



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**

Monday, July 22, 2024

6:00 PM

Town Hall, 363 N. Main Street and Via Video
Conference

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

COUNCILMEMBERS PLEASE TAKE NOTICE

Councilmembers are reminded that pursuant to the Council policy regarding use of electronic devices during public meetings adopted on November 28, 2022, all cell phones are to be turned off and there shall be no electronic communications during the meeting. All e-communications such as texts or emails from members of the public received during a meeting are to be forwarded to the City Clerk after the meeting is adjourned.

ZOOM WEBINAR INVITATION

This meeting is being presented in a hybrid format, both in person at Town Hall and via Zoom.

You are invited to a Zoom webinar.

When: Jul 22, 2024 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/82751419610>

*Or Telephone: 1 669 444 9171 US (*6 mute/unmute, *9 raise hand)*

Webinar ID: 827 5141 9610

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.

CLOSED SESSION REPORT

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.

WRITTEN PUBLIC COMMENTS: Written public comments received after agenda publication are forwarded to the Councilmembers as soon as possible after receipt and are available for inspection at City Hall, 416 N. Franklin Street, Fort Bragg, during normal business hours. All comments will become a permanent part of the agenda packet on the day after the meeting or as soon thereafter as possible, except 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 Diana Sanchez, dsanchez@fortbragg.com

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. [24-846](#)** Adopt City Council Resolution Approving Professional Services Agreement with Truepoint for the Purchase and Implementation of Accela Civic Applications for a Building, Planning and Engineering (Amount Not to Exceed \$107,030; Account 521-4394-0381)

Attachments: [RESO Truepoint Purchase](#)
[TruePoint Solutions Contract](#)
[Accela Contract](#)
[TruePoint Services SOW 6-26-24](#)

- 5B. [24-854](#) Adopt City Council Resolution Authorizing the City Manager to Execute a Memorandum of Understanding Between the City and the Fort Bragg Food Bank for Capacity Reporting, the Maximization of Edible Food Recovery, Organic Waste Disposal, and Fund Sharing
- Attachments:** [RESO FBFB COFB MOU](#)
[Ex A - FBFB Food Recovery MOU](#)
- 5C. [24-857](#) Resolution of the Fort Bragg City Council Approving Contract Amendment with Marie Jones Consulting for Professional Planning Services and Authorizing the City Manager to Execute Contract (Amount Not To Exceed \$240,000) Subject to City Attorney Approval as to Form
- Attachments:** [168 Marie Jones Consulting 5th Amd draft](#)
[RESO xxxx-2024](#)
- 5D. [24-861](#) Resolution of the Fort Bragg City Council Approving and Authorizing the City Manager to Execute a Contract with the Fort Bragg Unified School District, for the Assignment and Reimbursement for a Police Officer Assigned as a School Resource Officer.
- Attachments:** [SRO MOU Staff Report](#)
[RESO XXXX-2024](#)
[FBUSD MOU for SRO](#)
- 5E. [24-865](#) Adopt City Council Resolution Authorizing Submittal of Application(s) for All Hazard Mitigation Assistance Grant Programs for which the City of Fort Bragg is Eligible
- Attachments:** [Reso XXXX CalOES Grant Authority](#)
- 5F. [24-870](#) Resolution of the Fort Bragg City Council Authorizing the Amendment to Employment Agreement for Police Chief with Neil Cervenka
- Attachments:** [RESO XXXX-2024 Police Chief](#)
[Police Chief Contract First Amendment EX A](#)
- 5G. [24-872](#) Approve Minutes of July 8, 2024
- Attachments:** [CC2024-07-08 City Council](#)
- 5H. [24-856](#) Approve Minutes of City Council-Special Closed Session of July 8, 2024
- Attachments:** [CC20240708 Special Closed Session](#)

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.

- 7A. [24-859](#) Receive Report, Conduct Public Hearing, and Consider Adoption of City Council Resolution Approving an Application for Funding and the Execution of a Grant Agreement and Any Amendments Thereto from the 2023 and/or 2024 Funding Year of the State CDBG Program

Attachments: [07222024 Report Application Approval PI](#)
[Att 1 - 2023 CDBG NOFA - Amendment 1](#)
[Att 2 - Proposed RESO CDBG Application PI](#)
[Att 3 - Exhibit A - Resolution Form CDBG 2023-2024 Required Format](#)
[Att 4 - PH Notice 2024 CDBG PI App Approval](#)
[Att 5 - PH Notice 2024 CDBG PI App Approval Spanish](#)
[07222024 Presentation PI Only Application BALP Item 7A](#)

8. CONDUCT OF BUSINESS

- 8A. [24-874](#) Receive Report and Consider Adoption of City Council Resolution Authorizing the Execution and Delivery of an Equipment Lease/Purchase Agreement and Escrow Agreement with Bank of America, National Association Relating to the Financing of Energy Efficiency Projects to be Undertaken Pursuant to an Agreement with Syserco Energy Solutions, Inc., and Approving Related Documents and Actions

Attachments: [Staff Report](#)
[Resolution](#)
[Equipment Lease/Purchase Agreement](#)
[Escrow Agreement \(City of Fort Bragg\) \[CA – Func. Accept - Capital Interest - N](#)
[Resolution Authorizing Financing- Fort Bragg ELPA \(1\)](#)
[Fort Bragg 2024 Energy Equipment Lease - 7.22 CC Presentation d-Final](#)

- 8B. [24-866](#) Receive Report and Provide Direction to Staff on Mobile Vehicle Vending Location Standards

Attachments: [Staff Report Mobile Vehicle Vending](#)
[Ordinance No. 945-2019](#)
[Mobile Vending Vehicle Location Discussion](#)
[Public Comment](#)
[Public Comment](#)
[Public Comment](#)

8C. [24-864](#) Consideration of a Resolution of the Fort Bragg City Council Approving the Mendocino County Master Tax Sharing Agreement Among Mendocino County and the Cities of Ukiah, Willits, Fort Bragg, and Point Arena.

- Attachments:** [Staff Report on Master Tax Sharing](#)
[RESO MTSA](#)
[MendoCounty.MTSA - Attachment 1 to Resolution](#)
[MTSA Terms](#)

9. CLOSED SESSION

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, AUGUST 12, 2024**

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 agenda to be posted in the City Hall notice case on July 19, 2024.

Diana Sanchez
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

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Text File

File Number: 24-846

Agenda Date: 7/22/2024

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Resolution

Agenda Number: 5A.

Adopt City Council Resolution Approving Professional Services Agreement with Truepoint for the Purchase and Implementation of Accela Civic Applications for a Building, Planning and Engineering (Amount Not to Exceed \$107,030; Account 521-4394-0381)

RESOLUTION NO. ____-2024

RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING PROFESSIONAL SERVICES AGREEMENT WITH ACCELA & TRUEPOINT SOLUTIONS FOR PURCHASE AND USE OF ACCELA SOFTWARE AND IMPLEMENTATION SERVICES AUTHORIZING CITY MANAGER TO EXECUTE SAME (AMOUNT NOT TO EXCEED \$107,030; ACCOUNT NO. 521-4394-0384)

WHEREAS, the City of Fort Bragg is committed to improving the quality and efficiency of its Planning and Building Department operations; and

WHEREAS, Accela Permitting Software is a leading cloud-based solution that streamlines permitting processes, enhances transparency, and improves customer service by providing a centralized platform for permit applications, reviews, and approvals; and

WHEREAS, Accela Inc, provides the City with a new web-based permitting application for customers to apply for permits, make payments, and monitor the status of their project, 24 hours a day, seven days a week; and

WHEREAS, Truepoint is a strategic partner with Accella experienced in implementing Accela Permitting Software; and

WHEREAS, Accela offers features such as online permit applications, real-time tracking, automated workflows, and comprehensive reporting, which can significantly reduce processing times and operational costs providing a more user-friendly experience for residents and developers; and

WHEREAS, the acquisition of Accela is a strategic investment that aligns with the City Council's goals of being business friendly by modernization, efficiency, and enhanced public service delivery; and

WHEREAS, the cost of these services, pursuant to the Agreement, is \$20,000 for the annual recurring software costs and \$87,030 for a one-time implementation fee; and

WHEREAS, sufficient funding exists for these services, with \$57,000 funded by Grants and was approved as a part of the City's Fiscal Year 2023-24 & FY 2024-25 Approved Budget;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby approve a Professional Services Agreement with Truepoint for the purchase and implementation of Accella software and authorizes the City Manager to execute same (Amount Not to Exceed \$107,030; Account No. 521-4394-0384).

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 July 2024, by the following vote:

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

BERNIE NORVELL
Mayor

ATTEST:

Diana Sanchez
City Clerk

**CITY OF FORT BRAGG
PROFESSIONAL SERVICES AGREEMENT
WITH
TRUE POINT SOLUTIONS**

THIS AGREEMENT is made and entered into this ___ day of _____, 2024 (“Effective Date”), by and between the CITY OF FORT BRAGG, a municipal corporation, 416 N. Franklin Street, Fort Bragg, California 95437 (“City”), and TruePoint Solutions, a [state] [type of corporation] 3262 Penryn Road, Suite 100-B, Loomis, CA 95650 (“Consultant”).

WITNESSETH:

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to provide implementation of Accela Civic Applications for a Building, Planning and Engineering, 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 July 22, 2024, by Resolution No. _____ 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, BILLING AND PREVAILING WAGES

2.1. Compensation. Consultant's total compensation shall not exceed Eighty Seven Thousand Thirty Dollars (\$ 87,030.00).

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 **December 31, 2024**. 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 **March 31, 2025, [3 months after Completion Date in 3.1]** 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, by providing at least ten (10) days prior written notice to Consultant. 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 with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (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 approved in advance by 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 **Isaac Whippy**. 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 **Keith Hobday** 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:

TruePoint Solutions
3262 Penryn Road,
Suite 100-B
Loomis, CA 95650
Tel: 916-259-1293

IF TO CITY:

City Clerk
City of Fort Bragg
416 N. Franklin St.
Fort Bragg, CA 95437
Tel: 707-961-2823

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 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 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 sole active 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.

If Consultant is 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 arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant. The defense obligation provided for hereunder shall apply whenever any claim, action, complaint or suit asserts liability against the City, its elected and appointed officials, officers, agents and employees based upon the negligence, recklessness, or willful misconduct of 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 sole active 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 7920.000 *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 7924.510, 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.

6.27. Use of Recycled Paper Products. In the performance of this Agreement, Consultant shall use paper products and printing and writing paper that meets Federal Trade Commission recyclability standards as defined in 16 CFR 260.12.

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: _____
Isaac Whippy
Its: City Manager

By: _____
Keith Hobday
Its: Director of Implementation

ATTEST:

By: _____
Diana Sanchez
City Clerk

APPROVED AS TO FORM:

By: _____
Baron J. Bettenhausen
City Attorney

EXHIBIT A

CONSULTANT'S PROPOSAL
(Scope of Work, Fee Schedule and Time Table)

EXHIBIT B
CERTIFICATES OF INSURANCE AND ENDORSEMENTS



2633 Camino Ramon, Suite 500
San Ramon, CA, 94583

Proposed by: Tyler Stanchina
Contact Phone:
Contact Email: tstanchina@accela.com
Quote ID: Q-33802
Valid Through: 7/30/2024
Currency: USD

Order Form

Address Information

Bill To:

City of Fort Bragg, CA
416 N. Franklin Street
Fort Bragg, California 95437
United States

Ship To:

City of Fort Bragg, CA
416 N. Franklin Street
Fort Bragg, California 95437
United States

Billing Name: ISAAC WHIPPY
Billing Phone: 707-961-2825
Billing Email: iwhippy@fortbragg.com

Services	Year	Start Date	End Date	Term (Months)	Price	Qty	Net Total
Multi Solution User	Year 1	7/30/2024	7/29/2025	12	\$2,000.00	10	\$20,000.00
> Accela Building - SaaS	Year 1	7/30/2024	7/29/2025	12	\$0.00	10	\$0.00
> Accela Planning - SaaS	Year 1	7/30/2024	7/29/2025	12	\$0.00	10	\$0.00
> Accela Business Licensing - SaaS	Year 1	7/30/2024	7/29/2025	12	\$0.00	10	\$0.00
TOTAL:							\$20,000.00

Services	Year	Start Date	End Date	Term (Months)	Price	Qty	Net Total
Multi Solution User	Year 2	7/30/2025	7/29/2026	12	\$2,880.00	10	\$28,800.00
> Accela Building - SaaS	Year 2	7/30/2025	7/29/2026	12	\$0.00	10	\$0.00
> Accela Planning - SaaS	Year 2	7/30/2025	7/29/2026	12	\$0.00	10	\$0.00
> Accela Business Licensing - SaaS	Year 2	7/30/2025	7/29/2026	12	\$0.00	10	\$0.00
TOTAL:							\$28,800.00

Services	Year	Start Date	End Date	Term (Months)	Price	Qty	Net Total
Multi Solution User	Year 3	7/30/2026	7/29/2027	12	\$3,067.20	10	\$30,672.00
> Accela Building - SaaS	Year 3	7/30/2026	7/29/2027	12	\$0.00	10	\$0.00
> Accela Planning - SaaS	Year 3	7/30/2026	7/29/2027	12	\$0.00	10	\$0.00

Services	Year	Start Date	End Date	Term (Months)	Price	Qty	Net Total
> Accela Business Licensing - SaaS	Year 3	7/30/2026	7/29/2027	12	\$0.00	10	\$0.00
TOTAL:							\$30,672.00

Pricing Summary

Period	Net Total
Year 1	\$ 20,000.00
Year 2	\$ 28,800.00
Year 3	\$ 30,672.00
Total	\$ 79,472.00

Additional Terms:

1. No additional or conflicting terms or conditions stated in Customer's order documentation, including purchase orders, will be incorporated into or form any part of this Order Form or the governing agreement, and all such terms or conditions will be null.
2. This Order Form, including any OnPrem Licenses, Maintenance and Support, and Subscription Services, Enhanced Reporting Database and Managed Application Services will be governed by the applicable terms and conditions. If those terms and conditions are non-existent, have expired, do not apply or have otherwise been terminated, the following terms at <https://www.accela.com/terms/> will govern as applicable, based on the Customer's purchase.
3. All Software Licenses, Maintenance, and Subscription purchases are non-cancelable and non-refundable.
4. If Customer has a prior agreement with Accela, and this purchase is co-terming with that prior agreement, if the start date on this Order Form is before the actual delivery date of the purchase, Accela may pro-rate this purchase so that it can co-term with the prior agreement.
5. If this Order Form is executed and/or returned to Accela by Customer after the Order Start Date above, Accela may adjust the Order Start Date and Order End Date without increasing the total price based on the date Accela activates the products and provided that the total term length does not change.
6. Pricing is based upon payment by ACH or check. Payment by credit card (including Purchase Cards) for product and services in this Order Form will be subject to a service charge of 3%. There is no service charge for ACH or check payment.

Signatures

Accela, Inc.

