

AGREEMENT FOR PURCHASE AND SALE OF ASSETS

This agreement ("Agreement") is made as of __[date]__, at Fort Bragg, California, among the City of Fort Bragg ("City" or "Buyer"), a California municipal corporation, having its principal office at 416 North Franklin Street, Fort Bragg, CA 95437 and the Mendocino Unified School District ("District" or "Seller"), having its principal office at 44141 Little Lake Road, Mendocino, CA, 95460. City and District are collectively referred to in this Agreement as "Parties."

RECITALS

A. District is the owner and operator of an internet service provider business known as Mendocino Community Network ("MCN")

B. City wishes to purchase MCN from District and District wishes to sell MCN to City, on the terms and subject to the conditions of this Agreement in exchange for the consideration from City described in Section 3.

C. It is the intent of the Parties that all existing services provided by MCN to customers outside of Fort Bragg will be continued in their current form as long as they remain financially viable, or until another service provider is identified and customers are offered comparable service. The City will conduct regular financial reviews to ensure sustainability.

AGREEMENT

In consideration of the mutual covenants, agreements, representations, and warranties contained in this Agreement, the parties agree as follows:

- 1. Definitions.** As used in this Agreement, the following defined terms have the following meanings:
 - a. "Closing" has the meaning set forth in Section 8 of this Agreement.
 - b. "Closing Date" has the meaning set forth in Section 8 of this Agreement.
 - c. "Encumbrance" means any lien, pledge, hypothecation, charge, mortgage, deed of trust, security interest, encumbrance, claim, infringement, option, right of first refusal, preemptive right, community property interest, or restriction of any nature on any asset;
 - d. "Entity" means a Person other than an individual;
 - e. "Governmental Authority" means any federal, state, local, or foreign court, administrative agency or commission, or other governmental authority or instrumentality;
 - f. "Intellectual Property Rights" means, collectively, all of the following worldwide intangible legal rights, acquired by ownership, license, or other legal operation: (1) all patents, patent applications, and patent rights, including all continuations, continuations-in-part, divisions, reissues, reexaminations, and extensions of them; (2) all trademarks, trade names, logos, and service marks, registered or not; (3) all rights associated with

works of authorship, including copyrights (registered or not), copyright applications, copyright registrations, moral rights, mask work rights, mask work applications, and mask work registrations; (4) all inventions (patentable or not), know-how, show-how, formulas, processes, techniques, confidential business information, trade secrets, and other proprietary information, technology, and intellectual property rights; and (5) all rights to sue or make any claims for any past, present, or future misappropriation or unauthorized use of any of the foregoing rights and the right to receive income, royalties, damages, or payments that are now or will later become due with regard to the foregoing rights.

- g. "Person" means any individual, District, partnership, estate, trust, company (including any limited liability company), firm, or other enterprise, association, organization, or Governmental Authority;
- h. "Proceeding" means any claim, action, suit, investigation, or administrative or other proceeding before any Governmental Authority or any arbitration or mediation;
- i. "Taxes" means any and all federal, state, local, or foreign taxes, assessments, and other governmental charges, duties, impositions, and liabilities relating to taxes of any kind, together with all interest, penalties, and additions imposed with respect to such amounts.

2. Sale and Transfer of Assets. Subject to the terms and conditions set forth in this Agreement, at the Closing, District shall sell, convey, transfer, assign, and deliver to City, and City shall purchase from District, all rights and title to, and interest in, the assets, properties, and business of District of every kind, character, and description, whether tangible, intangible, real, personal, or mixed, and wherever located, all of which are sometimes collectively referred to as the Assets, free and clear of all Encumbrances, including the following:

- a. Cash equivalents and receivables;
- b. Network infrastructure (fiber, cables, routers, etc.)
- c. Customer contracts and agreements
- d. /20 of ARIN Assigned IP Space: (216.150.240.0/20)
- e. All internet domain names and registrations that are held or owned by District, including mcn.org and mcndigital.org
- f. All inventory, finished goods, supplies, materials, and works in progress;
- g. All office equipment, machinery, and furniture;
- h. All claims and rights under leases, contracts, insurance policies, notes, evidences of indebtedness, and purchase and sales orders;

