as provided in Public Resources Code Section 21099, would the project:				
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage point). If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

### Discussion

The change in service provider for solid waste collection will not impact the aesthetics of the community. The community already uses waste bins and the company is not proposing a significant visual change to the waste bins. Additionally, there are already solid waste, recycling, and organic waste collection trucks and a new service provider will not impact that aesthetics of the area. As noted in the proposal from the proposed service provider, the only visible change to the public will be “the color of the trucks” and the project will not have aesthetic impacts.

## Agricultural and Forestry Resources

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<p>II. AGRICULTURE AND FORESTRY RESOURCES. In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. Would the project:</p>				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Result in the loss of forest land or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Discussion

The scope of the project is to change service providers for the collection of solid waste including recyclables and organic waste. This is a mobile service and is not directly related to a specific site or location. Therefore it will not have farmland or forest land impacts.

**Air Quality**

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
III. AIR QUALITY. Where available, the significance criteria established by the applicable air quality management district or air pollution control district may be relied upon to make the following determinations. Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) [no criteria]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Discussion

The proposed project is a change in the service provider for solid waste collection and transportation. All areas that will be served by the new provider are already served by the current provider. The services are essentially like for like, except that the new service provider is proposing two changes which will reduce environmental impacts:

- 1) The Company will purchase all new collection trucks with the highest tiered engines available to meet CARB compliance, increase fuel efficiency and lower emissions.
- 2) New trucks will be “split body” trucks that can collect both waste and recycling in one trip, which reduces the number of vehicle trips.

The proposed “split-body” vehicles will reduce the overall number of trips made to each neighborhood for residential collection of solid-waste and recycling. The current provider has nine solid waste routes, nine recycling routes, and nine green waste routes. The proposal is that the new trucks would only do one trip for solid waste and recycling which would reduce the number of collection trips from 27 by the current provider to 18 by the new provider.

The current provider estimates that they can collect 77 containers per hour. There are an estimated 1,851 accounts in Fort Bragg spread over an approximate 27 miles of roads. Based on these numbers it is possible to estimate that it takes the current provider an estimated 53 minutes to collect solid waste and 53 minutes to collect recycling on each of the nine routes which averages to 3 miles each. During that time, the trucks are either driving or idling which results in emissions. Because the trucks are running the whole time it makes more sense to look at time instead of vehicle miles traveled to calculate emissions the “split-body” trucks will reduce total trips from 27 to 18. Using the 77 containers/hour metric, it takes the current provider a total of 24 hours to cover the 1,851 residential accounts in the City of Fort Bragg. If the new provider covers the same 1,851 accounts with split body vehicles also collecting 77 containers/hour.

The change in service provider and the new Franchise Agreement would result in a reduction in time that waste hauling vehicles are operating and creating emissions by an estimated 30%. The new trucks will be CARB certified and are equally if not more efficient than the trucks of the current waste hauler. This provides sufficient evidence to conclude that the new service provider will have lower emissions and reduce air quality emissions relative to the existing waste collection service. Therefore, there will be no air quality impacts as a result of the new Franchise Agreement.

## Biological Resources

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
IV. BIOLOGICAL RESOURCES: Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate,	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?

b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?

c) Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

Discussion

The proposed service provider will be using the same kind of covered waste, recycling, and organic waste bins as are currently used and will provide the same kind of collection service as is currently provided. The collection and transfer of waste, recycling, and organics by the new provider will have no impact on biological resources.

**Cultural Resources**

	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Potentially Significant Impact			

V. CULTURAL RESOURCES. Would the project:

- |  |                          |                          |                          |                                     |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Cause a substantial adverse change in the significance of a historical resource pursuant to § 15064.5?      | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Disturb any human remains, including those interred outside of formal cemeteries?                           | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Discussion

The proposed action is a change in service provider and will not have any impact on cultural resources.