Customer

Signature:

Signature:

DocuSigned by:

Michael E Gigliello



73668EE5EB274C8...
Print Name:

Print Name:

Michael E Gigliello

Isaac Whippy

Title:

Title:

controller

City Manager

Date:

Date:

7/8/2024

7/4/24

Statement of Work



City of Fort Bragg, CA

**Implementation of Accela Civic Applications
for a
Building, Planning and Engineering**

6-26-24

TruePoint Solutions
3262 Penryn Road
Suite 100-B
Loomis, CA 95650
Tel: 916-259-1293

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DOCUMENT CONTROL

Date	Author	Version	Change Reference
6-26-24	Keith	v1.0	Initial Draft

INTRODUCTION

OVERVIEW

The following Statement of Work will detail how TruePoint Solutions will implement the software and services you have purchased.

This Statement of Work (“SOW”) sets forth a scope and definition of the consulting/professional services, work and/or project (collectively, the “Services”) to be provided by TruePoint Solutions (“TruePoint”) to Agency (“City of Fort Bragg”).

CRITICAL SUCCESS FACTORS

To successfully execute the services described herein, there are several critical success factors for the project that must be closely monitored and managed by the stakeholders. These factors are critical in setting expectations between the Agency and TruePoint, identifying and monitoring project risks, and promoting strong project communication.

- **Dedicated Agency Participation** – Agency acknowledges that its staff must be actively involved throughout the entire duration of Services as defined in the agreed upon Project Plan. TruePoint will communicate insufficient participation of Agency resources through Project Status Reports with real and potential impacts to the project timeline. TruePoint will work with the project sponsors and department leaders to determine appropriate team member involvement. This could range from full-time, during early analysis meetings, to part-time during the technical implementation phase.

- **Knowledge Transfer** – It is critical that Agency personnel participate in the analysis, configuration, and deployment of Accela Civic Platform for TruePoint to transfer knowledge to the Agency. Once Postproduction assistance tasks are completed by TruePoint, the Agency assumes all day-to-day operations of Accela Civic Platform outside of the Support and Maintenance Agreement. The Support and Maintenance Agreement does not cover any Agency manipulation of implemented scripts, reports, interfaces, and adaptors. Key knowledge transfer areas could include:
 - Configuration
 - Business Rules Scripting
 - Interfaces
 - Reports and Forms
 - Release Management

PROJECT ASSUMPTIONS

GENERAL PROJECT ASSUMPTIONS

Scope and Timeline

- Scope is based on RFP response and feedback with Agency prior to the SOW development.
- Agency and TruePoint will review their responsibilities before work begins to ensure that Services can be satisfactorily completed and in the appropriate timeframe.
- Tasks not specifically described in this document are the responsibility of Agency.
- “Go live” (system is in production) timeline assumes timely completion of Agency deliverables (including finalization of requirements / use cases), availability of key Agency resources, and collaboration and availability of any third-party vendor resources. Late (per mutually agreed project plan) Agency deliverables may adversely impact overall implementation timeline.
- Overall project plan will be mutually agreed to by Agency and TruePoint project managers prior to final Configuration.

Training

- Project assumes that a Train the Trainer approach will be taken during this implementation. The Trainer will train the Agency super users in the day-to-day operation features of Accela. The training will also focus on successful training techniques and styles for training system end users that can be performed via web training sessions.

Testing

- TruePoint is responsible for testing the initial configuration of system along with functional use cases sample input/output for each (as demonstrated on onsite visit).
- TruePoint to validate system and interfaces before turning module over to the Agency for testing.
- Agency is responsible for User Acceptance Test and System Integration Testing

Go Live and Go Live Support

- “Go Live” definition is that the Accela software is up and running in production. If an Agency moves to production, i.e., “Goes Live” it is deemed to have accepted the product and shall comply with any payment obligation for “Go-Live” and/or “Acceptance”.

PROJECT RESOURCING ASSUMPTIONS

Agency Resourcing

- Agency will provide a Project Manager throughout the course of the implementation.
- Agency Project Manager will maintain primary responsibility for the scheduling of Agency employees and facilities in support of project activities.
- Agency has committed to the involvement of key resources and subject matter experts for ongoing participation in all project activities as defined in the project plan associated with this SOW.
- Agency agrees during the Initiation Phase of the project to assign a designated approver for each major project deliverable. The designated approver will be responsible for overseeing and/or directly participating in the design and development, as well as the approval, of the deliverable. Agency may make changes to designated approvers with written notification to TruePoint a minimum of one month before a deliverable is due.
- Agency will provide access to subject matter experts and decision makers in a timely fashion.

TruePoint Resourcing

- TruePoint has assumed that project team will need to be on-site as appropriate with-in the expense budget. Any additional on-site consulting will be at the mutual agreement of Agency and TruePoint Project Manager. All travel expenses incurred for on-site work are per the terms of expense reimbursement outlined above.
- In the pricing, TruePoint has assumed the appropriate resourcing to ensure deployment success for the scope outlined. Significant additional support requested by Agency over this level of resourcing would necessitate a change order that could impact the cost of the project.
- TruePoint will provide a project manager for services throughout the implementation to plan and monitor execution of the project in accordance with deliverables outlined in the Statement of Work. To support the implementation of the Accela Civic Platform software at the Agency, TruePoint will provide Project Management services throughout the project.
- Changes in project scope or expectations that require additional worked hours over the hours or scope stated in the SOW may require a Change Order.

ACCELA SOLUTION ASSUMPTIONS

General

- TruePoint will implement the most current version of Accela Civic Platform that is available at time of initial installation. This will likely be Civic Platform 24.1.0
- Agency will provide/purchase/acquire the appropriate hardware, software, and infrastructure assets to support all required Accela software products in both support/testing and production environments as defined in the project schedule.
- For use with Accela Citizen Access, Agency will provide/purchase/acquire an Accela supported online merchant account and all related hardware required by the merchant account provider for the handling of credit cards and/or checks.

ADMINISTRATION

CHANGE ORDERS

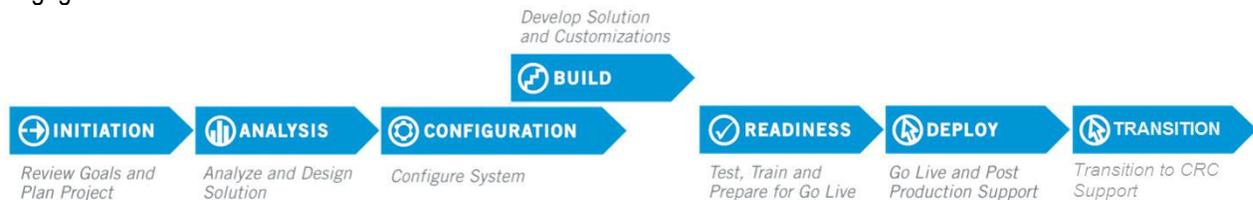
To make a change to the scope of Professional Services in this SOW, Agency must submit a written request to TruePoint specifying the proposed changes in detail. TruePoint shall submit to Agency an estimate of the charges and the anticipated changes in the delivery schedule if any that will result from the proposed change in the Professional Services (“Change Order”). TruePoint shall continue performing the Professional Services in accordance with the SOW until the parties agree in writing on the change in scope of work, scheduling, and fees. Any Change Order shall be agreed to by the parties in writing prior to implementation of the Change Order.

APPENDIX A - ACCELA IMPLEMENTATION APPROACH

TruePoint will deliver its Services to the Agency by employing the methodology detailed in this section. This is a proven methodology that guides the project from inception to deployment, thereby increasing the chances of successfully implementing Accela software products. Project delivery through execution of this Implementation Life Cycle is described below.

IMPLEMENTATION LIFE CYCLE

Thorough execution of these six stages ensures that customers receive high-quality services throughout the project engagement.



As illustrated in the figure above, the stages of project delivery flow in linear direction, although many tasks run in parallel as appropriate to avoid unnecessary project delays. Each stage has pre-defined objectives, tasks, and associated deliverables. Depending on the exact scope of the project, a full complement or subset of all available deliverables will be delivered through the services defined for the project. Employing this deliverables-based approach ensures that TruePoint and the Agency understand the composition and 'downstream' impact of each project deliverable to ensure the project is delivered with quality and in a timely manner.

INITIATION

Initiation represents the first stage in the lifecycle. During the Initiation stage, project contracts and the SOW are finalized, project scope and objectives are reviewed, and project planning activities and deliverables are completed.

ANALYSIS

Analysis is the second stage in the lifecycle. During the Analysis stage, TruePoint reviews existing agency documentation, interviews agency staff, and conducts workshops to understand the "To-Be" vision of the Agency that can be executed with the aid of Accela Civic Platform. It is during this Phase that TruePoint gains a deeper understanding of Agency processes and business rules; simultaneously, the Agency begins to gain a deeper understanding of the methodology and Accela Civic Platform capabilities. A key output of this Phase is the To-Be Analysis Document(s) which serve as the 'foundation' for configuration of Accela Civic Platform to support germane elements of the Agency "To-Be" vision. Supplementing the To-Be Analysis Document(s) are all other configuration specifications documents related to data conversion, interfaces, reports, and event scripts.

SOLUTION FOUNDATION

Solution Foundation is the third stage in the lifecycle. It begins upon completion of Stage 2 and should be completed prior to the next stage, Build. During the Solution Foundation stage, Accela Civic Platform will be built to match the to-be processes agreed to in the Analysis stage. Essential to this effort is the configuration of the Record (Case, Application, Permit, etc.) types that were agreed to during the Analysis phase.

BUILD

Build serves as the fourth stage in the lifecycle, and execution of this stage overlaps Configuration, but ends after Configuration is complete. During the Build stage, all defined elements during the Analysis stage

beyond the Solution Foundation will be implemented. This includes conversions, business rule scripts, interfaces, and reports.

READINESS

Readiness is the fifth stage in the lifecycle. During the Readiness stage Accela Civic Platform is fully tested, errors are identified, documented, and corrected. Additionally, the solution is prepared for deployment. In addition, system administrators and end users are trained so that all appropriate agency staff members are prepared to use and maintain the software once the move to production occurs.

DEPLOY

Deploy is the sixth and final stage in the lifecycle. During the Deploy stage the applications are moved to production; all requisite pre-production activities are identified, tracked, and completed, and post-production analysis and review is completed. Upon moving to production, the Accela Civic Platform applications are transitioned to the Accela Customer Resource Center ('CRC') for ongoing support. A formal introduction will occur between the Services team and the CRC that instructs the agency on available communication channels (telephone, email, online tracking system) and use of the Accela knowledge base

APPENDIX B

BASIC SCOPE OF WORK

The following section describes the specific activities and tasks that will be executed to meet the business objectives and business requirements of the Agency. In support of the implementation effort as described above, TruePoint will provide the following implementation services

STAGE 1 - INITIATION

TASK 1: PROJECT INITIATION

Project initiation is an opportunity to ensure the project starts in a well-organized, structured fashion while re-confirming the Agency and TruePoint expectations regarding the implementation. This task is comprised of project planning activities, core project management documents and templates and the project kickoff.

In conjunction with the Agency representatives, TruePoint will perform the following tasks:

- Finalize staffing for the project teams.
- Conduct a Kickoff meeting. The objective of this meeting is to review the purpose of the project and discuss the project scope, roles and responsibilities, deliverables, and timeline.
- Finalize an integrated baseline project plan that includes resource allocation for all tasks (in cooperation with the Agency Project Manager).
- Conduct Core Team training to prepare the Subject Matter Experts for the To-Be Analysis stage.

TruePoint Responsibilities:

- Provide timely and appropriate responses to Agency's request for information.
- Communicate the Accela Implementation Methodology that will be used by TruePoint to deliver Services.
- Complete Baseline Project Plan, Project Status Report Template, and Project Kickoff Presentation deliverables with input from appropriate Agency resources.

Agency Responsibilities:

- Identify and set expectations with key resources and subject matter experts for ongoing participation in the project.
- Provide timely and appropriate responses to TruePoint's requests for project planning input and meeting logistics requests.
- Work with TruePoint PM to schedule remote Project Kickoff and other activities as needed.

TASK 2: ACCELA ENVIRONMENT DEPLOYMENT

TruePoint will work with Accela to setup the Accela Automation software in the Accela Cloud environment, such that Agency can log into the system and verify that the software is available. TruePoint will populate the new environment with civic application templates or configuration from other implementations.

STAGE 2 – TO-BE / BUSINESS ANALYSIS

To-Be Analysis is comprised of the activities required to define the Accela Civic Platform Solution Foundation for the Agency. The key output of the process is the Configuration Document(s), which serves as a 'blueprint' for design and baseline configuration efforts throughout the implementation. The following departments will participate in the Business Analysis (Analysis for: Building, Planning and Public Works).

- Build Permits
 - New, Addition, Repair/Replace, Demolition
 - Reroof
 - Fire Repair
 - Pool
 - Electrical, Mechanical, Plumbing
 - Mobile Home
 - Deck/Patio Cover
 - Window Change
 - Garage/Storage

- Planning
 - Pre-Application
 - Entitlements
 - Design Review/Site & Architectural Review
 - Use Permit/Minor Use Permit
 - Coastal Development Permit
 - Variance/Administrative Variance
 - Lot Line Adjustment
 - Subdivision (no. of parcels) _____
 - Certificate of Appropriateness (COA)
 - Planned Development Permit
 - Certificate of Compliance
 - General Plan Amendment
 - Local Coastal Program Amendment
 - Rezoning
 - Annexation
 - Preapplication Conference
 - Limited Term Permit
 - Permit Amendment (list permits) ____
 - Address Listing
 - Sign

- Public Works
 - Grading
 - Encroachment

The Configuration Document(s) will provide detailed information on the Agency's business processes to be configured in the Accela Civic Platform Solution Foundation, including the following topics:

- Overall Process Overview
- Intake Process, user defined and required fields
- Required/Optional Review Tasks
- Issuance requirements
- Inspection Types, scheduling and checklists
- Workflow and processing requirements
- Fees – types, processing, and schedules
- Citizen Portal (Accela Citizen Access) specific to online submittal, inquiry, inspection scheduling and fee payments

TASK 3: TO-BE ANALYSIS AND CONFIGURATION DOCUMENT

To develop the content for the To-Be Analysis Document(s), TruePoint will work closely with designated Agency personnel and will conduct analysis sessions to capture the “to-be” required business processes. In conjunction with the Agency representatives, TruePoint will perform the following tasks:

- Review and understand existing business processes intended for migration into Accela Civic Platform.
- Review the developed business process as a basis for configuration in Accela Civic Platform’s workflow tool.
- Assist the Agency in **streamlining current** permit types to fit into **Accela Civic Applications**.
- Collect employee names and associated roles and identify user group setups.
- Review the collected document intake requirements, forms, and data fields for each process.
- Review the collected document output requirements (documents/letters/reports).
- Review the required fees, fee schedules, and collection procedures for each process.
- Review the required inspections and inspection result options for each type.

TruePoint Responsibilities:

- Interview staff to understand existing business processes.
- Conduct to-be analysis sessions to capture the required business processes to be automated within the system.
- Conduct meetings via email, web conference, phone, and in person to gather and validate analysis input.
- Demo basic prototypes off records for each department.

Agency Responsibilities:

- Make available the appropriate Agency key users and content experts to provide required information, participate in the configuration analysis and verify the accuracy of the documented workflows, input/output formats, and data elements.
- Provide any existing business process documentation, including process flows; fee schedules; commonly used applications, reports, and forms; and other relevant information.
- Work with TruePoint PM to schedule participants and meetings for analysis activities.