- i. All software programs, software code and technical documentation for all software program owned or licensed by District;
- j. All copies and tangible embodiments of the software programs and software code (in source and object code form), together with all documentation related to such programs and code;
- k. All Intellectual Property Rights exercisable or available in any jurisdiction of the world, and the exclusive right for City to hold itself out to be the successor to the business of District;
- l. All licenses to assets and properties of third parties (including licenses with respect to Intellectual Property Rights owned by third parties);
- m. Claims, causes of actions, royalty rights, deposits, and rights and claims to refunds (including Tax refunds) and adjustments of any kind (including rights to set-off and recoupment), and insurance proceeds;
- n. All franchises, permits, licenses, agreements, waivers, and authorizations from, issued, or granted by any Governmental Authority, where applicable;
- o. True and complete copies of District's business records for MCN, including general and financial records, marketing and sale information, and plans, pricing, and customer lists;
- p. All goodwill associated with District's MCN business and the Assets.
- q. Provided however, that notwithstanding the foregoing, the Assets shall not include, and City shall not purchase from District, nor shall District sell to City, any of the following assets or properties:
 - i. Those assets disposed of by District in the ordinary course of its business or as permitted by this Agreement during the time period beginning on the date of this Agreement and ending on the Closing Date;
 - ii. The cash and other property under this Agreement; and
 - iii. Amounts paid before the Closing Date for expenses incurred by District in negotiating this Agreement and in performing obligations and satisfying conditions under it, including any contemplated dissolution or liquidation of District.

3. Consideration From City at Closing. As full payment for the transfer of the Assets to City, City shall deliver to District at the Closing, the following (collectively, the Purchase Price):

- a. A total purchase price of Five-Hundred Thousand Dollars (\$300,000.00) payable at closing by cash in the amount of One-Hundred Thousand Dollars (\$100,000) and a note to District in the amount of Two-Hundred Thousand Dollars (\$200,000.00) payable in annual installments of Fifty-Thousand Dollars (\$50,000.00) per year for 4 years.

- b. Payment of the funds due at closing will be completed in accordance with wire transfer instructions delivered by District to City at least 2 business days before Closing, in the amount of \$100,000.
 - c. City's promissory note, dated as of the Closing Date, in the principal amount of \$200,000. This note shall be in the form of Exhibit 1.
 - d. Failure of the City to pay the promissory note according to the agreed-upon terms constitutes a material breach of this Agreement. In addition to other breach of contract remedies available to the District, the City shall be assessed a 10% penalty for any late or missed payment.
- 4. Assumption of Liabilities.** From and after the Closing, City shall assume all of District's rights and obligations arising after the Closing under those contracts (and only those contracts) provided, that City shall not be obligated to assume any such contract for which assignment to City requires the consent of the other party to such contract unless such consent has been obtained in writing and delivered to City on or before the Closing Date. District shall remain liable for all obligations arising under such contracts before the Closing. District shall have the right to require City to complete any sales order not assumed by City in that exhibit for District's account at a price to District equal to City's cost. It is expressly understood and agreed that City shall not be liable for any of the debts, obligations, or liabilities of District of any kind other than those specifically assumed by City under this paragraph and that District shall remain liable and responsible for any and all of its debts, obligations, and liabilities not expressly assumed by City under this Agreement.
- 5. Excise and Property Taxes.** District shall pay all sales, use, and similar Taxes arising from the transfer of the Assets (other than Taxes on a party's income) and shall pay its portion, prorated as of the Closing Date, of state and local real and personal property Taxes of the business. City shall not be responsible for any business, occupation, withholding, or similar Tax, or any Taxes of any kind incurred by District related to any period before the Closing Date.
- 6. Representations and Warranties of District.**
- a. Authorization of District. District has all requisite power and authority to enter into this Agreement, perform its obligations hereunder and consummate the transactions contemplated hereby, and the execution and delivery of this Agreement, and any the general conveyance, assignment, bill of sale, and/or other assignment and closing documents in accordance with Section 8 hereof, and the consummation of the transactions contemplated hereby and the compliance by District with the terms of this Agreement do not and will not (i) conflict with or result in a breach of any term of, or constitute with the lapse of time or delivery of notice (or both) a default under, any agreement or instrument to which District is a party or by which District or any of the Assets are bound, or (ii) result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the Assets. This Agreement constitutes a valid and binding obligation of District, enforceable in accordance with its terms. With the exception of the Mendocino County LAFCO, no consent or approval of or notice to or other action by any federal,

state, or local governmental entity or agency or any other person or entity is required in connection with the execution and delivery of the Agreement or the consummation of the transactions contemplated herein.