**Energy**

- |   | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact                           |
|---|--------------------------------|--|------------------------------|-------------------------------------|
| VI. ENERGY. Would the project:  |                                |  |                              |                                     |
| a) Result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation? | <input type="checkbox"/>       | <input type="checkbox"/>                           | <input type="checkbox"/>     | <input checked="" type="checkbox"/> |
| b) Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?   | <input type="checkbox"/>       | <input type="checkbox"/>                           | <input type="checkbox"/>     | <input checked="" type="checkbox"/> |

Discussion

The proposed service provider will use fuel efficient split storage vehicles that will allow them to minimize the fuel used to collect and transport waste. This is an improvement from the current provider that only uses single collection vehicles. As noted in the analysis of air quality, there will be a reduction in the number of trips made and the total time spent collecting waste which will result in an overall reduction in the use of energy, therefore there will be a less than significant impact from the new Franchise Agreement.

## Geology and Soils

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
VII. GEOLOGY AND SOILS. Would the project:				
a) Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist- Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ii) Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iii) Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iv) Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>



f) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Discussion

This project does not involve construction, ground disturbance, or any physical changes to the land. A new Franchise Agreement will have no impact on geological or soil resources.

**Greenhouse Gases**

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>VIII. GREENHOUSE GAS EMISSIONS.</b>				
Would the project:				
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Discussion

The proposed project is a change in the service provider for solid waste collection and transportation. As noted above in the review of "Air Quality," the proposed Franchise Agreement will reduce the use of fuel and energy and greenhouse gas emissions in the collection process. Therefore, there will be no impacts to energy as a result of the new Franchise Agreement.

**Hazards and Hazardous Materials**

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>IX. HAZARDS AND HAZARDOUS MATERIALS.</b>				
Would the project:				

- |   |                          |                          |                          |                                     |
|---|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard or excessive noise for people residing or working in the project area? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| f) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| g) Expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Discussion

The proposed project is for a new Franchise Agreement. The new service provider will not handle hazardous waste. The management protocols outlined in their proposal states:

“Route collectors who observe hazardous waste (including u-waste and e-waste) in bins or carts will be instructed to leave containers unemptied, leave a notice for the customer indicating why it was not collected, and contact the Route Supervisor. The Route

Supervisor will attempt to determine the generator of the material and return these improper materials to the appropriate person.”

Additionally, the proposed service provider will offer a robust education and public outreach plan to help customers understand what can be disposed of in which type of bin. They currently offer an interactive, mobile-friendly, cloud-based diversion tool for Mendocino County and the City of Fort Bragg at RedwoodRecycles.com. The tool allows customers to look up the appropriate disposal option for the item in question and should reduce issues with improper placement of waste.

The proposed service provider is offering a service that is comparable as “like-for-like” to the existing service provider and has precautions in place to prevent impacts from hazards and hazardous waste. This is sufficient evidence to conclude that the change in service provider will have less than significant impacts on the environment in relation to hazards or hazardous material.

### Hydrology and Water Quality

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>X. HYDROLOGY AND WATER QUALITY. Would the project:</b>				
a) Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or groundwater quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) result in substantial erosion or siltation on- or off-site;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

- |  |                          |                          |                          |                                     |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| ii) substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or offsite;   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| iii) create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| iv) impede or redirect flood flows?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| d) In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| e) Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Discussion

This project does not involve construction, ground disturbance, or any physical changes to the land. Therefore, a new Franchise Agreement will have no impact on hydrology or water quality.

**Land Use and Planning**

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>XI. LAND USE AND PLANNING. Would the project:</b>				
a) Physically divide an established community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Discussion

This project does not involve construction, ground disturbance, or any physical changes to the land. Therefore, a new Franchise Agreement will have no impact on land use and planning.

**Mineral Resources**

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XII. MINERAL RESOURCES. Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Discussion

This project does not involve construction, ground disturbance, or any physical changes to the land. Therefore, a new Franchise Agreement will have no impact on mineral resources.