STAGE 3 – SOLUTION FOUNDATION

TruePoint will provide professional services to develop the Accela Civic Platform Solution Foundation in accordance with requirements established and agreed upon during the execution of the tasks that comprise Stage 2 – To-Be Analysis. TruePoint will produce a detailed Configuration Document(s) that represents the entire foundation of the system, for each module. This document will be delivered for review with the completed solution.

TASK 4: ACCELA BASE CIVIC PLATFORM SOLUTION FOUNDATION

TruePoint will provide professional services to develop the Solution Foundation of the Accela Civic Platform product in accordance with requirements established and documented in the To-Be Analysis Document(s).

The solution foundation will include core Accela Civic Platform features for:

- Modules

- Admin User and User Groups
- Departments/Divisions
- Consoles (Administrator, Daily User, Inspection, and Cashiering)
- Portlets (Customized portlets for all Automation Screens)
- My Navigation Setup
- Menu Navigation Setup
- Quick Links
- Quick Queries for the Record, Inspection, and My Task Portlets

TASK 5: ACCELA CIVIC PLATFORM

TruePoint will provide professional services to configure Accela Civic Platform and DigEplan in accordance with requirements established and agreed upon during the execution of the tasks that comprise Stage 2 – To-Be Analysis.

The configuration will include Accela Civic Platform features for:

- Users and User Groups
- Record Types (based on Civic Applications)
- Intake Forms
- Workflows
- Fees
- Inspections
- Conditions
- Custom Fields and Lists

TruePoint Responsibilities:

- Configure the foundational components as defined in the To-Be Analysis Document(s).

Agency Responsibilities

- Make available the appropriate Agency key users and content experts to participate in solution configuration of the system to learn about the system and facilitate in knowledge transfer.
- Work with TruePoint to verify that the system meets the foundational requirements documented in the To-Be Analysis Document(s).
- The Agency will test the system for purposes of validating the configuration.

STAGE 4 – BUILD

The Build stage includes data conversions, development of interfaces, development of all Business Process Validation and Automation (Business Rule Scripts and Expressions) configuration of add-on products and custom report development. It comprises all the additional activities outside of solution foundation that are required to complete the total solution for the Agency. Like the Configuration Stage, it is critical that appropriate agency representatives are involved in each step of the process to ensure success.

TASK 6: BUSINESS PROCESS VALIDATION AND AUTOMATION (BUSINESS RULE SCRIPTING)

During the configuration analysis phase of the implementation project, TruePoint will identify opportunities to supplement the Accela Civic Platform base functionality via Business Rule Script Engine scripts and Expression Builder to validate and automate business processes. TruePoint will work with Agency to identify desired functionality, and subsequently will assist with prioritizing the needs to determine that will be developed by TruePoint within the scope of this implementation. The Business Process Validation and Automation developed by TruePoint can be used as models whereby agency staff can develop and modify additional functionality as needed.

Business Process Validation and Automation is broken out into two functional areas of the Accela solution, as defined below:

- **Business Rule Scripting Engine** – used to script based on system activities, such as a before or after event, that allow the system to automate activities (**example:** do not allow an inspection to be scheduled prior to a specific workflow task, or, auto-calculate and invoice a fee upon application submittal)
- **Expression Builder** – used to script form-based interactions that occur prior to triggering an event or master script activity (**example:** auto-population form-based data fields based on user-selected values)

TruePoint Responsibilities:

- Work with Agency staff to identify potential uses of automation
- Assist with development of a list of desired functionalities
- Aid the Agency in prioritizing which scripts will be developed by TruePoint
- Develop automation scripts based on the specifications

Agency Responsibilities:

- Identify resources that will learn scripting tools and approaches for ongoing maintenance
- Prioritize desired functionality to determine which scripts TruePoint will develop
- Provide timely and appropriate responses to TruePoint's request for information
- Verify the Script Specification meets the intended business requirement
- Allocate the time for qualified personnel to test the script for acceptance

DATA CONVERSION (NOT REQUIRED AND THIS POINT)

SYSTEM INTERFACES

For each interface, the TruePoint technical lead will work together with Agency's technical lead and business leads to document functional and technical requirements of the interface in an Interface Specifications Document. Interface development begins upon written approval of the specifications. It is expected all interfaces will use Accela's Construct API, web services or batch engine. No custom or third party integration tool will be used to accomplish input or output of data to/from the Accela system. In other words, data coming into Accela and data coming from Accela will use the existing integration technology. Agency responsibility includes obtaining permission for level/type of integration from appropriate application owners (including on premises or cloud/hosted, etc.). All interfaces will be developed against 1 (one), agreed upon version of the 3rd party system.

TruePoint will conduct Analysis for each Integration that will be developed in the scope of this implementation.

Deliverable	System Name	Description
7A	Address, Parcel Owner Import	Address, Parcel Owner Migration from Accessor files
7B	CSLB	Real time validation from the CSLB from Professional Portlet
7C	Financial System Export	Daily payment by Account export file

TASK 7A THRU C: INTERFACE ANALYSIS AND DEVELOPMENT

To determine the Agency requirements for each interface, analysis sessions will be conducted as a portion of this deliverable. The findings will then be documented in the Interface Specifications Document(s) for use by TruePoint in building the interface code. The implementation of each interface is dependent on the assistance of the Agency’s staff, specifically, interface analysis, data mapping, and data manipulation as required in the source system. TruePoint will provide a program to integrate 3rd Party data to/from Accela Civic Platform.

In terms of specific output, the following will be executed for each integration:

- Integration Specifications Document
- Operational Integration in the Development or Test environment

TruePoint Responsibilities:

- Provide timely and appropriate responses to Agency’s request for information.
- Conduct Interface Analysis sessions.
- Work with Agency staff to develop interface specifications document.
- Use an Accela web service or other tool to implement the interface functionality based on the specifications.
- Build all aspects of the interface that interact directly with the Accela Civic Platform.

Agency Responsibilities:

- Provide timely and appropriate responses to TruePoint’s request for information.
- Provide system and access to individuals to provide required details of system interface.
- Allocate the time for qualified business and technical experts for the testing sessions that are critical to the project success.
- Identify and coordinate any related tools used to implement the interface (3rd party or in-house development).
- Assist in the interface specification development and data mapping process.
- Review and approve the interface specification documents.
- Work with Third Party Data Sources to determine best methods of interfacing to Accela system.
- Validate interface through testing.
- Work with 3rd party to ensure data from Accela is in correct format.
- Updates to interface, post go-live, due to changes in 3rd party system or Agency business processes.

REPORTS

Reports are defined as anything that can be generated from the system, including but not limited to, reports, forms, documents, notices, and letters that the Agency wishes to print as identified during configuration analysis. The Configuration Document will define the reports and documents that are required by the Agency to effectively use Accela Civic Platform. These reports will be broken down by level of effort and identified in the configuration document. It is expected that, after the appropriate training on the database and the selected report writing tool is completed, Agency personnel will be able to handle additional and future report requirements.

Reports can be developed using the integral Ad-Hoc Report Writer included with Accela Civic Platform, Microsoft Report Service (SSRS) or Crystal Reports at the Agency's discretion. Custom reports, whether developed with Ad-Hoc Report Writer, SSRS or Crystal Reports, will be deployed in the Report Manager for use within Accela Civic Platform. The Agency will need to create a local Accela DB environment for use in creating and testing reports in-house. Request for a local copy of the Agency data can be requested through CRC.

TASK 8: REPORT SPECIFICATIONS

TruePoint will develop 5 to 10 documents/letters/reports from those identified by the Agency as required for the new system.

Prior to the development of a report the Agency will approve report design specification documents that will be created jointly by the Agency and TruePoint. The approved documents will be used as a basis for determining completion and approval of the reports. Development of each report cannot begin until agreement on each specification is complete.

A proven strategy that combines the use of the Accela Civic Platform Quick Queries, Accela Ad-Hoc reports and custom reports developed by TruePoint, or Agency, can ensure that all required reporting requirements are met.

TruePoint Responsibilities:

- Assist in determining level of effort for reports to assist with prioritization
- Develop report specifications

Agency Responsibilities:

- Make available the appropriate key users and content experts to participate in the report specification
- Provide information and data in the formats specified by TruePoint that will be needed for agreement on the Deliverable

TASK 9: REPORT DEVELOPMENT

TruePoint will develop custom documents/letters/reports per the specifications developed and approved in the Report Specifications. Changes to the report specifications after approval can negatively impact project progress and the overall schedule.

TruePoint Responsibilities:

- Develop reports per specifications in Accela Ad-Hoc or SSRS.
- Assist in the validation of the reports in test environment

Agency Responsibilities:

- Make available the appropriate key users and content experts to participate in the report development and validation activities
- Request change order if changes to specifications are required

TASK 10: ACCELA CITIZEN ACCESS CONFIGURATION AND INTEGRATION TO DIGEPLAN

This task includes setup and configuration of Accela Citizen Access (ACA) per the Requirements gathered in the To-Be Analysis Phase. TruePoint will work with the Agency representatives to validate and implement Accela Citizen Access to extend certain aspects of the internal Accela Civic Platform configuration for use by the general public.

TruePoint Responsibilities:

- Setup Accela Citizen Access in Dev and Test environments
- Assist agency in set up and validation of merchant account integration
- Work with the Agency to determine which services to expose to the public via Accela Citizen Access
- Configure the Online Record types defined in the System Configuration Document in Accela Citizen Access

Agency Responsibilities:

- Obtain a merchant account, and deploy an internet-enabled payment engine
- Validate that the configuration specification for Accela Citizen Access meets Agency requirements based on details from the Configuration phase of the project
- Perform testing of all Online Record types for purposes of validating the configuration

TASK 11: ACCELA GIS CONFIGURATION

TruePoint configure Accela GIS to link and leverage existing Agency GIS information, including assistance with establishing the map service to be used in conjunction with Accela GIS. The following are the main objectives being pursued through the implementation of the Accela GIS:

- Look up permit information and parcel information from the Permitting system
- View selection, location, and associated GIS information
- Select one or more parcels and add new applications to the permit system
- Auto-populate spatial attributes for a property in forms
- MAP XAPO data attributes

TruePoint Responsibilities:

- Demonstrate that the Accela GIS applications are operational in the Agency computing environment thus communicating with the Accela Civic Platform system

Agency Responsibilities:

- Arrange for the availability of appropriate staff for the system setup, testing, and quality assurance throughout the setup process
- Provide information and data in the formats specified by Accela that will be needed for the GIS implementation.

TASK 12: ACCELA MOBILE DEPLOYMENT

TruePoint will setup the Accela Mobile Gateway. As part of this deliverable TruePoint will perform the configuration tasks required to ensure the Accela Mobile Apps interfaces with Accela Civic Platform in both a test and production environment. Using Accela Mobile Apps, an Agency inspector can perform activities such as:

- Result inspections/investigations in either store/forward or wireless mode
- Create or Review Record information in the field

TruePoint Responsibilities:

- Create configuration specifications for Accela Mobile Office based on analysis with the Agency
- Configure Accela Mobile Apps

STAGE 5 – READINESS

TASK 13: TRAINING

TruePoint will provide training for Agency staff that focuses on the administration, maintenance, and augmentation of its Accela Civic Platform configuration. Our aim is to educate Agency resources on all aspects of Accela Civic Platform to ensure the Agency is self-sufficient. This allows the Agency to best react to changing requirements and ongoing maintenance, which can allow the Agency to be reactive and significantly reduce system maintenance costs over time.

TruePoint can provide on-site or remote training services as desired by the Agency. With COVID-19 we have adapted to remote web training for most of our customers that has been very successful.

In terms of specific training sessions, the following are recommended:

- Accela Civic Platform - Core Team Training – .5 days (SME's and Admins)
- Accela Civic Platform Admin Training – 2 days (System Admin)
- Accela Civic Platform Business Rules Scripting (Basic) – 1 day
- Accela Civic Platform Database Schema Fundamentals – .5 day (report writers)
- Report Workshop Report Training .5 day of workshop training
- Report Workshop Ad-Hoc Report Training 2 (1 hour) remote sessions
- Train the Trainer Training Support 1 days

TruePoint Responsibilities:

- Coordinate with the Agency to define training schedule and coordination.

- Deliver training per the specific requirements listed above.

Agency Responsibilities:

- Select and prepare the power-users who will be participating in the training and subsequently training end users.
- Arrange the time and qualified people for the training who are critical to the project success.
- Provide suitable Agency facilities (this can be remote if necessary) to accommodate various training classes.
- For the Report Workshop agency, will need to provide a local MSSQL environment loaded with a current copy of the configured Data Base.

TASK 14: USER ACCEPTANCE TESTING (UAT) AND GO LIVE PREP

This task is comprised of the assistance TruePoint will provide to allow the Agency to accept that the solution meets the requirements as documented in all the deliverables.

TruePoint will provide support for training, oversight, answering questions and addressing issues discovered in User Acceptance Testing. It should be noted that it is critical that the Agency devote ample time and resources to his effort to ensure that the system is operating per signed specifications and ready for the move to production.

TruePoint will aid the Agency by providing User Acceptance Testing (UAT) support and a defined testing process. TruePoint will address and rectify issues discovered during the UAT process as Agency staff executes testing activities.

TruePoint Responsibilities:

- Provide recommendations on testing strategy and best practices.
- Lead the Agency in up to [3] weeks of User Acceptance testing effort and the validation of the system configuration and its readiness to be migrated to production for active use.
- Resolution of issues because of User Acceptance Testing activities.

Agency Responsibilities:

- Make available the appropriate Agency key users and content experts to participate in user acceptance testing as defined and managed by Agency.
- Develop the User Acceptance test scripts.
- Utilize the use cases documented in each Configuration Document Deliverable as the basis for the acceptance of this Deliverable.

STAGE 6 - DEPLOY

TASK 15: PRODUCTION SUPPORT

Production date is defined as the official date in which Accela Civic Platform moves from the test environment to production for daily Agency usage. This date will be agreed to by both TruePoint and the Agency at project inception. It may be altered only by change order agreed to by both parties. In the weeks prior to moving to Production, TruePoint will assist in final data conversions, system validation, staff preparation assistance and training, and coordination of deployment.

TruePoint Responsibilities:

- Provide on-site or remote resources to support the move to Production and Post-Production Support effort
- With assistance from the Agency, lead the effort to transfer the system configuration and any required data from Support to Production
- Assist in the development of a Pre-Production checklist that details the critical tasks that must be accomplished prior to moving to Production

Agency Responsibilities:

- Provide technical and functional user support for pre and postproduction Planning, execution, and monitoring
- Provide timely and appropriate responses to TruePoint's request for information
- Assist in the development of a Pre-Production checklist that details the critical tasks that must be accomplished prior to moving to Production
- Make available the appropriate Agency key users and content experts to participate in user acceptance testing as defined and managed by Agency

PROJECT TIMELINE

The estimated duration of this project is 6 months.

Upon initiation of these Services, the TruePoint Project Manager will work with the Agency to collaboratively define a baseline project schedule. Given the fact that project schedules are working documents that change over the course of the project, the TruePoint Project Manager will work closely with Agency to update, monitor, agree, and communicate any modifications.