- b. Title to the Assets. Effective as of the execution of this Agreement, District shall have good and marketable title to the Assets, free and clear of all liens, mortgages, pledges, encumbrances, security interest, equities, and restrictions of any nature whatsoever. This Agreement gives City marketable title to the Assets, free and clear of all liens, mortgages, pledges, encumbrances, security interests, charges, and equities of any nature whatsoever as of the effective date.
- c. Litigation. There is no claim, litigation, action, suit, proceeding, investigation, or inquiry, administrative or judicial, pending or, to the best of District's knowledge, threatened against District involving the Assets, at law or in equity, before any federal, state, or local court or regulatory agency, or other governmental authority.
- d. Business Assets. No personal property used by District in connection with the operation of the Business is held under any lease, security agreement, conditional sales contract, or other title retention or security arrangement, or is located other than in the possession of District. District assigns to City all warranties relating to the equipment.
- e. Employment Contracts. There are no employment contracts, collective bargaining agreements, pension, retirement, bonus, profit-sharing, stock option, or other plan, agreement or arrangement providing for remuneration or benefits for employees of MCN to which District is bound.
- f. Liabilities. All accounts payable and other liabilities due on or before the Closing Date which might materially affect the Assets or City's ability to transact business shall be paid in full on or before the Closing. Notwithstanding the foregoing, if a liability incurred by District prior to Closing in connection with the Business has not become due and payable as of the Closing Date and is not specifically assumed by City hereunder, District shall promptly pay any such liability once due and payable. In the event District fails to pay any such liability, the amount of such liability shall be subject to City's right to seek reimbursement pursuant to this Agreement.
- g. Financial Statements. District has provided City with the last three years of financial statements for District's business. District represents they are accurate in all material respects and reflect the financial standing of District's business for the applicable periods to the best of District's knowledge.
- h. Disclosures. District has disclosed to City all material facts concerning the assets and the business operations of Mendocino Community Network and has disclosed all facts necessary to make any such disclosure to City not misleading.
- i. Conduct of Business. Prior to execution of this Agreement, District shall conduct the operation of the Business in the ordinary course. District shall

make no extraordinary transactions or expenditures during such period without the prior written consent of City.

- j. District has complied in all material respects with all federal, state, and local statutes, laws, and regulations. District has not received any notice asserting any violation by either of them of any statute, law, or regulation that has not been remedied before the date of this Agreement
- k. District's Creditors. District represents and warrants that the transactions described in this Agreement have been undertaken by them in good faith, considering its obligations to any person or entity to whom District owes a right to payment in association with the Business, whether or not the right to payment is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured (collectively such persons with such claims are called "creditors" under this paragraph), and District has undertaken these transactions without any intent to hinder, delay, or defraud any such creditors, and either has disclosed in the ordinary course of business or will undertake to disclose to all such creditors associated with the Business the existence of this transaction, and Districts has not and will not conceal this transaction or the proceeds of this transaction from any such creditors.

7. Representations and Warranties of City.

- a. City represents and warrants to District that City is an entity in good standing; City has all requisite power and authority to enter into this Agreement and perform their obligations hereunder; City has taken all action necessary to enable City to execute and deliver this Agreement, acquire the Assets from District and otherwise carry out their obligations under this Agreement; and this Agreement constitutes the valid and binding obligation of City enforceable in accordance with its terms.
- b. Further, the execution and delivery of this Agreement, the other documents to be delivered by City in connection herewith, the consummation of the transactions contemplated hereby and the compliance by City with the terms of this Agreement do not and will not conflict with, result in a breach of any term of, or constitute with the lapse of time or notice or delivery of notice (or both) a default under, City's ordinances or any agreement or instrument to which City is a party.
- c. With the exception of the Mendocino County LAFCO, no consent or approval of or notice to or other action by any federal, state, or local governmental entity or agency, or any other person or entity, is required in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated herein.