**Noise**

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XIII. NOISE. Would the project result in:				
a) Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Generation of excessive groundborne vibration or groundborne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

c) For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?

Discussion

The proposed service is currently carried out by a fleet of diesel trucks that collect and transport solid waste. It is noted by the proposed service provider that the only noticeable change will be the “color of the trucks.” However, given that diesel waste hauling vehicles do generate noise, the change in service provider will likely reduce the current noise experience by the community because as noted above, there will be fewer trips and less time that the trucks are operating in each of the neighborhoods. This evidence suggests that the new Franchise Agreement will have a less than significant impact on noise.

**Population and Housing**

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>XIV. POPULATION AND HOUSING.</b>				
Would the project:				

a) Induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?

b) Displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?

Discussion

The change in provider of solid waste collection and hauling services will not result in increased population growth or displacement of people. The proposed service provider is planning to recruit as many existing employees of the current provider as possible to prevent the displacement of local residents working for the current provider. The project is essentially a “like for like” service that will not induce any unplanned substantial growth either directly or indirectly. Therefore, the change in solid waste collection and

transportation service providers will have a less than significant impact on population or housing.

**Public Services**

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>XV. PUBLIC SERVICES.</b>				
a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Police protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other public facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Discussion

The current provision of solid waste collection and transportation is a critical function for schools, clean parks, and other public facilities. However, the change in who will provide these “like-for-like” services will have “less than significant” impacts on public facilities as the collection of refuse will still occur at the same frequency as the previous provider. Therefore, the new Franchise Agreement will have no impact on public facilities.

## Recreation

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XVI. RECREATION.				
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

### Discussion

This project does not involve construction, ground disturbance, or any physical changes to the land. Therefore, a new Franchise Agreement will have no impact on recreation or recreation facilities in or around the City of Fort Bragg.

## Transportation

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XVII. TRANSPORTATION. Would the project:				
a) Conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Would the project conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Result in inadequate emergency access?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>



Discussion

The proposed project is a change in service provider and will not result in changes to existing roads or circulation in the City. The use of the “split-body vehicles” will reduce the frequency of large diesel vehicles traveling on City streets, and as noted above will likely result in a 33% reduction in trips which should translate to a reduction in Vehicle Miles Traveled.

This project does not involve construction, ground disturbance, or any physical changes to the land and therefore would not result in any changes to the environment or road system including any potential geometric design features or changes to emergency access. Therefore, the project would have no impact on transportation.

**Tribal Cultural Resources**

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>XVIII. TRIBAL CULTURAL RESOURCES.</b> Would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:				
a) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k), or	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Discussion

The new Franchise Agreement does not involve construction, ground disturbance, or any physical changes to the land and therefore will have no impact on tribal cultural resources.

**Utilities and Service Systems**

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>XIX. UTILITIES AND SERVICE SYSTEMS. Would the project:</b>				
a) Require or result in the relocation or construction of new or expanded water, wastewater treatment or storm water drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Comply with federal, state, and local management and reduction statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Discussion

The current franchise holder identifies the following facilities for the diversion of waste:

The proposal for the new Franchise Agreement states that the operator, C&S Waste Solutions already holds the California permits necessary for the collection, processing,

and marketing of materials including permits for volume transfer station, recycling processing, green waste composting, small volume wood debris chipping and grinding, construction and demolition waste processing, and compostable materials processing.

The same sites in Willits and Ukiah are used by both C&S Waste Solutions and the current service provider for waste diversion and inland transfer of waste. These sites include Solid Waste of Willits in Willits, Pacific Recycling Solutions in Ukiah, and Pacific Organic Solutions in Ukiah. Because they are the same sites and processors that will be used, the new Franchise Agreement will have a less than significant impact on utilities and service systems.

### Wildfire

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XX. WILDFIRE. If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project:				
a) Substantially impair an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to, pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Discussion

The new Franchise Agreement does not involve construction, ground disturbance, or any physical changes to the land and the service provided will be the same as what is currently provided. Therefore it will have no impact on wildfire risk.