PROJECT SERVICES BUDGET

6 month implementation estimate				
Professional Services Tasks	Hours	Rate	Amount	Description
Project Management	32	\$185.00	\$5,920.00	Project Management for the duration of the project
Agency Setup (SaaS)	4	\$165.00	\$660.00	PROD, SUPP and TEST environments
Configuration Analysis and Prototypes	32	\$165.00	\$5,280.00	Building, Planning, and Engineering 10 users
System Configuration	120	\$165.00	\$19,800.00	Based on Analysis
Business Automation Script Development	32	\$165.00	\$5,280.00	Business Automation Scripts
Data Conversion	0	\$165.00	\$0.00	Permit History is not being converted at this time
Report Creation	32	\$165.00	\$5,280.00	Time for 5 to 10 reports, City will also support the Report creation effort with Accela ad-hoc report writer
Address, Parcel and Owner Import	40	\$165.00	\$6,600.00	Import of Accessor Data or XAPO config
Interface - CSLB integration	4	\$165.00	\$660.00	Using CSLB API
Payment Adaptor	0	\$0.00	\$0.00	Assume using Pay Pal Commerce or Forte built into Accela
Accela Mobile Cloud and APP Setup	24	\$165.00	\$3,960.00	
Accela Citizen Access Configuration	56	\$165.00	\$9,240.00	Assuming City will use Accela standard payment adaptor for Forte, Paypal Commerce, Elavon,
Accela GIS Configuration	32	\$165.00	\$5,280.00	
Training	46	\$185.00	\$8,510.00	Train the Trainer Approach
User Acceptance Testing and Go Live prep	32	\$165.00	\$5,280.00	
Go Live Support	32	\$165.00	\$5,280.00	
Professional Services Totals	518		\$87,030.00	
Travel and Expense				
Not required, if desired expenses will be billed as incurred				
Total Year 1 (Everything but Accela License)			\$87,030.00	

EXPENSES:

TruePoint will plan to perform services remotely. If travel is allowed and required actual amounts of any reasonable and customary travel expenses incurred during the performance of services under this SOW will be billed to Agency. TruePoint will bill Agency for actual expenses incurred for travel and lodging/living, as well as other approved out-of-pocket expenses (such as mileage, parking, tolls, and telecommunications charges). TruePoint will work with Agency to manage and control its expenses and will not incur expenses more than the initial contracted budget below without Agency's prior written consent. Expense receipts will be made available as requested by the Agency.



City of Fort Bragg

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Text File

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Agenda Date: 7/22/2024

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Status: Consent Agenda

In Control: City Council

File Type: Resolution

Agenda Number: 5B.

Adopt City Council Resolution Authorizing the City Manager to Execute a Memorandum of Understanding Between the City and the Fort Bragg Food Bank for Capacity Reporting, the Maximization of Edible Food Recovery, Organic Waste Disposal, and Fund Sharing

RESOLUTION NO. ____-2024

RESOLUTION OF THE FORT BRAGG CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF FORT BRAGG AND THE FORT BRAGG FOOD BANK FOR CAPACITY REPORTING, THE MAXIMIZATION OF EDIBLE FOOD RECOVERY, ORGANIC WASTE DISPOSAL, AND FUND SHARING

WHEREAS, April 11, 2022, the Fort Bragg City Council adopted Ordinance No. 978-2022 to reduce the amount of organic waste disposal within the City of Fort Bragg (“City”); and

WHEREAS, the Fort Bragg Food Bank (“FBFB”) has been identified by CalRecycle as a local food recovery organization, which is required to provide the City with written annual reports no later than June 1st of every year detailing the number of pounds received per month from each Tier 1 and 2 edible food recovery organization within city limits; and

WHEREAS, the FBFB will provide the City with copies of agreements between all Type 1 and Type 2 edible food generators within City Limits by no later than December 31, 2024, to maximize the amount of edible food that is recovered each year; and

WHEREAS, execution of this Resolution enables the City to make a portion of grant funding from CalRecycle available to the FBFB based on the quantity of funding received from CalRecycle, and the submission of budgets, quotes, and estimates for capacity expansion projects to the City upon request and before fund distribution; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby approve the establishment of a memorandum of understanding (Exhibit A) between the City of Fort Bragg and the Fort Bragg Food Bank for capacity reporting, maximization of edible food recovery, organic waste disposal, and fund sharing.

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 July 2024, by the following vote:

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

Bernie Norvell
Mayor

ATTEST:

Diana Sanchez
City Clerk

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF FORT BRAGG AND
FORT BRAGG FOOD BANK**

This Memorandum of Understanding (“MOU”) dated _____, 2024 is by and between The City of Fort Bragg (“City”), and the Fort Bragg Food Bank (“FBFB”), sometimes referred to individually as “Party” and collectively as “Parties.”

WHEREAS, the FBFB has been identified as a local food recovery organization in the City; and

WHEREAS, the FBFB will be required to provide the City with a written annual report inclusive of the number of pounds of food received per month from each local edible food generator, and food deemed unfit for human consumption that is sent to landfills, or livestock feed no later than June 1st of every year; and

WHEREAS, food recovery organizations collecting or receiving edible food directly from commercial edible food generators, via a contract or written agreement established under 14 California Code of Regulation (CCR) Section 18991.3(b), shall maintain the following records readily available for inspection by the City, or as otherwise specified by 14 CCR Section 18991.5(a)(2):

1. The name, address, and contact information for each commercial edible food generator from which the organization receives edible food within city limits.
2. The quantity in pounds of edible food received from each commercial edible food generator per month no later than June 1st of every year.

WHEREAS, the FBFB will be required to provide the City with copies of agreements between the FBFB, and all Tier 1 and Tier 2 edible food generators in City Limits by December 31, 2024, and annually thereafter to ensure that the maximum amount of edible food is being recovered; and

WHEREAS, the FBFB has the experience, training, resources, and staff to manage food and items for basic human needs; and

WHEREAS, funding for capacity expansion is available through the City’s portion of CalRecycle SB1383 Grant Funding upon entering into this MOU.

NOW THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

I. TERM AND TERMINATION.

- A. Either party may terminate this MOU at any time with or without cause by giving the other party thirty (30) days' advance written notice.

II. DUTIES AND RESPONSIBILITIES OF THE PARTIES.

A. FBFB agrees to the following:

- 1. Provide the City with copies of agreements between the FBFB and all Tier 1 and Tier 2 edible food generators within city limits by December 31, 2024, and annually thereafter.
- 2. Provide annual reporting to the City no later than June 1st of every year, which includes the number of pounds of food received per month from each Tier 1 and Tier 2 generator in City Limits.
- 3. Provide budgets, quotes, or estimates for capacity expansion resources as requested by the City.

B. The City agrees to the following:

- 1. Provide an annual capacity planning study to the FBFB which identifies whether there is a need for additional organic waste recycling capacity and edible food recovery capacity.
- 2. Provide support to FBFB with meeting capacity and maximizing recovery efforts.
- 3. Provide support to FBFB for capacity expansion as the applicant for grants made available by CalRecycle. A portion of grant funding from CalRecycle may be made available to the FBFB at the discretion of the City.

III. INDEMNIFICATION

Both parties shall indemnify, defend with counsel acceptable to the other party, and hold harmless to the full extent permitted by law, the other party and its Council, Board of

Trustees/Board, officers, agents, employees, and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including, without limitation, attorney fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with this Agreement or failure to comply with any obligations contained in these contract documents, except such liability caused by the active negligence, sole negligence, or willful misconduct of either party. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for either party or its agents under workers' compensation acts, disability benefit acts, or other employee benefit acts.

III. NO PROMISE OF REIMBURSEMENT

While this MOU may increase the likelihood that both the City and FBFB may be reimbursed for expenses incurred when expanding the capacity of food recovery organizations at the federal or state level, nothing in this MOU is intended to guarantee that such reimbursement shall occur.

IN WITNESS WHEREOF, the parties have entered into this MOU as of the day and year first written above.

CITY OF FORT BRAGG

FORT BRAGG FOOD BANK

By:

By:

Name: Isaac Whippy

Name:

Title: City Manager

Title:

Date:

Date:



City of Fort Bragg

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Status: Consent Agenda

In Control: City Council

File Type: Resolution

Agenda Number: 5C.

Resolution of the Fort Bragg City Council Approving Contract Amendment with Marie Jones Consulting for Professional Planning Services and Authorizing the City Manager to Execute Contract (Amount Not To Exceed \$240,000) Subject to City Attorney Approval as to Form

**FIFTH AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT
WITH
MARIE JONES CONSULTING**

THIS FIFTH AMENDMENT is made and entered into this 22nd day of July 2024, by and between the CITY OF FORT BRAGG, a municipal corporation, 416 N. Franklin Street, Fort Bragg, California 95437 (“City”), and MARIE JONES CONSULTING, a sole proprietorship, 16312 Old Caspar RR, Fort Bragg, California 95437 (“Consultant”).

WHEREAS, the City and Consultant entered into a Professional Services Agreement (“Contract”) on March 4, 2022, a First Amendment to the Contract on September 13, 2022, a Second Amendment on April 10, 2023, a Third Amendment on December 11, 2023, a Fourth Amendment on February 26, 2024; and

WHEREAS, the Contract states that Consultant will provide land use expertise and planning services as described in Consultant’s Scope of Work attached to the Contract as Exhibit A; and

WHEREAS, the initial Contract term was amended and was set to expire on July 31, 2024; and

WHEREAS, the parties desire to amend the contract to extend the services through July 31, 2025; and

WHEREAS, the City intends to modify the contract amount from \$165,000 to \$240,000; and

WHEREAS, the costs associated with this contract would be paid through a variety of sources including grant funds from the State of California to increase housing opportunities, cost recovery accounts paid by applicants through developer deposit agreements (DDA), and General Fund funds; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby approve a Fifth Amendment to the Professional Services Agreement with Marie Jones Consulting; and,

BE IT FURTHER RESOLVED , for the aforementioned reasons and other valuable consideration, the receipt and sufficiency of which is acknowledged, City and Consultant hereby agree that the Professional Services Agreement for land use expertise and planning services is hereby amended as follows:

1. TIME OF PERFORMANCE

Paragraph 3.1 (Commencement and Completion of Work) is hereby amended to extend the time of completion of the project to **July 31, 2025**.

2. TERM AND TERMINATION

Paragraph 4.1 (Term) is hereby amended to extend the expiration date of the Contract to **July 31, 2025**.

3. All terms not defined herein shall have the same meaning and use as set forth in the Agreement, as amended.

4. All other terms, conditions, and provisions of the Agreement, as amended, shall remain in full force and effect.

5. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and the Agreement, First Amendment, Second Amendment, Third Amendment, Fourth Amendment, and this Fifth Amendment shall constitute one Agreement.

IN WITNESS WHEREOF, the parties have executed this Amendment the day and year first above written.

CITY

CONSULTANT

By: _____
Isaac Whippy
Its: City Manager

By: _____
Marie Jones
Its: Principal

ATTEST:

By: _____
Diana Sanchez
City Clerk

APPROVED AS TO FORM:

By: _____
Baron J. Bettenhausen
City Attorney

RESOLUTION NO. xxxx-2024

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL
APPROVING FIFTH AMENDMENT TO CONTRACT WITH MARIE JONES
CONSULTING FOR PROFESSIONAL PLANNING SERVICES AND
AUTHORIZING CITY MANAGER TO EXECUTE CONTRACT (TOTAL
CONTRACT AMOUNT NOT TO EXCEED \$240,000) SUBJECT TO CITY
ATTORNEY APPROVAL AS TO FORM**

WHEREAS, the City and Consultant entered into a Professional Services Agreement (“Contract”) on March 4, 2022, a First Amendment to the Contract on September 13, 2022, a Second Amendment on April 10, 2023, a Third Amendment on December 11, 2023, a Fourth Amendment on February 26, 2024; and

WHEREAS, the Consultant has demonstrated a skillful expertise in local land use regulations and environmental review processes; and

WHEREAS, the City necessitates further and continuous professional planning services to accommodate the existing workload demands, offer staff expertise, and address the staffing gaps within the department; and

WHEREAS, the City intends to modify the contract not to exceed amount from \$165,000 to \$240,000; and

WHEREAS, the City desires to extend the length of the existing contract from July 31, 2024, to July 31, 2025, and thereby benefit from the Consultant’s expertise; and

WHEREAS, the costs associated with this contract would be paid through a variety of sources including grant funds from the State of California to increase housing opportunities, cost recovery accounts paid by applicants through developer deposit agreements (DDA), and General Fund funds; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby approve a Fifth Amendment to the Professional Services Agreement with Marie Jones Consulting.

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 July 2024, by the following vote:

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

BERNIE NORVELL
Mayor

ATTEST:

Diana Sanchez
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: 24-861

Agenda Date: 7/22/2024

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Resolution

Agenda Number: 5D.

Resolution of the Fort Bragg City Council Approving and Authorizing the City Manager to Execute a Contract with the Fort Bragg Unified School District, for the Assignment and Reimbursement for a Police Officer Assigned as a School Resource Officer.

MOU with FBUSD and City to assign a police officer to the District as a School Resource Officer during the normal school year. FBUSD will reimburse City up to 70% salary and benefits for one police officer. MOU establishes expectations duties of SRO when acting in that capacity. MOU will be school years 24/25, 25/26, and 26/27.



AGENCY: City of Fort Bragg
MEETING DATE: July 22, 2024
DEPARTMENT: Police
PRESENTED BY: Chief Neil Cervenka
EMAIL ADDRESS: ncervenka@fortbragg.com

AGENDA ITEM SUMMARY

TITLE:

RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH FORT BRAGG UNIFIED SCHOOL DISTRICT, FOR THE ASSIGNMENT AND REIMBURSEMENT FOR ONE SCHOOL RESOURCE OFFICER.

ISSUE:

Fort Bragg Police Department (FBPD) and the Fort Bragg Unified School District (FBUSD) mutually desire the assignment of a police officer in the District as a School Resource Officer (SRO). FBUSD has agreed to reimburse the City for 70% of a police officer's salary and benefit cost, while the SRO is assigned to FBUSD during the regular school year.

ANALYSIS:

The staffing of FBPD has significantly improved and stabilized this year, which allows for one officer to be assigned as an SRO with only minimal impact to patrol. The advantages of an officer assigned to the schools during the school year offset the impacts due to increased intervention prior to becoming a call for service. The SRO will also investigate all calls relating in any way to the school, again reducing burden to Patrol. When school is not in session, the SRO will be assigned to Patrol to offset vacation overtime coverage and provide additional staffing during peak tourism months.

FBUSD has asked for an SRO to be officially assigned for several years, but due to past staffing deficiencies, it was not possible. FBUSD offered to offset the cost of an SRO by reimbursing the City for the time the SRO is assigned to the school.

After submitting a memo of interest, interviews with school administration, a former SRO, and FBPD Administration, a police officer was selected for the assignment and is prepared to begin on the first day of regular school, August 14, 2024. The SRO will complete specialized training in regards to SRO operations, gang identification/intervention, crisis intervention, adolescent mental health, and active shooter response to provide a high level of service to the school community.