8. Closing Date; Closing Obligations.

- a. For purposes of this Agreement, the "Closing" shall be defined as the consummation of the transaction contemplated by this Agreement and "Close of Escrow" shall be defined as the date that the City delivers the cash payment and the promissory note to the District.

- b. The Closing Date shall be June 30th, 2025.
- c. On or prior to the Closing Date, District shall deliver to City:
 - i. The Assets;
 - ii. A current tax certificate from the county treasurer relating to the personal property to be conveyed hereunder showing that property taxes are current; and
 - iii. Evidence reasonably satisfactory to City that District's payroll withholding taxes owed to the Internal Revenue Service, the State of California, and any other applicable entity have been paid in full, or arrangements therefor has been made, and that all other creditors of District have been paid in full.
 - iv. District shall present to City originally executed releases of all liens attached to the assets as of the Closing.
 - v. District shall also execute and deliver to City at the Closing or at any time and from time to time thereafter such other and further documents and instruments of conveyance, bill of sale, assignment, or transfer, and shall take, or cause to be taken, such other or further actions as City may reasonably request to vest more fully, confirm or evidence in City title to all or any part of the Assets.
- d. On or prior to the Closing Date, City shall deliver to District:
 - i. The cash payment in the amount of \$100,000.
 - ii. The fully executed promissory note in the amount of \$200,000.
- e. The obligations of City to consummate the transactions contemplated by this Agreement are subject to all representations and warranties of District being true on the Closing as though made at that time and District having performed and satisfied all covenants, agreements and conditions required by this Agreement.
- f. The obligations of City to consummate the transactions contemplated by this Agreement are subject to the condition that MCN's assets and business operations remain materially unchanged through the closing date.
- g. The obligations of District to consummate the transactions contemplated by this Agreement are subject to all representations and warranties of City being true on the Closing as though made at that time and City having performed and satisfied all covenants, agreements and conditions required by this Agreement.
- h. District's signature on this Agreement constitutes a Bill of Sale and Assignment conveying the assets to City free and clear of all security interests, liens, charges, and encumbrances whatsoever.
- i. The City of Fort Bragg will onboard MCN employees to positions with the City of Fort Bragg at greater or equal to the same rate of pay, subject to a 6-month probationary period in compliance with the City of Fort Bragg personnel policies.

- j. The Parties will negotiate in good faith the terms of a transition plan for the MCN business operations which at a minimum will address i) a transition team designated to oversee the transition process; ii) a detailed timeline with milestones for the transfer of assets, migration of services, and integration of employees; and iii) a Customer Communication for notifying customers about the change and ensuring uninterrupted service.

9. Post closing service obligations of the City. The City shall continue to provide the following services to the District:

- a. Existing Digital Voice Telephone Service to the Mendocino Unified School District will continue at the current rate, excluding changes in taxes, until all payments from the City of Fort Bragg have been completed.
- b. Staff Email Accounts for District staff will be provided at no charge until all payments from the City have been completed.

10. Facility Rental. The city may use the current MCN facility free of charge for the first three months (July 1st, 2025 – September 30th, 2025) and \$2500/month from October 1st, 2025 – December 31st, 2025. The City will be responsible for all utility payments during the entire time they are using the current MCN facility.

11. Risk of Loss. In the event the Assets shall be damaged by fire or other casualty prior to the Closing Date, this Agreement may be terminated at the option of City as City's sole remedy.

12. Survival. Notwithstanding any investigation conducted at any time with regard thereto, all representations and warranties of District and City in this Agreement shall survive the Closing date and the execution, delivery, and performance of this Agreement.