**Mandatory Findings of Significance**

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>XXI. MANDATORY FINDINGS OF SIGNIFICANCE.</b>				
a) Does the project have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Does the project have impacts that are individually limited, but cumulatively considerable? (“Cumulatively considerable” means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Discussion

The proposed Franchise Agreement for solid waste collection and transportation services is essentially a “like for like” change from one service provider to another. The service area will be the same, the accounts will be the same, and the destination of the waste to diversion and processing centers will remain the same. The only proposed changes will be the new CARB compliant “split-body” trucks that will result in a reduction in emissions, and vehicle miles traveled.

There are no significant impacts to any of the areas referenced above individually or cumulatively. Therefore, the new franchise agreement will result in less than significant impact and the project is exempt under the following:

15301(b) of the Class 1 categorical exemption which includes existing facilities of both investor and publicly owned utilities used to provide electrical power, natural gas, sewerage, or other public utility services. The project is a new Franchise Agreement for the collection and transfer of solid waste, recycling, and organic material for the City of Fort Bragg. It will be the same accounts as currently exist and the processing locations in Willits and Ukiah will be the same. Therefore, the awarding of the new Franchise Agreement to a different operator does not expand or materially change the current operation of solid waste collection and transportation and it is exempt as an existing "facility."

The project also qualifies for the under Section 15308, actions taken by regulatory agencies for protection of the environment. Class 8 includes action by regulatory agencies, "*as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for the protection of the environment.*"

The California Integrated Solid Waste Management Act of 1989 (AB 9369) requires cities to permit and regulate solid waste handling and declares that there is an urgent need for regulation to avoid an adverse environmental impact from the amount of waste generated in the state. Several subsequent bills have been passed to address other environmental issues including AB 341, AB 1826, AB 1594, and SB 1383, and the California Electronic Waste Recycling Act of 2003. The Franchise Agreement requires the franchisee to comply with both State and local regulations for hauling and disposing of waste. The City's action assures the protection of the environment since the Agreement contains several regulatory mandates for complying with state law for the disposal of multiple waste streams in a manner that ensures the protection of the environment.

Furthermore, the project is exempt under the "Common Sense" exemption as stated in the CEQA Guidelines in Section 15061(b)(3). The collection and disposal of solid waste is not only mandated and regulated by state law, but an essential service for the public health, safety, and welfare. The proposed change in service providers or awarding of a new franchise agreement for existing services. This change in service provider will not result in significant impacts on the environment and is eligible for the common sense exemption.

The City of Fort Bragg has reviewed the proposed change in service provider for solid waste collection and transportation. The awarding of a new Franchise Agreement will not result in significant environmental impacts and is categorically exempt from CEQA under Section 15301 Class 1 Existing "Facilities," Section 15308 Class 8 "Actions By Regulatory Agencies for Protection of the Environment," and 15061(b)(3) the common

sense exemption because the change in Franchise Agreement is essentially a “like-for-like” service provided by a different organization.

**From:** [Jacob Patterson](#)  
**To:** [Munoz, Cristal](#); [Lemos, June](#)  
**Subject:** Public Comment -- 11/22/21 City Council Meeting, Item No. 8A, C&S Franchise Agreement  
**Date:** Friday, November 19, 2021 2:19:21 PM

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City Council,

Although I have no objections to entering into this franchise agreement with C&S/Redwood Waste Solutions, I have concerns and objections relating to the CEQA analysis. In reviewing the agenda materials, the City appears to be attempting to base the CEQA analysis on a superficial connection to a Class 1 categorical exemption that likely doesn't apply to the current situation and completely misplaced reference to a Class 8 categorical exemption. Moreover, there is an issue with the project definition and scope.