An MOU with FBUSD is necessary to establish expected schedule, reimbursement, equipment, and duties.

FISCAL IMPACT:

FBUSD will reimburse City for up to 70% of a police officer's salary and benefit cost per year.

IMPLEMENTATION/TIMEFRAMES:

First day of school is August 14, 2024.

RECOMMENDED ACTION:

Accept and authorize City Manager, by motion, to execute a contract with the Fort Bragg Unified School District for the assignment of one School Resource Officer.

ALTERNATIVE ACTION(S):

1. No action.

ATTACHMENTS:

1. Agreement Between the City of Fort Bragg and the Fort Bragg Unified School District for School Resource Officer Services

RESOLUTION NO. ____-2024

RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH FORT BRAGG UNIFIED SCHOOL DISTRICT, FOR THE ASSIGNMENT AND REIMBURSEMENT FOR ONE SCHOOL RESOURCE OFFICER.

WHEREAS, Fort Bragg Unified School District (FBUSD) has requested a School Resource Officer (SRO) be assigned to the District during the normal school year; and

WHEREAS, the FBUSD has agreed to reimburse the City up to 70% of salary and benefits for one police officer assigned as an SRO; and

WHEREAS, the Fort Bragg Police Department (FBPD) also desires to assign an SRO to the District to enhance student safety; and

WHEREAS, the FBPD currently has staffing to support an SRO in the FBUSD; and

WHEREAS, the SRO will work to restore youth-based programs in the District to decrease drug use, violence, and gang participation; and

WHEREAS, the SRO will enhance the engagement between the police and youth community; and

WHEREAS, there will be cost savings to the City budget; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby approve and authorize the city manager to execute a contract with Fort Bragg Unified School District, for the assignment and reimbursement for one School Resource Officer.

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 July, 2024, by the following vote:

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

BERNIE NORVELL
Mayor

ATTEST:

Diana Sanchez
City Clerk

CITY OF FORT BRAGG

**AGREEMENT BETWEEN THE CITY OF FORT
BRAGG AND THE FORT BRAGG UNIFIED
SCHOOL DISTRICT**

**FOR SCHOOL RESOURCE OFFICER
SERVICES**

This Agreement is entered into on this 1st day of August 2024, ("Agreement") by and between the City of Fort Bragg, a California chartered municipal corporation ("City"), and the Fort Bragg Unified School District, located at 312 S. Lincoln Street, Fort Bragg, CA 953437 ("District").

RECITALS

The following recitals are a substantive portion of this Agreement.

- A. District intends to provide increased safety at its public schools by utilizing one (1) Fort Bragg Police Department Officers as School Resource Officers (SRO).
- B. The City desires to accommodate District's request for police services.
- C. It is not the intent of the Parties for the District to delegate to the City its duty to protect its students from foreseeable dangers.
- D. The Parties understand the District has broader legal authority to set and enforce rules than the City and its officer.
- E. The Parties understand student privacy rights may limit the City's and assigned officer's access to District information, which may limit the City and officer's ability to perceive a potential threat.
- F. The Parties anticipate the assigned officer's duties and travel between campuses will take the officer off-campus and result in the lack of the presence of an officer and marked vehicle during such times.
- G. The Parties acknowledge there is no viable legal theory on which a claim and/or cause of action could arise out of the absence of the assigned officer and/or the patrol vehicle at a school. Therefore, the Parties agree that absence of the assigned officer and/or the patrol vehicle at a school shall not be considered a substantial cause of an act or omission-giving rise to a claim and/or cause of action against the City or the assigned officer.

- H. The Parties acknowledge the assigned officer requires special training for this assignment, which will require him/her to be absent from school grounds.

NOW, THEREFORE, in consideration of the recitals, covenants, terms, and conditions in this Agreement, the Parties agree:

AGREEMENT

SECTION 1. SCOPE OF SERVICES. City's assigned police SRO shall perform the Services described in Exhibit "A" in accordance with the terms and conditions contained in this Agreement. Exhibit "A" is attached to this Agreement and incorporated herein as though fully set forth. Each SRO shall be the City's employee and shall be subject to the City's administration, supervision, and control, except as such administration, supervision, and control is subject to the terms and conditions of this Agreement.

SECTION 2. TERM. The term of this Agreement shall be from the date of its full execution through June 30, 2027, unless terminated earlier pursuant to Section 10 of this Agreement by either party providing thirty (30) days' written notice. The first date of service shall be August 14, 2024.

SECTION 3. DUTY SCHEDULE, DUTIES AND ASSIGNMENTS.

A. Duty Schedule

- a. The SROs shall be on duty a minimum of forty (40) hours per week with a regular workweek being some combination of 4 or 5 workdays, Monday through Friday.
- b. The SROs shall be on duty one hundred eighty (180) student instruction days plus six (6) registration days, and for a total of two hundred ten (210) duty days. Per Fort Bragg Police MOU, Officers are entitled sick leave and vacation leave time off. SROs are encouraged to plan vacations when school is out of session. Extended time off for long periods (twenty-one (21) instruction days or more) will constitute the department to provide backfill coverage or reimburse the District for time the SRO was absent from instruction days.
- c. The SROs shall arrive to the assigned school site ten (10) minutes prior to beginning of the student instructional day and may leave school after their assigned eight (8) hour shift has ended, except when meeting professional responsibilities. If an officer works, a schedule that changes the normal arrival time or length of shift this would be mutually agreed upon between the City and District.

The SRO schedule shall be from 0800 to 1600 hours. This allows SROs adequate time for donning/doffing, to attend pertinent briefings, and conduct other SRO functions such as traffic enforcement before and after school.

- d. During the duty day, the SROs shall be allowed a forty-five (45) minute period for lunch.
- e. The SROs will be assigned as the primary officers to provide afternoon and/or evening security at District events as requested, and/or to pursue criminal investigations of school-related crimes. The SRO will flex time from the regular day to cover these events without the use of overtime
- f. The SROs shall target their vacations when students are not in session and obtain prior approval of vacation time from both the City and the District.
- g. Specific SROs duty hours. The SROs' schedule may be reviewed by both City and District management to determine if adjustments are needed. Any adjustments will be completed in accordance to the Fort Bragg Police Association's MOU with the City of Fort Bragg.
- h. It is understood and agreed that time spent by the SROs attending court regarding juvenile and/or criminal cases arising from their employment as an SRO, shall be considered as hours worked under this Agreement.
- i. Upon City's written request, the District shall also consider authorizing an SRO to work an alternative work schedule in order to permit an SRO to participate in other special duties and to attend special training required by the City.
- j. In the event of an emergency, City may order an SRO to leave the assigned District duty location during normal duty hours to perform other services for the City. The time spent performing emergency services for the City shall not be considered hours worked under this Agreement. In such an event, the quarterly compensation paid by the District to City shall be reduced by the number of hours the SRO did not provide service to the District, or the hours shall be made up in a manner determined by mutual agreement of the parties.

B. Duties

- a. As a peace officer and an employee of City, the SRO shall be required to perform those duties required by the City.
- b. In addition, the SROs' District-specific duties include, but are not limited to, the following:
 1. To provide law enforcement expertise to the District's administrators.
 2. To provide information and knowledge gained as a result of gang and drug information received through law enforcement training to District administrators.
 3. To receive information from District administrators regarding student discipline under the Education Code and District Board Policies and Administrative Regulations.
 4. To receive information from District administrators regarding the occurrence of a crime or likelihood of the occurrence of a crime being committed on, or adjacent to, District property. To enforce federal, state and local criminal laws and ordinances, and to assist District officials with the enforcement of District Board Policies and Administrative Regulations regarding student conduct.
 5. To investigate criminal activity committed on, or adjacent to, District property.
 6. To counsel District students in special situations, such as students suspected of engaging in criminal misconduct, when requested by the principal or the principal's designee.
 7. To answer questions that students may have about California criminal or juvenile laws.
 8. To assist other law enforcement officers with outside investigations concerning students attending the school(s) to which the SRO is assigned.
 9. Subject to the provisions in Section IV, E, to provide security for special District events or functions, at the request of the principal or the Coordinator of Child Welfare and Attendance in conjunction with the City.
 10. SRO's will conduct presentations within the scope of their duties to school staff upon request.
 11. To make classroom presentations to students as directed, including making regular visits to elementary schools in the District on a mutually agreed upon schedule.
 12. To act as the designee of the campus administrator in maintaining the physical presence of the assigned; to provide a safe environment as to law enforcement matters and school code violations. This includes buildings, grounds, parking lots, lockers, and other public school's property.
 13. It will be the responsibility of the SRO to report all crimes originating on campus. Information on cases that are worked off campus by the police department or other agencies involving students on a campus served by an SRO will be provided to the SRO.
 14. To provide traffic enforcement around school sites during morning and after school hours.

- c. In collaboration with a designated District administrator, each SRO shall provide training to the Campus Supervision Team and train all District Campus Supervisors in the following procedures:
 - 1. Supervision coverage/beat, to insure the SRO is visible on campus during breaks, lunch hour, before and after school.
 - 2. Gang and drug awareness.
 - 3. Group surveillance techniques and strategies.
 - 4. Methods of approaching students and non-students in various situations.
 - 5. Methods of avoiding stereotyping, including race, dress, peer groups etc.
 - 6. Emergency strategies and procedures.
 - 7. Techniques on how to respond quickly, efficiently, while maintaining control of normal responsibilities.
 - 8. Coordination and supervision of athletic events and extracurricular activities.
 - 9. Responding and interacting with the community in an appropriate professional manner (focus on prevention not reaction).

- d. In collaboration with the principal, each SRO shall determine the appropriate number of officers needed at school events and make the arrangements with the police department.

- e. Each SRO shall develop appropriate professional relationships with students; be visible and actively engage with students, including before and after school.

- f. The SRO will not be involved in ordinary school discipline, UNLESS it pertains to preventing a potential disruption and/or climate that places students at risk of harm. Disciplining students is a school district's responsibility, and only when the principal and the SRO agree that the SRO's assistance is needed to maintain a safe and proper school environment, would the principal request SRO involvement.

- g. The SRO is first and foremost a law enforcement officer. This fact must be constantly reinforced.

- h. Access to Education Records.
 - 1. School officials shall allow SROs to inspect and copy any public records maintained by the school to the extent allowed by law.
 - 2. If some information in a student's record is needed in an emergency to protect the health or safety of the student or other individuals, school officials may disclose to the SRO that information which is needed to respond to the emergency situation based on the seriousness of the threat to someone's health or safety; the need of the information to meet the emergency situation and the extent to which time is of the essence.
 - 3. If confidential student record's information is needed by an SRO but no emergency situation exists, the information may be released only

as allowed by law.

C. Assignments

- a. City shall assign one (1) SRO as follows:
 1. One (1) SRO shall be regularly assigned to Fort Bragg High School ("FBHS"), and to other school sites as directed by District administration.
- b. Absence from SRO Assignment
 1. In the event an SRO is absent from work, the SRO shall notify both the City's designated supervisor and the District's Coordinator [or principal of Fort Bragg, High School].

D. Communication

- a. In the performance of their duties, each SRO shall coordinate and communicate with the Principal or the Principal's' designee of the school to which the SRO is assigned. However, each SRO shall be expected to follow City's standard operating procedures and use professional discretion in the areas of investigation, interrogation, search, and arrest procedures.

E. Dress Code

- a. SRO is expected to wear a FBPD uniform in accordance with policy.
- b. Each SRO shall be armed and wear standard police issued equipment, including body armor, at all times while on duty.

F. Supplies and Equipment

- a. City shall provide each SRO with the following equipment:
 1. Police Vehicles.
 - a) City shall provide a standard patrol vehicle for each SRO.
 - b) In addition, City shall:
 - 1) Maintain the motor vehicles assigned to each SRO.
 - 2) Purchase gasoline/electricity, oil, replacement tires, and other expenses associated with the operation of each motor vehicle.
 - 3) Maintain comprehensive general auto liability insurance on each motor vehicle.
 2. Weapons and Ammunition
 - a) City shall provide the standard issued weapon and rounds of ammunition for each SRO.
 3. Office Supplies
 - a) District shall provide each SRO with the usual and customary office supplies and forms required in the performance of their duties.
 4. SRO School Site Office
 - a) The District shall provide each SRO their own office at their primary school sites (Fort Bragg High School). SRO offices are necessary for the storage of specialized equipment and provides a private space to conduct private and confidential interviews.

G. Training/City Meetings

- a. City may require each SRO to attend the City's training and briefing sessions.

- b. SRO shall attend the City's Police Department Training for all peace officers, which includes but not limited to: CPR, First Aid, Range, and Driving Awareness.
- c. Police Department Training is usually scheduled in advance and is approximately eight hours. These sessions will be held at the direction of the City.
- d. An SRO, upon receiving prior written approval from the District and the City, may attend appropriate in-service training sessions, or professional development courses, in which the subject matter is related to specific SRO duties, such as gang awareness training. District and City shall determine financial responsibility prior to approving the SRO's attendance.
- e. City shall be financially responsible for paying each SRO's mandated training sessions, which are not related to specific SRO duties. Examples of mandated training sessions include, but are not limited to, in-service firearm training, etc.

SECTION 4. COMPENSATION AND REIMBURSEMENT.

A. City Compensation

a. Salary and Benefits

- 1. City agrees to provide and to pay each SRO's salary and employment benefits in accordance with the City's applicable salary schedules and employment practices in effect. Salary and employment benefits include, but are not necessarily limited to: sick leave, annual leave, retirement compensation, disability salary continuation, workers compensation, unemployment compensation, life insurance, dental insurance, and medical/hospitalization insurance.

b. Overtime

- 1. If the officer is assigned work in excess of 40 hours or required to perform additional Services as approved by the Police Chief, City shall pay additional compensation.
- 2. The District agrees that it will prepare an estimate of expected overtime hours that would be required for the school year.
- 3. The District understands that under the existing Police Association's MOU with the City, the work schedule of the SROs cannot be interrupted during the day without the payment of overtime. Therefore, should the District, need the services of the SROs for special events occurring after their regular workday, it may request such services from the Police Chief or his designee.
 - a) All such requests shall be made in writing or by e-mail and shall state the purpose for which SROs are needed.
 - b) The Police Chief or designee shall have sole discretion to authorize or deny the requested overtime services of the SROs.
 - c) Additional Services shall mean any work that is determined by City to be necessary for the proper implementation of Services, but not included within the Scope of Services described in Exhibit "A".

B. District Compensation and Reimbursement

a. Salary and Benefits

1. During the terms of this Agreement, District shall pay the City, as full reimbursement for the cost of providing the services of the SROs, the following sums:

a) For performance of the Services described in Exhibit "A," the District shall compensate City at the rate of 100% of the actual salary costs of each SRO pursuant to the terms of this Agreement based upon a 40-hour week. This sum shall not include the payment of overtime. This will be a maximum of 70% of the annual pay and benefits for the officer, not including overtime.

b. Vehicles

1. The City will provide the SRO a standard patrol vehicle and cover all maintenance cost associated with it.

C. Cost Cap

a. City agrees that the total costs of all payments required to be paid by District to City during the term of this Agreement, will not exceed 70% of the SRO's pay and benefit cost annually.