13. Hold Harmless.

- a. Seller shall defend (with counsel reasonably acceptable to City), indemnify and hold City and its councilpersons, officers, attorneys, agents, contractors, and employees (collectively, the "Indemnified Parties") harmless from and against all losses, costs and expenses (including, without limitation, reasonable attorneys' fees and costs), damages (including, without limitation, consequential damages), claims and liabilities arising from and against any challenges to the validity of this Agreement. The obligations of Seller under this Section shall survive the expiration or any earlier termination, as applicable, of this Agreement.
- b. Each party shall defend (with counsel reasonably acceptable to the other), indemnify and hold the other party and its councilpersons, board members, officers, attorneys, agents, contractors, and employees (collectively, the "Indemnified Parties") harmless from and against all losses, costs and expenses (including, without limitation, reasonable attorneys' fees and costs), damages (including, without limitation, consequential damages), claims and liabilities arising from this Agreement, excluding liability due to the Indemnified Parties' conduct and any challenge to the validity of this Agreement as more specifically set forth in subparagraph a. above. The obligations under this Section shall survive the expiration or any earlier termination, as applicable, of this Agreement.

14. Limited Assumption of Obligations; Indemnification.

- a. Buyer shall not, by the execution and performance of this Agreement or otherwise, assume or otherwise be responsible for any liability or obligation of any nature of Seller, or claims of such liability or obligation, matured or unmatured, whether arising out of occurrences prior to, at or after the execution of this Agreement except for those obligations and liabilities expressly set forth herein. Notwithstanding the foregoing, after Closing, Buyer may, at its option and in its sole discretion, elect to pay any unpaid obligation of Seller incurred by Seller in connection with the Business prior to Closing, provided that Seller's third party creditor has made a claim against Buyer with respect to such unpaid obligation or the obligation otherwise may have an adverse impact on Buyer, and Buyer shall have provided Seller with a reasonable opportunity to pay or contest the obligation to pay the same. In the event Buyer makes such payment, Buyer shall have the right to seek reimbursement from Seller for all such payments. Notwithstanding the foregoing, if Buyer, in its reasonable prudent judgment, determines an immediate payment is required so as not to adversely affect the operation of the Business, such notice to Seller shall not be required.
- b. Notwithstanding any investigation at any time made by or on behalf of Buyer, Seller agrees to defend and indemnify Buyer, Buyer's members, managers, officers, successors and assigns harmless from and against any and all losses, claims, causes of action, suits, demands, damages, liabilities, expenses, and costs of any kind or amount whatever (including reasonable attorneys' fees), whether matured or contingent, whether accrued or to accrue, whether known or unknown, which results, either before, on or after Closing, from:
 - i. Any material inaccuracy in any representation or breach of any warranty of Seller under this Agreement or failure by Seller, under this Agreement or failure by Seller, after ten (10) days written notice, to perform and observe any term, provision, covenant, agreement, or condition under this Agreement;
 - ii. Any liability of Seller not assumed by Buyer as transferee of the Assets;
 - iii. Any material misrepresentation in, or any omission from any certificate or other document furnished or to be furnished by or on behalf of Seller pursuant to the terms of this Agreement; or
 - iv. Any event or occurrence related to the Business happening or arising on or prior to Closing.
- c. Notwithstanding any investigation at any time made by or on behalf of Seller, Buyer agrees to defend and indemnify Seller and Seller's members, managers, officers, successors and assigns harmless from and against any and all losses, claims, causes of action, suits, demands, damages, liabilities, expenses, and costs of any kind or amount whatever (including reasonable attorneys' fees), whether matured or contingent, whether accrued or to

accrue, whether known or unknown, which results, either before, on or after the Closing Date, from:

- i. Any contractual obligations of Seller assumed by Buyer pursuant to this Agreement and related to events or occurrences happening or arising after the Closing Date;
- ii. Any material inaccuracy in any representation or breach of any warranty of Buyer under this Agreement or failure by Buyer after ten (10) days written notice, to perform and observe any term, provision, covenant, agreement, or condition under this Agreement;
- iii. Any material misrepresentation in, or any omission from any certificate or other document furnished or to be furnished by or on behalf of Buyer pursuant to the terms of this Agreement;
- iv. Any event or occurrence relating to the operations of Buyer happening or arising on or after Closing.

15. Disputes.

- a. If a party has a dispute with the other party, the aggrieved party must promptly notify the other party of the dispute in writing and provide sufficient documentation to enable the other party to intelligently evaluate the claim.
- b. If the parties are unable to resolve any dispute within fourteen days of notice, they agree to participate in non-binding mediation, with each party to pay one-half the mediation costs. This is a prerequisite to the filing of any lawsuit.