First, there is the underlying issue of the project definition and proper scope of the environmental review. This portion of the overall project changing the franchise contract provider for solid waste collection and transfer services for City residents appears to be improperly segmented (aka piecemealed) out of the full scope of the project, which arguably includes the new coast transfer facility proposed for 1280 North Main Street because it is a clearly foreseeable consequence of awarding this new franchise agreement--it is so foreseeable, in fact, that the entitlement application and review is already underway. The agenda materials assert that that project is "separate and distinct" and will be subject to its own CEQA review but it is arguably a component of the overall project of switching the franchise provider from Waste Management to C&S/Redwood and limiting the future CEQA review to only the new facility itself and not the replacement vehicles and equipment, including decommissioning the existing facilities, would lead to ignoring the full impacts of the overall project or the cumulative impacts of the successive related projects or project components. In my opinion, neither discretionary action can be considered an independent project from the other because both the award of the franchise agreement itself and the construction of the new solid waste facility on the coast would not happen independently of the other action. In particular, the relocation and construction of the new facility is the direct consequence of awarding this franchise agreement to a new provider as are the new vehicles and collection containers for all existing accounts in the City as well as the County's collection subarea on the coast around Fort Bragg. (These related projects or project components, including their cumulative impacts, also involve what will happen to the existing Pudding Creek facility and equipment owned and operated by Waste Management.) If the City were considering awarding the new franchise agreement to Waste Management and Waste Management intended to continue using their existing facilities and equipment, then the Class 1 categorical exemption under section 15301(b) might have applied.

In my opinion, the CEQA categorical exemption for existing facilities is likely inapplicable to this project for several reasons, many of which are actually mentioned in your staff report. Even assuming merely for argument's sake that the franchise agreement and the entitlements for the new facility could be properly segmented and evaluated as separate projects, the staff report highlights numerous additional changes from baseline conditions that have a potentially significant impact on the environment and need to be analyzed, which likely prevents reliance on a Class 1 categorical exemption even if it could apply to approving a franchise agreement. These include the potentially significant impacts of replacing all of the existing vehicles and collection containers with new vehicles and collection containers (at least three per customer account). Several specific issues need to be evaluated for potentially significant impacts. What

will happen to the existing facilities and equipment owned by Waste Management and what is involved in the manufacture and transportation of the new vehicles and equipment to the coast because of their acquisition by C&S? Although there are clearly some benefits to converting to new vehicles, particularly switching to the new trucks that combine green waste and recycling collection into a single vehicle, the disposition of the former collection trucks and collection containers and the environmental impacts of the construction and acquisition of the new vehicles and containers need to be evaluated as part of an environmental review for this project (e.g., energy, air quality, and solid waste impacts). We are talking about replacing and likely disposing of a large number of collection containers for every customer on the coast (not just the City but also the County's service area since this the result of a joint RFP and combined effort). There are always environmental impacts to demolishing or disposing of existing facilities and equipment and replacing them with entirely new facilities and equipment. There is even a question in the Initial study checklist for CEQA reviews that specifically deals with solid waste impacts within environmental reviews, albeit one that is frequently disregarded or overlooked by less experienced or knowledgeable planners, at least in my experience. The City's reference to continuing to use the same inland facilities ignores the fact that the discretionary action also involves new facilities and equipment located on the coast and all the various facilities and equipment are relevant to the environmental determination for this project even if some of the existing facilities will continue to be used