D. Withdrawal of Officer

a. In the event City withdraws an SRO, District shall compensate City for actual hours worked at 100% of the actual payroll costs of withdrawn SRO pursuant to the terms of this Agreement, based upon a 40-hour week. This sum shall not include the payment of overtime.

SECTION 5. INVOICES.

City will bill District quarterly, in arrears, beginning January 1, 2025 and District shall remit payment within thirty (30) days.

SECTION 6. SELECTION. EMPLOYMENT AND OVERSIGHT OF OFFICERS.

City, in its sole discretion, shall have the power and authority to hire, discharge and discipline an SRO. City shall retain control over supervision, wages and other terms and conditions of employment of the officers providing the Services under this Agreement. The Parties acknowledge that such officers are held to the requirements of the law and City policies and procedures. The District shall assist City with evaluation of the officers, however, the City shall have the responsibility to evaluate, manage, and supervise the officers. The District shall immediately notify City of any concerns regarding the performance of the assigned officer, including, but not limited to, adherence to the Duty Schedule and quality of Services.

A. Selection of Officers

a. Whenever it becomes necessary for City to select an SRO, City shall use its best efforts to work diligently to employ a peace officer whose communication skills, temperament and leadership abilities are most closely aligned with District needs.

- b. As part of the SRO selection process the city shall disclose all current collateral duties of each applicant which the District should take into consideration when making their selection.
- c. Each SRO shall be subject to the City's personnel policies and practices.

B. Officer Evaluations

- a. SRO's will be evaluated by supervisors based on their current evaluation schedule.
- b. The evaluation shall consider each SRO's working relationship with District Administrators.
- c. City shall contact and request information from the FBHS & FBMS principals, assistant principals, the District Superintendent, and other District Administrators, as necessary.
- d. The SRO's evaluation is part of a police officer's personnel record. As such, it is a confidential record which cannot be released or viewed by third parties, including District personnel.
- e. The City will give due consideration to the input and comments of District officials, provided such input and comments are substantiated and not simply opinion or conjecture.
- f. It is understood that the City retains final authority to evaluate the performance of the SROs.

C. Supervision of Officers

- a. As stated, each SRO shall be the City's employee. Each SRO shall follow the chain of command as set forth in the City's applicable Policies and Procedure Manual.

SECTION 7. COMPLIANCE WITH LAWS.

The Parties shall keep themselves informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner performance of the Services or those engaged to perform Services under this Agreement.

SECTION 8. INDEMNITY.

- A. The District shall indemnify, defend, and hold harmless the City, its officers, officials, employees, and volunteers from and against any and all liability, claims, damage, cost, expenses, awards, fines, judgments, and expenses of litigation (including, without limitation, costs, attorney fees, expert witness fees and prevailing party fees and cost) of every nature arising out of or in connection with the assigned officer's performance of work or his or her failure to comply with any of its obligations contained in the Agreement, except such loss or damage which was caused by the active negligence by the City, or the gross or willful misconduct of the assigned officer.
- B. The City shall indemnify, defend, and hold harmless the District, its officers, officials, employees, and volunteers from and against any and all liability, claims, damage, cost, expenses, awards, fines, judgments, and expenses of litigation (including,

without limitation, costs, attorney fees, expert witness fees and prevailing party fees and cost) of every nature arising out of the active negligence by the City or the gross or willful misconduct of the assigned officer during the performance of work hereunder.

- C. If the District rejects a tender of defense by the City and/or the assigned officer under this Agreement, and it is later determined that the City and/or the officer breached no duty of care and/or was immune from liability, the District shall reimburse the City and/or officer for any and all litigation expenses (including, without limitation, costs, attorney fees, expert witness fees and prevailing party fees and cost). A duty of care or immunity determination may be made by a jury or a court, including a declaratory relief determination by a court after the City and/or officer settles a liability claim, with or without participation by the District.
- D. The Parties acknowledge that it is not the intent of the Agreement to create a duty of care by the City or its assigned officer that they would not owe in the absence of the Agreement. The Agreement does not create an affirmative duty of care (including, without limitation, a duty to protect, a duty to deter and/or a duty to intervene) by the City or the assigned officer and the absence of the assigned officer and/or the patrol vehicle is not a material breach of this Agreement. The Parties further acknowledge that by entering into this Agreement neither the City nor its assigned officer intends to waive any immunities to which they would be entitled in the absence of the Agreement.

SECTION 10. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.

- A. The Parties understand that staffing and/or operational demands may require City to withdraw the SRO for other duties and agree that City may do so at its discretion at any time. If the City withdraws pursuant to this Section, it will notify the District as soon as practical.
- B. Either Party may suspend the performance of the Services, in whole or in part, or terminate this Agreement, with or without cause, by giving thirty (30) days prior written notice thereof to the other Party. Upon receipt of such notice, City will immediately discontinue its performance of the Services.
- C. Upon such suspension or termination by either Party, City will be paid for the Services rendered or materials delivered to District in accordance with the Scope of Services on or before the effective date (i.e., 30 days after giving notice) of suspension or termination. The following Sections will survive any expiration or termination of this Agreement: 4, 5, and 8.
- D. No payment, partial payment, acceptance, or partial acceptance by City will operate as a waiver on the part of City of any of its rights under this Agreement.

SECTION 11. NOTICES.

All notices hereunder will be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To City:

Fort Bragg Police
Department Neil Cervenka,
Chief
250 Cypress Street
Fort Bragg, CA 95437
707-961-2804

With a copy to:

Fort Bragg Police Department
Thomas O'Neal, Captain
250 Cypress Street
Fort Bragg, CA 95437
707-961-2804

To District:

Fort Bragg Unified School District
Joseph Aldridge, Superintendent
312 S Lincoln St
Fort Bragg, CA 95437
707-961-2850

SECTION 12. CONFLICT OF INTEREST.

Both Parties certify that they will comply with all laws applicable to governmental agencies and related conflicts of interest. If the City determines the District is a "Consultant" as that term is defined by the Regulations of the Fair Political Practices Commission, District shall be required and agrees to file the appropriate financial disclosure documents required by the City of Fort Bragg Municipal Code and the Political Reform Act.

SECTION 13. NONDISCRIMINATION.

As set forth in City of Fort Bragg Personnel Rules, District certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. District acknowledges it has read and understands the provisions of the City of Fort Bragg Personnel Rules relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Section 2.1 pertaining to nondiscrimination in employment.

SECTION 14. PERSONAL INFORMATION.

If, pursuant to this Agreement with District, City shares with District personal information as defined in California Civil Code Section 1798.81.5(d) about a California resident ("Personal Information"), District shall maintain reasonable and appropriate security procedures to protect that) personal information, and shall inform City immediately upon learning that there has been

a breach in the security of the system or in the security of the personal information. District shall not use personal information for direct marketing purposes without City's express written consent. Similarly, the City shall maintain reasonable and appropriate security procedures to protect personal information pertaining to District students.

SECTION 15. CONTROLLING LAW.

This Agreement, its validity, the construction of its terms, and the interpretation of rights and duties of the Parties hereto, shall be governed and construed under the laws of the State of California. In the event that an action is brought, the Parties agree that trial of such action will be vested exclusively in the state courts of California in the County of Mendocino, State of California.

SECTION 16. PREVAILING PARTY.

The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys' fees paid to third parties.

SECTION 17. SEVERABILITY.

If any part hereof is illegal or invalid for any reason, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

SECTION 18. INTEGRATION OF PRIOR TERMS AND CONDITIONS.

This Agreement, including all recitals [and Exhibits] constitutes the entire agreement of the Parties. This Agreement may be amended or modified only by the mutual written agreement of the Parties. This Agreement is invalid unless approved by the legislative body of each Party, although it may be executed by an authorized agent of each Party. An authorized agent of the City shall be a person specifically authorized by the legislative body of the City to execute this Agreement, at the level of City Manager, City Attorney or equivalent.

IN WITNESS WHEREOF, the Parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

CITY OF FORT BRAGG

FORT BRAGG UNIFIED SCHOOL DISTRICT

Isaac Whippy, City Manager

Joseph Aldridge, Superintendent

Attachments:

EXHIBIT "A": SCOPE OF WORK

EXHIBIT "A"
SCOPE OF
SERVICES

The City/District School Resource Officer shall perform the following Services:

1. **Campus Community Policing.** The School Resource Officer (SRO) shall assist the District in making the grounds and adjacent grounds safe from criminal activity.
2. **Truancy Issues.** The SRO shall assist the District in resolving truancy issues, including attending Student Attendance Review Board (SARB) meetings, and Truancy Mediation Meetings with District Attorney; other duties may include providing information on criminal consequences of truancy.
3. **Comply With Legal Reporting Requirements.** The SRO shall assist the District in complying with legal reporting requirements, including completing the Monthly Report on the Detention of Minors form for the California Board of State and Community Corrections and completing the Annual Survey of Law Enforcement Facilities.
4. **After Hours Community Policing.** The SRO shall assist the District in providing security, directing traffic and interacting with students and the community at activities such as football games, school dances, etc.



City of Fort Bragg

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

Text File

File Number: 24-865

Agenda Date: 7/22/2024

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Resolution

Agenda Number: 5E.

Adopt City Council Resolution Authorizing Submittal of Application(s) for All Hazard Mitigation Assistance Grant Programs for which the City of Fort Bragg is Eligible

The City of Fort Bragg is applying for \$3 Million in funding through the Hazard Mitigation Grant Program (HMGP) to assist with the Fire Station North Wing Reconstruction. The funds associated with this grant application will be used for administrative efforts as well as construction costs.

RESOLUTION NO. ____-2024

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL
AUTHORIZING SUBMITTAL OF APPLICATION(S) FOR ALL HAZARD
MITIGATION ASSISTANCE GRANT PROGRAMS FOR WHICH THE
CITY OF FORT BRAGG IS ELIGIBLE**

WHEREAS, The Federal Emergency Management Agency’s (FEMA) Hazard Mitigation Assistance (HMA) grant programs provide funding for eligible mitigation activities that reduce disaster losses and protect life and property from future disaster damages; and

WHEREAS, FEMA’s 2023 Hazard Mitigation Assistance Program and Policy Guide (HMA Guide) outlines the policy and procedural requirements of HMA grant programs over the lifecycle of an activity; and

WHEREAS, The HMA Guide also addresses guiding principles and priorities for the HMA programs including the Hazard Mitigation Grant Program (HMGP), Hazard Mitigations Grant Program Post Fire (HMGP Post Fire), Building Resilient Infrastructure and Communities (BRIC) and Flood Mitigation Assistance (FMA); and

WHEREAS, The California Governor’s Office of Emergency Services (Cal OES) serves as the state’s overall coordinator and agent to secure federal government resources through FEMA; and

WHEREAS, Cal OES grant application procedures require, among other things, an applicant’s governing body to declare by resolution certain authorizations related to the administration of HMA grants.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg authorizes the submittal of application(s) to Cal OES for all Hazard Mitigation Assistance grant programs for which the City of Fort Bragg is eligible; and

BE IT FURTHER RESOLVED that the City Manager, or his/her designee is hereby authorized and empowered to execute in the name of the City of Fort Bragg all grant documents, including but not limited to, applications, agreements, amendments and requests for payment, necessary to secure grant funds and implement the approved grant project; and

BE IT FURTHER RESOLVED that these authorizations are effective for five (5) years from the date of adoption of this resolution.

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 July, 2024, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSED:

BERNIE NORVELL
Mayor

ATTEST:

Diana Sanchez
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: 24-870

Agenda Date: 7/22/2024

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Resolution

Agenda Number: 5F.

Resolution of the Fort Bragg City Council Authorizing the Amendment to Employment Agreement for Police Chief with Neil Cervenka

RESOLUTION NO. ____-2024

RESOLUTION OF THE FORT BRAGG CITY COUNCIL AUTHORIZING AN AMENDMENT TO THE EMPLOYMENT AGREEMENT FOR POLICE CHIEF NEIL CERVENKA

WHEREAS, Fort Bragg Police Chief Neil Cervenka has faithfully served the City of Fort Bragg since July 25, 2022; and

WHEREAS, Chief Cervenka also undertook the role of Assistant City Manager for the City of Fort Bragg under former City Manager Peggy Ducey beginning July 10, 2023; and

WHEREAS, Chief Cervenka has consistently demonstrated his experience, knowledge, and leadership qualities, proving to be an excellent Police Chief; and

WHEREAS, the new City Manager Isaac Whippy, believes that it is in the best interests of the City for Chief Cervenka to focus solely on his responsibilities as Police Chief, without the added role of Assistant City Manager; and

WHEREAS, to ensure the continuity of leadership of the City's operations and administration when the City Manager is away from the City, the Fort Bragg City Manager will designate one of the Department Heads to serve as Acting City Manager in their absence; and

WHEREAS, the Fort Bragg City Manager believes that it is in the best interests of the City to employ Chief Cervenka as Police Chief and to provide for the terms and conditions of the Police Chief's continued City employment through an employment agreement.

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

Section 1. The City Council, City Manager, and Chief Cervenka have agreed to the terms and conditions set forth in the employment agreement.

Section 2. The City Council approves the Police Chief Employment Agreement, attached hereto as Exhibit "A", and incorporated herein by this reference, and authorizes the Mayor to execute the Police Chief Employment Agreement with Neil Cervenka.

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 July 2024, by the following vote:

**AYES:
NOES:**

**ABSENT:
ABSTAIN:
RECUSED:**

BERNIE NORVELL
Mayor

ATTEST:

Diana Sanchez
City Clerk

POLICE CHIEF EMPLOYMENT AGREEMENT RESTATED
Between the City of Fort Bragg,
a Municipal Corporation,
and Neil Cervenka

I. PARTIES AND DATE

The Police Chief Employment Agreement is herein amended and Restated and dated August 1, 2024, and is effective as of final approval by the City of Fort Bragg City Manager, by and between the City of Fort Bragg, California, a municipal corporation (the "City"), and Neil Cervenka, an individual (Cervenka) (collectively the "Parties").

- A. The City requires the services of a Police Chief;
- B. Cervenka has the necessary education, experience, skills and expertise to serve as the City's Police Chief;
- C. The City Manager of the City (the "City Manager") desires to continue to employ Neil Cervenka as the Fort Bragg Police Chief;
- D. The Parties desire to execute this Agreement Amendment pursuant to the authority of and subject to the provisions of Government Code Section 53260 et seq.; and
- E. In consideration of these Recitals and the performance by the Parties of the promises, covenants, and conditions herein contained, the Parties agree as provided in this Agreement.

II. EMPLOYMENT

The City has continually employed Neil Cervenka as its Police Chief since July 25, 2022. City wishes to continue Police Chief's employment.

III. COMMITMENTS AND UNDERSTANDINGS

A. Police Chief's Commitments

- 1. Duties & Authority:
 - Cervenka shall be the Police Chief of the City upon execution of this Agreement and be responsible to the City Manager for the proper administration of assigned duties and responsibilities of the City.
 - Plans, organizes, directs and coordinates the activities of Police Department in the preservation of order, protection of life and property; enforcement of all federal, state and local laws, codes and ordinances, investigation and prevention of crime; and maintenance of effective communication and records systems and other support activities.
 - Develops, implements and revises departmental rules, procedures and policies; reviews actions and conduct of subordinates, recommends corrective action and maintains effective discipline throughout the department.
 - Directs and participates in the development, implementation and monitoring of annual departmental budget; prepares reports and recommendations concerning proposed city

activities and their budgetary and/or staffing impact on the city and the police department and recommends purchase of equipment and supplies.