16. Litigation / Venue / Waiver of Jury. The exclusive venue for any legal action arising out of this Agreement shall be in Mendocino County unless change of venue is agreed to in writing by both parties. The parties waive trial by jury.

17. Attorneys' Fees and Costs. If the services of any attorney are required by any party to secure the performance of this Agreement or otherwise upon the breach or default of another party, or if any judicial remedy or arbitration is necessary to enforce or interpret any provisions of this Agreement or the rights and duties of any person in relation to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and other expenses, in addition to any other relief to which such party may be entitled. Prevailing party includes (a) a party who dismisses an action in exchange for sums allegedly due; (b) the party that receives performance from the other party of an alleged breach of covenant or a desired remedy, if it is substantially equal to the relief sought in an action; or (c) the party determined to be prevailing by a court of law.

Whenever provision is made in this Agreement for the payment of attorney's fees, such fees shall be payable whether the legal services are rendered by a salaried employee for the party or by independent counsel and shall include such fees as are incurred in connection with any pretrial proceeding, trial or appeal of the action. Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law.

18. No Broker. District and City each represent and warrant to the other that the warranting party has had no dealing with any dealer, broker, or agent to entitle such

dealer, broker or agent to any commission or fee in connection with the sale of the Assets to City. If for any reason any such commission or fee shall become due, the party dealing with such dealer, broker or agent shall pay any such commission or fee and agrees to indemnify and save the other party harmless from all claims for any such commissions or fees and from any attorneys' fees and litigation or other expenses relating to any such claim.

- 19. Entire Agreement.** This Agreement embodies the entire agreement and understanding of the parties hereto with respect to the subject matter herein contained. All prior discussions are merged into this Agreement. There are no promises or representations other than those set forth in this Agreement.
- 20. Exhibits.** The Exhibits attached hereto are hereby incorporated herein by this reference for all purposes.
- 21. Required Actions of Buyer and Seller.** Buyer and Seller agree to execute such instruments and documents and to diligently undertake such actions as may be required in order to consummate the purchase and sale herein contemplated and shall use good faith efforts to accomplish the Close of Escrow in accordance with the provisions hereof.
- 22. Time of Essence.** Time is of the essence of each and every term, condition, obligation and provision hereof.
- 23. Captions.** The section headings of this Agreement are inserted for convenience only and shall not constitute a part of this Agreement in construing or interpreting any provision hereof.
- 24. Expenses of Transactions.** Districts shall pay all costs and expenses incurred by it in connection with this Agreement, including without limitation, the fees, and expenses of its professional advisors. City shall pay all costs and expenses incurred by it in connection with this Agreement, including without limitation, the fees and expenses of their professional advisors.
- 25. Waiver.** No waiver of any of the provisions or conditions of this Agreement or any of the rights of a party hereto shall be effective or binding unless such waiver shall be in writing and signed by the party claimed to have given or consented thereto.
- 26. Modification.** No modifications of this Agreement shall be binding unless they are in writing and signed by the parties.
- 27. Governing Law.** The laws of the State of California govern this Agreement.
- 28. Jointly Drafted.** It is agreed among the parties that this Agreement was jointly negotiated and jointly drafted by the Parties and their respective counsel, and that it shall not be interpreted or construed in favor of or against any party solely on the ground that it drafted the Agreement. It is also agreed and represented by all Parties that said Parties were of equal or relatively equal bargaining power and that in no way whatsoever shall this Agreement be deemed to be a contract of adhesion, or unreasonable or unconscionable.