Regarding the Class 8 categorical exemption, that class of exemption doesn't apply to projects like this, which is not about the City undergoing a project for the purpose of remediating an environmental harm or protecting the environment, it is about awarding a franchise agreement to a different franchisee and service provider to continue offering the same solid waste collection and transfer services as are already provided in the City and neighboring collection area in the County. Even the aspects of this particular proposal from C&S that arguably have some environmental benefits, like the combination of the recycling and green waste collection activities into single vehicles, were not a required component of the proposals and therefore actions of the City that could be classified as for the purpose of protecting the environment. In fact, the CEQA memo lists applicable requirements with which C&S will have to comply but those are all the result of *prior* regulatory processes, primarily at the state level. This discretionary action is not the relevant regulatory process that could rely on a Class 8 categorical exemption, even if the franchisee will need to comply with those regulations. Those regulations are all already in effect or scheduled to go into effect and nothing about this current discretionary action by the City has an impact on the environmental protections that will apply to local solid waste collection and management activities and services. In addition, the agenda materials make clear that the same customer accounts and services will be involved, including using the same inland locations for solid waste transfer and disposal as are being used under the current franchise agreement with Waste Management. There is nothing in the agenda materials for this item (or prior related discussions) that suggest this new proposed franchise agreement is being done for the purpose of protecting the environment compared to current baseline conditions and none of the prior discussion about switching service providers focused on environmental concerns or preventing expected environmental harms that would happen absent the discretionary action of entering into the franchise agreement with a new provider. (This project is not considering, for example, ending the City's use of Glass Beach as the town dump which is damaging to the environment, including the marine ecosystem and local air quality, and switching to a new more environmentally friendly means of dealing with solid waste.) This project is merely switching to a different provider to provide the same services incorporating the same environmental protections contained in the various laws and regulations cited in the CEQA memo. Those regulatory requirements apply



to local waste management activities independent of and regardless of with whom we enter into a new franchise agreement.

In fact, the attempted reliance on a Class 8 categorical exemption is undermined by the City's positions taken in the staff report and CEQA memo that attempted to justify relying on the Class 1 exemption for existing facilities since that content focused on not changing the current locations or facilities (at least the inland facilities). A Class 8 categorical exemption would apply to a project like adopting an ordinance banning the local use of plastic or polystyrene packaging in order to avoid the known adverse environmental effects of plastic and polystyrene waste to the marine environment and wildlife. By approving this franchise agreement, the City is not undergoing a regulatory process that involves procedures for protection of the environment. Entering into a franchise agreement isn't really a regulatory process, the way adopting regulations or issuing a license might be considered a regulatory process; it is simply entering into a contract with a particular service provider. (The CEQA memo notes that C&S already holds the necessary licenses, the granting of which was a separate regulatory process.) If the City was imposing significant new requirements and conditions that were specifically intended to protect the environment that were not already required as a result of the State of California's existing regulatory processes, then the City might be able to try to rely on a Class 8 categorical exemption but that is not the current situation. Simply because a proposal under consideration involves an aspect that arguably results in an environmental benefit or complies with existing regulatory requirements intended to protect the environment doesn't mean the discretionary action under review is being taken for the purpose of protecting the environment. If that were the case, any project that complied with our local storm water retention regulations or tree retention policies would be claimed to be exempt from environmental review under a Class 8 categorical exemption even if it involved other negative environmental impacts or even if those requirements were already applicable to the project because of prior regulatory processes by the City or another authority.

Also, even if a categorical exemption could apply to the award of the franchise agreement, the unusual circumstances exception to reliance on categorical exemptions would apply to this project because of the unique facts and circumstances and sensitive environmental resources at the location of the proposed new facility, which are discussed below, including its prominent location along Highway One and the fact that the site provides public access to coastal resources and recreation (as well as being a coastal resource itself in the form of public community parking). The CEQA memo asserted, without any supporting analysis, that there are no exceptions to the Class 1 or Class 8 exemptions. Those unsupported assertions are not even explained in any way because there is no discussion of possible cumulative impacts or possible impacts to historic resources, unusual circumstances, etc. Omitting even a cursory discussion of the possible exceptions is not adequate CEQA analysis that is attempting to rely on categorical exemptions to avoid further environmental review.