- Identifies and develops solutions to difficult community and organizational problems and assures effective implementation through the Police Department.
- Recommends appointment and evaluates Police Department personnel, assigns work projects; coordinates work or subordinates and has general accountability for the effectiveness of all operations; observes and takes corrective action on significant employee relations problems; and implements Affirmative Action Program within the Police Department.
- Develops and ensures enforcement of Police Department operating policies and procedures.
- Coordinates Police Department activities and maintains liaison with other federal, state, county and local law enforcements related agencies on judicial, prosecution and defense issues.
- Represents the Police Department before the City Council and other governmental bodies; prepares and presents special studies and reports concerning Police Department programs and activities.
- Represents the Police Department before various community groups, develops and implements the department's community relation efforts with special emphasis toward community oriented policing principles and practices and maintaining positive and effective relationships among the various communities in Fort Bragg.
- Reviews reports on crimes committed, arrests made, investigations conducted and unusual incidents requiring documentation and assure their transmittal to other agencies and the City manager as appropriate.
- Investigates or directs investigation of citizen complaints.
- Facilitates, leads and/or participates in meetings and committees; represents the City at meetings and conferences, serves as liaison between departments, external organizations, the general public and other agencies.
- Implements and oversees special projects that meet the goals of the City Council and the City Manager.
- Responds to and resolves sensitive and complex community inquiries and complaints.
- If the City Manager is expected to be unavailable in their duties for a period longer than two weeks, and the Police Chief is asked to serve as Acting City Manager, the Police Chief shall receive 5% out-of-class pay according to personnel rules and regulations. Police Chief agrees to waive 5% out-of-class pay for Acting City Manager duties for any time period two consecutive work weeks or less.

2. Hours of Work

Police Chief is an exempt employee without set hours of work, but is expected to be available at all times and to engage in those hours of work that are necessary to fulfill the obligations of the Police Chief's position.

3. Disability or Inability to Perform

In the event the Police Chief becomes mentally or physically incapable of performing the Police Chief's functions and duties with reasonable accommodation and it reasonably appears such incapacity will last for more than six months; the City Manager may terminate the Police Chief. If the City Manager does elect to terminate the Police Chief due to incapacity, the Police Chief shall receive all severance benefits provided in Section V.C. under Severance Pay.

B. City Commitments

1. The City shall provide the Police Chief with the compensation, incentives and benefits specified in this Agreement.
2. The City shall provide the Police Chief with office space, staff, equipment, supplies, automobile, and all other facilities and services adequate for the performance of the Police Chief's duties.
3. The City shall pay for or provide the Police Chief reimbursement for all actual business expenses. The City shall provide the Police Chief a credit card to charge appropriate and lawful business expenses.
4. The City agrees to pay the professional dues and subscriptions on behalf of the Police Chief for participation in national, regional, state, or local associations and organizations, as necessary and desirable for the good of the City, and for the Police Chief's continued professional participation and advancement.
5. The City agrees to pay the travel and subsistence expenses of the Police Chief for purposes such as official functions, meetings, occasions, short courses, institutes and seminars that are necessary for the good of the City or for the professional development of the Police Chief.
6. The City agrees to appropriate \$1,800 per year, to be used as needed, for continuing education expenses associated with maintaining professional licenses and furthering professional development of the Police Chief.

C. Mutual Commitments

1. Performance Evaluation

The City Manager recognizes that for the Police Chief to respond to its needs and to grow in the performance of the job, the Police Chief needs to know how the City Manager evaluates the Police Chief's performance. To assure that the Police Chief gets this feedback, the City Manager shall conduct an evaluation of the Police Chief's performance at least once each year, and/or when it deems necessary to discuss any concerns or direction in performance.

The City Manager and Police Chief shall jointly define goals and performance objectives which they deem necessary for the proper operation of the City in the attainment of the City Manager's policy objectives, and shall establish the relative priority among the various goals and objectives.

IV. COMPENSATION

The City agrees to provide the following compensation to the Police Chief during the term of the

agreement:

A. Salary

1. Cervenka shall be paid an annual base salary of \$188,822.40 (Step 5) for performing the duties of Police Chief and a 5% increase for obtaining, or being eligible for, a California Peace Officers Standards and Training Executive Certificate effective August 1, 2024. This salary shall be increased by any COLAs applied to the City's Executive Management Employee Group, or the increase determined by the annual Salary Survey in accordance with Ordinance 672, whichever is greater, or by amendment to this Agreement.
2. The Police Chief shall be paid at the same intervals and in the same manner as regular City employees; in the event that there are more than twenty-six pay periods in a calendar year the periodic payments shall be adjusted accordingly so that the salary shall not exceed any amount approved by the City Manager.
3. The City shall not at any time during the term of this Agreement, reduce the base salary, compensation or other financial benefits of the Police Chief, unless as part of a general City management salary reduction, and then in no greater percentage than the average reduction of all City department heads

B. Benefits:

1. Retirement. Police Chief Employee shall be eligible for the "2% at 50" retirement formula enrolled in the Tier 1 ("Classic") retirement formula. Police Chief shall pay employee's contribution to CalPERS. City shall pay the required Employer contribution.
 - If the City Council enters into an agreement with any Public Safety bargaining unit changing the Classic CalPERS formula to "3% at 50" or 3% at 55", this Agreement shall be deemed amended and Employee shall be subject to the same percentage contribution as it is applied to other Public Safety Members and for the same duration.
2. Life Insurance. City shall obtain and pay for a life insurance policy for Police Chief in the amount of \$200,000.
3. Health Insurance. City shall pay 80% of the premiums for medical, dental and vision plans for Police Chief and dependents.
4. Sick Leave and Vacation.
 - (a) Sick Leave:
 - i. Accrual: Police Chief shall accrue sick leave at a rate of eight (8) hours per month. Sick leave may be accrued with no maximum limit.
 - ii. Personal Use: Sick leave may be used as it is accrued. It is to be used for illness or injury and may not be used to supplement days off.
 - iii. Family Care Use: Accrued sick leave may be used for care of children, siblings and parents (be they natural, adoptive, step or foster of the employee or their current spouse or domestic partner), or spouse or domestic partner, to a maximum of one hundred twenty (120) hours in the calendar

year of January 1 through December 31.

- iv. Conversion: Sick leave accrued in excess of eight hundred (800) hours may be converted to vacation on the basis of three (3) hours of vacation time for each ten (10) hours of sick leave accrued and converted.
- v. Up to 25% of sick leave accrued in excess of one thousand (1,000) hours may be converted to vacation on the basis of one (1) hour of vacation time for each one (1) hour of sick leave accrued and converted.
- vi. Conversions may be made once in each calendar year.
- vii. Transfer: Police Chief may voluntarily transfer accrued sick leave to another employee in cases of emergency.
- viii. Compensation on Separation: Upon separation after two or more years of service, Police Chief shall be paid for 30% of unused accrued sick leave. Such compensation is not applicable if Police Chief is discharged for cause.
- ix. Family and Medical Leave: Police Chief shall be entitled to leave as provided for in the Family and Medical Leave Act (FMLA) of 1993 and the California Family Rights Act (CFRA).

(b) Vacation Leave:

- i. Police Chief shall accrue vacation as follows:
 - 120 hours annually for 1 to 10 years of service (i.e. 0-120 months of service);
 - 160 hours annually for 10 to 15 years of service (i.e. 121-180 months of service);
 - 200 hours annually for more than 15 years of service (i.e. more than 180 months of service).
 - Accumulation: Police Chief may accumulate up to 360 hours of vacation leave. The City Manager may authorize accrual of additional vacation hours in situations where vacation time cannot be authorized due to work demands.
 - Use: Vacation leave may be taken as it accrues. Accrued vacation time may be used, at a minimum, in blocks of one (1) hour or more. The date of vacation may be selected by the employee, but shall be approved by the City Manager, who shall consider the wishes of the employee and the needs of the Department.
 - Vacation Buy-Back: Once during each fiscal year, and subject to the approval of the City Manager, a maximum of 160 hours of vacation leave may be cashed in. At the time the cash-in option is exercised, the employee must retain a minimum of 80 hours of vacation leave. Cash-in requests must be made in writing to the City Manager.
6. Cell Phone Allowance. Police Chief shall be paid a technology allowance in the amount of \$40 per month for a Police Chief owned cell phone and, if applicable, \$20 per month for a Police Chief owned tablet, all payable on the City's regular payroll under the procedures currently used by the City for making such payments.
 7. City-Provided Vehicle. Police Chief's duties require him to be available to respond to the demands of City business at all times and outside of regular business hours, including weekends. Therefore, City shall provide Employee with a vehicle that may be used for City-related business purposes. City anticipates that the vehicle provided

to Employee may be a Ford Explorer, but the make and model of the vehicle shall remain in the City's sole discretion. City shall pay for reasonable maintenance of the vehicle and gasoline. It is contemplated by the parties that the Employee will use the vehicle principally for City-related business, however, to the extent the Employee uses the vehicle for any incidental personal business, Employee shall pay for gasoline for all such personal use.

8. Uniform Allowance. As permissible by law and subject to the provisions and limitations under the California Public Employees' Retirement Law (California Government Code §20000 et seq.), as amended or superseded from time to time, the City shall report, biweekly, the value of provided uniforms at \$1,300 (one thousand, three hundred dollars) per year, in accordance with California Public Employees' Retirement System ("CalPERS") requirements. The Parties agree the reported value of uniforms is intended to reflect clothing such as pants, shirts, jackets, and related attire and excludes health and safety related equipment. Employee agrees and understands that an increase in the uniform allowance will require an amendment to the Agreement for CalPERS to consider a uniform allowance as a special compensation. If CalPERS does not agree that the original uniform allowance or any increased allowance qualifies as special compensation, then the City shall have no liability in this regard, no duty to appeal this determination on Employee's behalf, and no duty to represent Employee in proceedings related to said determination.
9. Other Benefits: The Police Chief shall be entitled to the following benefits:

- a. Executive Leave. Police Chief shall receive 80 hours of Executive Leave annually accrued as of January 1. Executive Leave must be taken as time off and is not compensable upon termination. This will be prorated if hired after January 1st of the year.

If the Leave is not used by December 31 of each year, the unused balance will not carry forward unless approval by the City Manager is requested and received before December 31. The City Manager may authorize a carry-over of the unused balance for up to 90 days past December 31. Any unused leave not taken within the 90-day extension period will be lost. Executive Leave must be taken as time off and is not compensable upon termination.

- b. Holidays: Police Chief shall receive 12 designated paid holidays per year and one floating holiday per year to be observed during each fiscal year (July 1-June 30). Specified holidays are as follows:

- January 1 (New Year's Day)
- 3rd Monday in January (Martin Luther King Jr. Day)
- 3rd Monday in February (Presidents Day)
- Last Monday in May (Memorial Day)
- July 4 (Independence Day)
- 1st Monday in September (Labor Day)
- 2nd Monday in October (Indigenous Peoples' Day)
- November 11 (Veterans Day)

- 4th Thursday in November (Thanksgiving)
- Friday after Thanksgiving
- December 24 (Christmas Eve)
- December 25 (Christmas Day)

In addition, any day proclaimed by the Governor and recognized by the City Manager as a public holiday, day of mourning, or day of thanksgiving shall be provided as a holiday.

One "floating holiday" may be taken as time off only, scheduled with due regard to the wishes of the employee and the convenience of the City. Floating holidays, defined as eight hours, may not be carried forward from one fiscal year to the next and must be used no later than the last regularly scheduled pay date prior to June 30th of each fiscal year. Unused floating holidays are deemed to be lost, if not used, at the end of each fiscal year or upon termination of employment. Floating holiday time may not be exchanged for actual compensation under any circumstances.

- c. Bereavement Leave. When a death occurs in the Police Chief's immediate family, the Police Chief shall be granted necessary time off of up to five consecutive work days, with compensation, for the purpose of attending the funeral and/or to personal affairs.
- d. Jury Duty. If the Police Chief is summoned to serve on jury duty during an on-duty day, they shall be entitled to leave of absence with full pay for such period of time as may be required to attend the court in response to such summons. The Police Chief may retain such payment as may be allowed for travel, lodging and meal expenses. The Police Chief shall not be required to submit to the City compensation received from the court for jury duty in order to receive full pay and expenses referenced above.

V. SEPARATION

- A. Resignation/Retirement: The Police Chief may resign at any time and agrees to give the City at least 45 days' advance written notice of the effective date of the Police Chief's resignation, unless the Parties otherwise agree in writing. If the Police Chief retires from full time public service with the City, the Police Chief may provide six months' advance notice. The Police Chief's actual retirement date will be mutually established.
- B. Termination & Removal: Police Chief is an exempt at-will employee serving at the pleasure of the City Manager as provided in Government Code Section 36506.
 - 1. The City Manager may remove the Police Chief at any time, either with or without cause. Notice of termination shall be provided to the Police Chief in writing. The City Manager may also elect not to renew this Agreement. Notice of nonrenewal shall also be provided to the Police Chief in writing. The City Manager understands that termination or nonrenewal of employment without cause could result in an adverse financial impact not completely mitigated by any severance compensation as provided in this Agreement. Therefore, the City Manager agrees that if termination or nonrenewal is made without cause, it shall provide not less than 180 days' notice of termination to the Police Chief. If the Police Chief resigns after receiving notice of termination, or notice of nonrenewal, the resignation shall be considered "involuntary" as described in Section 5.D. of this Agreement. Termination as used in this section

shall also include a request that the Police Chief resign, a reduction in salary or other financial benefits of the Police Chief (excluding a general City Management salary reduction), a material reduction in the powers and authority of the Police Chief, or the elimination of the Police Chief's position. Any such notice of termination or act constituting termination shall be given at or effectuated at a duly noticed and conducted meeting of the City Manager.

C. Severance Pay

1. In the event the Police Chief is terminated by the City Manager during such time that the Police Chief is willing and able to perform the Police Chief's duties under this Agreement, the City shall pay the Police Chief a lump sum cash payment equal to the lesser of (a) the actual number of months' salary remaining on the current term of employment and the cash equivalent of health (medical, dental and vision) benefits for that same period, or (b) six (6) months' base salary and cash equivalent of health (medical, dental and vision) benefits then in effect as provided in Section 4 above. It is the intention of the parties that this paragraph complies with the requirements of Government Code Section 53260 et seq. When provided by California Intergovernmental Risk Authority or CIRA Insurance an additional six (6) month's salary may be provided by the insurance company. In the event of any conflict between this provision and those code sections, the terms of those code sections shall govern the contractual relationship between the employer and employee.
2. In addition, the City shall extend to the Police Chief the right to continue health insurance as may be required by and pursuant to the terms and conditions of the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA).
3. In the event the City refuses, following written notice of non-compliance, to comply with any provision in this Employment Agreement benefitting the Police Chief, or the Police Chief resigns following a suggestion, whether formal or informal, by the City Manager that the Police Chief resign, then, in that event, the Police Chief may be deemed to be "terminated" as of the date of such refusal to comply or suggestion to resign and this severance pay provision shall be actuated.
4. All payments required under this Section V are subject to and shall be interpreted to comply with the limitations set forth in Government Code Section 53260.