- 29. Independent Legal Counsel.** Each party acknowledges that it has been represented by independent legal counsel of its own choice throughout all of the negotiations that preceded the execution of this Agreement or has knowingly and voluntarily declined to consult legal counsel, and that each Party has executed this Agreement with the consent and on the advice of such independent legal counsel.
- 30. Further Cooperation.** The parties herein agree to execute any and all agreements, documents or instruments as may be reasonably necessary in order to fully effectuate the agreements and covenants of the Parties contained in this Agreement, or to evidence this Agreement as a matter of public record, if required to fulfill the purposes of this Agreement. The Parties further agree to mutually cooperate with one another in carrying out the purposes of this Agreement.
- 31. Binding Effect.** This Agreement shall be binding upon, and inure to the benefit of the parties and their respective legal representatives, heirs, successors and permitted assigns.
- 32. No Third-Party Beneficiaries.** Nothing herein, expressed or implied, is intended or shall be construed to confer upon or give to any person, firm, District, or legal entity, other than the parties hereto, any rights, remedies, or other benefits under or because of this Agreement.
- 33. Counterparts/Facsimile.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute the same instrument. This Agreement may be signed and transmitted electronically, and the parties agree that their signatures which are copies on the transmitted documents shall be binding as if they were original signatures.
- 34. Transmission by E-mail.** Any and all documents to be executed by any Party (including this Agreement) may when executed be transmitted to the other Party and to Escrow Holder (as applicable) by e-mail and such transmission shall constitute delivery of such document.
- 35. Partial Invalidity.** If any portion of this Agreement as applied to either Party or to any circumstances shall be adjudged by a court to be void or unenforceable, such portion shall be deemed severed from this Agreement and shall in no way effect the validity or enforceability of the remaining portions of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Execution Date.

[Signatures on next page]

“CITY”

CITY OF FORT BRAGG, CA
a California Municipal Corporation

Date: _____, 2025

By: _____

Mayor

Attest:

By: _____

City Clerk

Approved as to form:

Jones & Mayer

By: _____

Baron J. Bettenhausen, Esq.
City Attorney

“DISTRICT”

MENDOCINO UNIFIED SCHOOL
DISTRICT

Date: _____, 2025

By: _____

Approved as to form:

By: _____

MUSD General Counsel

PROMISSORY NOTE
(Mendocino Community Network Purchase)

\$200,000

Fort Bragg, California
May 6, 2025

FOR VALUE RECEIVED, the City of Fort Bragg, a California municipal corporation (the "Borrower"), promises to pay to the Mendocino Unified School District ("MUSD"), or order, the principal sum of Two-Hundred Thousand Dollars (\$200,000.00) payable in annual installments of Fifty-Thousand Dollars (\$50,000.00) per year for 4 years, pursuant to that certain Agreement for Purchase and Sale of Assets dated XXXX, as may be amended or implemented from time to time (collectively, the "Purchase Agreement").

1. Borrower's Obligation. This promissory note (the "Note") evidences the Borrower's obligation to pay the MUSD the principal amount of Two-Hundred Thousand Dollars (\$200,000.00) payable in annual installments of Fifty-Thousand Dollars (\$50,000.00) per year for 4 years (the "Loan" or the "MUSD Loan"), for the balance of the purchase price to finance the purchase of the Mendocino Community Network, ("MCN") from MUSD pursuant to the Agreement for Purchase and Sale of Assets dated XXXX (the "MCN Purchase Agreement"). All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the MCN Purchase Agreement.

2. Interest. The outstanding principal balance of this Note shall bear no interest provided, however, if an Event of Default occurs, interest on the principal balance shall begin to accrue, as of the date of the Event of Default (following expiration of applicable notice and cure periods), and continuing until such time as the Loan funds are repaid in full or the Event of Default is cured, at the default rate of ten percent (10%) compounded annually, or the highest rate permitted by law (whichever is lower).

3. Term and Repayment Requirements.

(a) The term of this Note (the "Term") shall commence on the date set forth above and shall expire on the on the fifth (5th) anniversary of the effective date of the MCN Purchase Agreement or the date of an Event of Default as provided in Section 3(b) below.

(b) Subject to the provisions of subsection (d) below, all principal and interest, if any, on the Loan shall, at the option of the MUSD, be due and payable upon the earliest of: (i) the occurrence of an Event of Default (following the expiration of any applicable notice and cure periods) for which the MUSD exercises its right to cause the MUSD Loan indebtedness to become immediately due and payable; or (ii) the expiration of the Term.

(c) The Borrower shall make annual repayments of the MUSD Loan in an amount equal to Fifty Thousand and 00/100 Dollars beginning on or before the first anniversary date of the effective date of the MCN Purchase Agreement, and thereafter annually on or before the subsequent anniversary date of the effective date of the MCN Purchase Agreement, all in accordance with the MCN Purchase Agreement.

(d) The Borrower shall have the right to prepay the MUSD Loan at any time without penalty or additional charge.