Moreover, I would also like to highlight two related concerns about the new proposed transfer site, which are (1) the prescriptive public easement on that property based on the long-standing public use of the western-most portion of the site for public parking and coastal access, and (2) the coastal access and coastal resources provided by the site, both of which will complicate development efforts of the site as a solid waste transfer station and which have likely resulted in the site not being developed in the past for other purposes. The requirements for a prescriptive easement for continued public use of the portion of the site fronting North Main Street/Highway One appear to have been met long ago. The established and long-

standing (i.e., longer than my lifetime) public use is for parking for the public to access MacKerricher State Park, the beach at Virgin Creek in particular, which is a wonderful beach and popular surfing spot. There is an established access trail directly across Highway One from the parking area that takes up the entire frontage of the property along North Main Street, which is also the only clear access point for the solid waste collection and transfer trucks to access the new facility directly from a public road. However, I am not stating that this is an insurmountable obstacle to developing the site as a solid waste facility but continuing to provide a public parking and coastal access area on the site that provides the same or an equivalent amount of public access will make designing the new facility and managing the traffic flow to and from that facility without materially interfering with continued public access quite challenging. That will need to be included in the entitlement review for the facility but it is also a topic that should be considered within the CEQA review for this project (or these related projects).

In addition, although the staff report correctly identifies the 1280 North Main street property as outside the Coastal Zone, the site is directly adjacent to the Coastal Zone and may still fall within some oversight and jurisdiction of the Coastal Commission because the site itself provides significant coastal access and is therefore a coastal resource. I haven't done any refresher research on this topic, and I believe that Jones & Mayer explicitly excluded Coastal Act matters from the offered scope of services in their initial proposal to the City, so you may want to consult with special legal counsel with Coastal Act and Coastal Commission expertise, but I think the Coastal Commission's authority extends to development outside the Coastal Zone that directly impacts coastal resources and access to coastal resources in areas adjacent to the Coastal Zone. (This is a similar concept to a city's sphere of influence where a jurisdiction must be consulted for projects in areas outside its incorporated boundaries but which may impact the use and development of property within its explicit jurisdictional boundaries.) This specific property at 1280 N. Main Street appears to implicate that very specific issue.

In conclusion, this project, whether evaluated as a stand-alone discretionary action or as part of an overall project along with the new facility at 1280 N. Main Street, should not be determined to be exempt from environmental review based on a Class 1 or Class 8 categorical exemption or the catch-all common sense exemption under CCR section 15061(b)(3) despite the agenda materials that suggest otherwise. In fact, there are several areas of study that this project implicates that arguably require further consideration in an Initial Study (and possibly an MND or EIR) despite many of these areas being discussed in the CEQA memo. If the overall project is considered as a whole, these areas of inquiry include potentially significant impacts in aesthetics, biological resources, hydrology and water quality, noise, recreation (not the standard Initial Study checklist question but an appropriate customized checklist question and threshold of significance specific to this project), utilities and service systems, cultural resources, greenhouse gas emissions, land use and planning, transportation, air quality, energy, hazards and hazardous materials, public services, and tribal cultural resources. Other specific impacts may also be relevant. (Some of those areas of inquiry primarily apply to the new coast facility rather than just the vehicle and collection bin replacement.)

Thank you for your consideration of these important matters,

--Jacob

**From:** [Jacob Patterson](#)  
**To:** [Munoz, Cristal](#); [Lemos, June](#)  
**Subject:** Re: Public Comment -- 11/22/21 City Council Meeting, Item No. 8A, C&S Franchise Agreement  
**Date:** Friday, November 19, 2021 9:42:30 PM

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Updated Public Comment:

City Council,

I see the agenda materials are updated but I am confused because none of the issues are addressed by the additional checklist that was added to the agenda packet, which inexplicably focuses on reiterating the initial conclusions based on arguably incomplete analysis.

Unfortunately, the City might be able to rely on minimally reasonable analysis for items that are explicitly addressed but it cannot rely on something that doesn't exist but is implicated by the details of the proposed project. The City uploaded an initial study checklist from staff but it still doesn't adequately address anything that was left out the first time, specifically any of the impacts associated with replacing the collection containers in a meaningful manner. This also only discusses the aspects of the project that arguably have environmental benefits but omits any discussion of something that could have a significant impact.