4. No Assumption. This Note shall not be assumable by the successors and assigns of Borrower without the prior written consent of the MUSD (which shall not be unreasonably withheld, delayed, or conditioned, except as otherwise set forth in the MCN Purchase Agreement.

5. Terms of Payment.

(a) All payments due under this Note shall be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

(b) All payments on this Note shall be paid to the MUSD at the following address: 44141 Little Lake Road, Mendocino, CA, 95460, or to such other place as the MUSD may from time to time designate in writing.

(c) All payments on this Note shall be without expense to the MUSD, and the Borrower agrees to pay all costs and expenses, including re-conveyance fees and reasonable attorney's fees of the MUSD, incurred in connection with the payment of this Note and the release of any security hereof.

(d) Notwithstanding any other provision of this Note, or any instrument securing the obligations of the Borrower under this Note, if, for any reason whatsoever, the payment of any sums by the Borrower pursuant to the terms of this Note would result in the payment of interest which would exceed the amount that the MUSD may legally charge under the laws of the State of California, then the amount by which payments exceeds the lawful interest rate shall automatically be deducted from the principal balance owing on this Note, so that in no event shall the Borrower be obligated under the terms of this Note to pay any interest which would exceed the lawful rate.

6. Default.

(a) Any of the following shall constitute an "Event of Default" under this Note:

(i) Any failure to pay, in full, any payment required under this Note when due following written notice by the MUSD of such failure and ten (10) days opportunity to cure;

(ii) Any failure in the performance by the Borrower of any other term, condition, provision or covenant set forth in the MCN Purchase Agreement subject to the applicable notice and cure period set forth therein; and

(b) Upon the occurrence of such an Event of Default, the entire unpaid principal balance, together with all interest thereon, and together with all other sums then payable under this Note and the Deed of Trust shall at the option of the MUSD become immediately due and payable upon written notice by the MUSD to the Borrower without further demand.

(c) The failure to exercise the remedy set forth in subsection 7(b) above or any other remedy provided by law upon the occurrence of one or more of the foregoing events of default shall not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other default. The acceptance by the MUSD hereof of any payment which is less than the total of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of the MUSD, except as and to the extent otherwise provided by law.

7. Waivers.

(a) The Borrower hereby waives diligence, presentment, protest and demand, and notice of protest, notice of demand, and notice of dishonor of this Note. The Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time, and that the MUSD may accept further security or release any security for this Note, all without in any way affecting the liability of the Borrower.

(b) No extension of time for payment of this Note or any installment hereof made by agreement by the MUSD with any person now or hereafter liable for payment of this Note shall operate to release, discharge, modify, change or affect the original liability of the Borrower under this Note, either in whole or in part.

(c) The obligations of the Borrower under this Note shall be absolute and the Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

8. Miscellaneous Provisions.

(a) All notices to the MUSD or the Borrower shall be given to Borrower at 416 North Franklin Street, Fort Bragg, CA 95437 and to MUSD at 44141 Little Lake Road, Mendocino, CA, 95460, or to such addresses as the MUSD and the Borrower may hereinafter designate.

(b) The Borrower promises to pay all costs and expenses, including reasonable attorney's fees and other professional service fees and costs, incurred by the MUSD in the enforcement of the provision of this Note, regardless of whether suit is filed to seek enforcement.

(c) This Note may not be changed orally, but only by an agreement in writing signed by the Party against whom enforcement of any waiver, change, modification or discharge is sought.

(d) This Note shall be governed by and construed in accordance with the laws of the State of California.

(e) The times for the performance of any obligations hereunder shall be strictly construed, time being of the essence.

(f) This Note, together with the MCN Purchase Agreement, contain the entire agreement between the Parties as to the MUSD Loan.

Signatures on Following Page

Borrower has executed this Note as of the date first written above.

BORROWER:

CITY OF FORT BRAGG, CA., a California Municipal Corporation

By: _____

Mayor

Attest:

By: _____

City Clerk

Approved as to form:

Jones & Mayer

By: _____

Baron J. Bettenhausen, Esq.
City Attorney

“MUSD”

Date: _____, 2025

MENDOCINO UNIFIED SCHOOL DISTRICT

By: _____

Approved as to form:

By: _____

MUSD General Counsel