The checklist notes there are an estimated 1851 accounts, which means there are at least 5553 collection containers in circulation. This project involves the removal from service of at least 5553 containers and the manufacture and transportation of at least 5553 new containers. Inexplicably, this asserts that all that activity doesn't have any impact on energy consumption because it only discusses the projected reduction in energy use because of the more efficient and fewer vehicles that will be used. What about the energy use of manufacturing the new containers or recycling or destroying the existing containers? What about the solid waste impacts of removing that many containers from service? This kind of cherry-picked analysis is not justified or compliant with applicable legal requirements. and I honestly don't understand why it is being permitted. Please consider these issues when you provide direction. If you ignore them, you could have another Grocery Outlet situation on your hands where the City's defective planning work interferes with Council's policy objectives.

Regards,

--Jacob

**From:** [Annemarie](#)  
**To:** [Lemos, June](#); [Munoz, Cristal](#); [Peters, Lindy](#); [Norvell, Bernie](#); [Morsell-Haye, Jessica](#); [Albin-Smith, Tess](#); [Rafanan, Marcia](#)  
**Subject:** public comment 11-22-21 City Council Meeting item # 8A, C&S Franchise Agreement  
**Date:** Friday, November 19, 2021 9:36:12 PM

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To City Council members,

I read the documents available on your agenda posted under 8A, C&S Franchise Agreement.

I also read what Jacob Patterson wrote and believe that what he wrote makes a lot of sense. I agree with his comments. I therefore would like for you to know that I support his letter.

At the time when the city council decided to switch to another company I have to admit that I did not think about important details like switching to all new equipment with a new outfit and how this would have to be looked at in terms of CEQA. I agree that the cumulative effects are such that it can not be declared that the project is exempt from CEQA review, no matter what clause is being used.

The Franchise Agreement with C&S needs to consider the location where there would be a lot of traffic in addition to traffic from locals and tourists. A lot of traffic would be taking place close to the recreation area by the historic Pudding Creek Trestle Bridge and Pudding Creek beach. This makes dealing with no CEQA review impossible to think off. This project requires at least a Mitigated Negative Declaration (MND), if not an Environmental Impact Report (EIR).

Sincerely,  
Annemarie Weibel  
11-19-2021



# City of Fort Bragg

416 N Franklin Street  
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## Text File

File Number: 21-607

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**Agenda Date:** 11/22/2021

**Version:** 1

**Status:** Closed Session

**In Control:** City Council

**File Type:** Staff Report

**Agenda Number:** 9A.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION: Significant exposure to litigation pursuant to Paragraph (2) of Subdivision (d) of California Government Code Section 54956.9: One (1) Potential Case: Claim from Jacob Patterson, Intentional or Negligent Interference with Prospective Economic Relations; Intentional Interference with Contractual Relations; Inducing Breach of Contract; Defamation; False Light, Invasion of Privacy; Intentional or Negligent Infliction of Emotional Distress; Disability Discrimination; Retaliation; Failure to Prevent Harassment, Discrimination, or Retaliation; and Violation of Civil Rights, including Failure to Train Subordinate City Staff



# City of Fort Bragg

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## Text File

File Number: 21-604

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**Agenda Date:** 11/22/2021

**Version:** 1

**Status:** Closed Session

**In Control:** City Council

**File Type:** Report

**Agenda Number:** 9B.

**PUBLIC EMPLOYMENT:** Pursuant to Government Code 54957(b). Title: City Manager



# City of Fort Bragg

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## Text File

File Number: 21-611

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**Agenda Date:** 11/22/2021

**Version:** 1

**Status:** Closed Session

**In Control:** City Council

**File Type:** Staff Report

**Agenda Number:** 9C.

CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION; Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9 of the Government Code: (one case)