D. Involuntary Resignation: In the event that the City Manager formally or informally asks the Police Chief to resign, then the Police Chief shall be entitled to resign and still receive the severance benefits provided in Section V.C. above.

E. Separation for Cause

1. Notwithstanding the provisions of Section V.C., the Police Chief may be terminated for cause. As used in this section, "cause" shall mean only one or more of the following:
 - (a) Conviction of, or no contest plea to, a felony;
 - (b) Conviction of, or no contest plea to, any illegal act involving moral turpitude or personal gain;

- (c) Continued abuse of non-prescription drugs or alcohol that materially affects the performance of the Manager's duties;
 - (d) Any act constituting a knowing and intentional violation of the City's conflict of interest code; or
 - (e) Repeated and protracted unexcused absences from the Police Chief's office and duties;
- 2. In the event the City terminates the Police Chief for cause, then the City may terminate this Agreement immediately, and the Police Chief shall be entitled to only the compensation accrued up to the date of termination, payments required by Section V.F. below, and such other termination benefits and payments as may be required by law. The Police Chief shall not be entitled to any severance benefits provided by Section V.C.
 - 3. If the Police Chief is terminated for cause, and "cause" meets the definition of "abuse of office or position," as defined in Government Code section 53243.4, the provisions of Government Code sections 53243 through 53243.4 shall apply and prevail over any contrary terms and conditions of this Agreement.

F. Payment for Unused Leave Balance

- 1. On separation from City employment, the Police Chief shall be paid for all unused accrued leave allowances provided in Section 4.B. above in accordance with the current salary and benefits plan for Exempt At-Will Executive Classification employees. Accumulated leave balances shall be paid at the Police Chief's monthly base salary rate at the effective date of separation.
- 2. In the event the Police Chief dies while employed by the City under this Agreement, the Police Chief's beneficiaries or those entitled to the Police Chief's estate, shall be entitled to the Police Chief's earned salary, and any in-lieu payments for accrued benefits, including compensation for the value of all accrued leave balances.

- G. Joint Statements of Separation: In the event of resignation or retirement of the Police Chief, termination by the City (with or without cause), or other separation of employment as described the Section V, the City and the Police Chief agree that neither any member of the City Manager, or the City's management staff, nor the Police Chief, shall make any written, oral or electronic statement to any member of the public, the press, or any City employee concerning the Police Chief's termination or separation, except in the form of a joint press release or statement, the content of which is mutually agreeable to both the City and the Police Chief. The joint press release or statement shall not contain any text or information that is disparaging to either Party. Either Party may verbally repeat the substance of this Section V.G., and the joint press release or statement, in response to any inquiry.

VI. MISCELLANEOUS PROVISIONS

A. Term

The initial term of this Agreement shall be for a period of twenty-four (24) months beginning 12:00 a.m. August 1, 2024 and continuing until 12:00 a.m. July 31, 2026 (the "initial Termination

Date").

B. Subsequent Terms

Unless the City gives the Police Chief written notice of non-renewal at least 180 days prior to the initial Termination Date or the termination date of any Renewal Term (as hereinafter defined) this Agreement may be renewed by the parties for one or more additional terms of up to three (3) years each, each renewal term to be reflected by a written amendment signed by the parties. If the parties cannot mutually agree to the term of any renewal, this Agreement shall continue in effect for automatic renewals of one (1) year each (whether renewed by amendment or renewed by operation of this Section each, a "Renewal Term").

C. Provisions that Survive Termination

Many sections of this Agreement are intended by their terms to survive the Police Chief's termination of employment with the City, including but not limited to Sections V and VI.F. These sections, and the others so intended, shall survive termination of employment and termination of this Agreement.

D. Amendments

This Agreement may be amended at any time by mutual agreement of the City and the Police Chief. Any amendments are to be negotiated, put in writing, and adopted by the City Manager.

E. Conflict of Interest

1. The Police Chief shall not engage in any business or transaction or have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties.
2. The Police Chief shall also be subject to the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to the Police Chief's City employment.
3. The Police Chief is responsible for submitting to the City Clerk the appropriate Statement of Economic Interests at the time of appointment, annually thereafter, and at the time of separation from the position. Form 700 from the Fair Political Practice Commission (FPPC) shall be completed in a timely matter as required by law.

F. Indemnification

1. To the full extent of the law, the City shall defend and indemnify the Police Chief, in his capacity as Police Chief against and for all losses sustained by the Police Chief in direct consequences of the discharge of the Police Chief's duties on the City's behalf for the period of the Police Chief's employment, save and except those losses sustained as a result of the willful act or omission of the Police Chief including any "abuse of office or position," as described in Section V(E)(3) of this Agreement.
2. The City shall defend, save harmless and indemnify the Police Chief against any tort, professional liability claims or demand or other legal action, whether groundless or

otherwise, arising out of an alleged act or omission occurring in the performance of the Police Chief's duties as Police Chief. The City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

3. Whenever the Police Chief shall be sued for damages arising out of the performance of the Police Chief's duties, the City shall provide defense counsel for the Police Chief in such suit and indemnify the Police Chief from any judgment rendered against the Police Chief; provided that such indemnity shall not extend to any judgment for damages arising out of any willful wrongdoing. This indemnification shall extend beyond termination of employment and the otherwise expiration of this Agreement to provide protection for any such acts undertaken or committed in the Police Chief's capacity as Police Chief, regardless of whether the notice of filing of a lawsuit occurs during or following employment with the City. This indemnity provision shall survive the termination of the Agreement and is in addition to any other rights or remedies that the Police Chief may have under the law.

4. The City and all parties claiming under or through it, hereby waive all rights of subrogation and contribution against the Police Chief, while acting within the scope of the Police Chief's duties, from all claims, losses and liabilities arising out of or incident to activities or operations performed by or on behalf of the City or any party affiliated with or otherwise claiming under it or through it, regardless of any prior, concurrent, or subsequent active or passive negligence by the Police Chief.

G. Severability

If any clause, sentence, part, section, or portion of this Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, such clause, sentence, part, section, or portion so found shall be regarded as though it were not part of this Agreement and the remaining parts of this Agreement shall be fully binding and enforceable by the Parties hereto.

H. Laws Affecting Title

In addition to those laws affecting a Police Chief, the Police Chief shall have the same powers, rights and responsibilities as a Chief Executive Officer, City Administrative Officer, Administrator, and City Administrator as those terms are used in local, state or federal laws when acting in the City Manager's role.

I. Jurisdiction and Venue

This Contract shall be construed in accordance with the laws of the State of California, and the Parties agree that venue shall be in Mendocino County, California, unless the Parties mutually agree to removal to a different county.

J. Entire Agreement

This Contract represents the entire agreement of the Parties, and no representations have been made or relied upon except as set forth herein. This Contract may be amended or modified only by a written, fully executed agreement of the Parties.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above

written.

CITY OF FORT BRAGG

POLICE CHIEF

By: _____
Bernie Norvell, Mayor

By: _____
Neil Cervenka

Attest:

Approved as to Form:

By: _____
Diana Sanchez, City Clerk

By: _____
Baron J Bettenhausen, City Attorney

DRAFT



City of Fort Bragg

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

Text File

File Number: 24-872

Agenda Date: 7/22/2024

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Minutes

Agenda Number: 5G.

Approve Minutes of July 8, 2024



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*

Monday, July 8, 2024

6:00 PM Town Hall, 363 N. Main Street and Via Video Conference

CALL TO ORDER

Mayor Norvell called the meeting to order at 6:00 PM.

PLEDGE OF ALLEGIANCE

ROLL CALL

Present: 5 - Mayor Bernie Norvell, Vice Mayor Jason Godeke, Councilmember Tess Albin-Smith, Councilmember Lindy Peters and Councilmember Marcia Rafanan

CLOSED SESSION REPORT

None.

AGENDA REVIEW

None.

1. MAYOR'S RECOGNITIONS AND ANNOUNCEMENTS

None.

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

- (1) Ron White, Jenny Shattuck, Jacob Patterson, Andrew Jordan, Shelley Green.
- (2) Shelley Green.

3. STAFF COMMENTS

City Manager Isaac Whippy announced that the City's Strategic Planning Workshop will be held on Tuesday, July 23, 2024, from 2 PM to 7 PM at Town Hall. All community members are welcome to attend. He also took the opportunity to thank the community for the successful Fourth of July event and the post-event cleanup efforts.

Public Works Director John Smith expressed gratitude to all the volunteers who participated in the beach clean-up after the Fourth of July event. He highlighted that many of the related expenses, including staff time and newly ordered garbage cans are covered by the Clean California Grant. Additionally, Smith mentioned a recent fire at one of the C&S Waste Facilities and reminded the public of the importance of properly disposing of lithium batteries and other

hazardous materials to prevent such incidents.

Chief of Police Neil Cervenka provided an update on the level of service over the past week, covering July 4 to July 7. During this period, there were 109 calls for service and 10 arrests. Over 20,000 vehicles entered the area via Highway 20. Chief Cervenka thanked the community for their patience on July 6, 2024, as traffic from the fireworks event was being cleared out.

4. MATTERS FROM COUNCILMEMBERS

Councilmember Peters discussed the Caspar Landfill and the potential of repurposing it for a micro-grid to support essential services. He mentioned that this idea was initially explored in 2019 but was abandoned because the Caspar Landfill property was deemed too distant for a feasible micro-grid. Councilmember Peters expressed a desire to revisit this project and identify a more suitable location closer to the City to bring the micro-grid to fruition. He also stated that the application for this grant has been submitted to PG&E.

Councilmember Albin-Smith expressed gratitude to the staff for their assistance at the Salmon BBQ and noted the success of the bus service to the Harbor for the event. She requested an update from the Fentanyl Task Force and sought clarification on why the streets are being striped despite the work not being completed. Public Works Director John Smith clarified that the issue with the road work was not in the middle section of the road and that the sides had been patched up and will be tested. If the patches are found to be faulty, the contractor will be asked to correct the work. She also announced that there is a Music Festival starting next weekend and running for two weeks.

Vice Mayor Godeke mentioned upcoming events, including a Strategic Housing Workshop on Tuesday, July 23, 2024, from 2 to 7 PM. Additionally, the Community Development Committee will be hosting a Housing Workshop on Thursday, July 25, 2024, from 5:30 PM to 7 PM. Both events will be held at Town Hall.

5. CONSENT CALENDAR

Moved by Councilmember Peters, seconded by Vice Mayor Godeke, that the Consent Calendar be approved. The motion carried by the following vote:

Aye: 5 - Mayor Norvell, Vice Mayor Godeke, Councilmember Albin-Smith, Councilmember Peters and Councilmember Rafanan

5A. [24-840](#) Adopt by Title Only, and Waive Further Reading of Ordinance 992-2024 Amending Division 18 of the Fort Bragg Municipal Code (ILUDC 4-23) to Amend Chapter 18.42.175 Tiny Homes, of Division 18 of the Fort Bragg Municipal Code, to Modify Regulations and Standards for Tiny Homes

This Ordinance was adopted on the Consent Calendar.

5B. [24-841](#) Adopt by Title Only, and Waiver Further Reading of Ordinance 993-2024 Amending Division 18 of the Fort Bragg Municipal Code (ILUDC 5-23) to Repeal Chapter 18.42.110 Mobile Home Parks of Division 18 of the Fort Bragg Municipal Code and Replace it with Chapter 18.42.110 Tiny Home & Manufactured Home Communities to Establish Standards for Tiny Home

Communities

This Ordinance was adopted on the Consent Calendar.

- 5C.** [24-842](#) Adopt City Council Resolution Approving the Purchase of Forty-Six Dual Stream Waste Receptacles with Art-Wrapped Side Panels from Securr (Amount Not to Exceed \$116,967.68)
- This Resolution was adopted on the Consent Calendar.**
- 5D.** [24-843](#) Adopt City Council Resolution Approving the Purchase of Nine New Dual Stream Waste Receptacles and Twenty Sets of Art-Wrapped Replacement Door Panels From Max-R (Amount Not to Exceed \$48,042.35)
- This Resolution was adopted on the Consent Calendar.**
- 5E.** [24-848](#) Adopt Resolution of the Fort Bragg City Council Approving Professional Services Agreement with Environmental Science Associates for Sea Level Rise, Tsunami Hazards, and Erosion Resiliency Strategy for LCP 22-07 Grant Project, and Authorizing the City Manager to Execute Contract (Amount Not To Exceed \$190,200; Account 337-5080-0630); CEQA Exemption 15061(b) (3)
- This Resolution was adopted on the Consent Calendar.**
- 5F.** [24-839](#) Adopt Resolution of the Fort Bragg City Council Approving the Interfund Loan for the Reimbursement to the City for the Fire Station Roof Project.
- This Resolution was adopted on the Consent Calendar.**
- 5G.** [24-849](#) Approve Minutes of June 24, 2024
- These Minutes were approved on the Consent Calendar.**
- 5H.** [24-830](#) Receive and File Minutes of the Public Works and Facilities Committee Meeting for May 20, 2024
- These Committee Minutes were received and filed on the Consent Calendar.**

6. DISCLOSURE OF EX PARTE COMMUNICATIONS ON AGENDA ITEMS

None.

7. PUBLIC HEARING

- 7A.** [24-783](#) Receive Report, Conduct Public Hearing, and Provide Direction to Staff Regarding a Potential Application for Funding from the 2023 and/or 2024 Community Development Block Grant (CDBG) Notice of Funding Availability (NOFA); CEQA Exempt 15061(b)(3)

Grants Coordinator Lacy Peterson presented the staff report on this item.

Mayor Norvell opened the public hearing at 6:57 PM.

Public Comment: Jacob Patterson, Sage Statham of Parents and Friends, Shelley Green,

Andrew Jordan.

Mayor Norvell closed the public hearing at 7:02 PM.

Discussion: After much discussion, the Council directed staff to apply for grant funding with the following priorities:

Application 1: Fire Station as the first priority for an over-the-counter project, with Broadband as the second priority. Application 2: Housing Combination Program. Application 3: CV Starr Planning, with Utility Assistance as a backup.

- 7B. [24-833](#)** Receive Report, Conduct Public Hearing, and Provide Direction to Staff Regarding 2023 and/or 2024 Community Development Block Grant (CDBG) Program Income Application; CEQA Exemption 15061(b)(3)

Grants Coordinator Lacy Peterson presented the staff report on this item.

Mayor Norvell opened the public hearing at 7:18 PM.

Public Comment: None.

Mayor Norvell closed the public hearing at 7:19 PM.

Discussion: After a brief discussion the Council took into consideration the direction from the prior Public Hearing for the Community Development Block Grant (CDBG) and decided to direct staff to apply for the Business Loan Assistance Program for this CDBG Program Income Application.

8. CONDUCT OF BUSINESS

- 8A. [24-819](#)** Nomination and Appointment of Planning Commissioner to Serve on the Fort Bragg Planning Commission and Swearing In of New Commissioner

Vice Mayor Godeke thanked outgoing Planning Commissioner Jeremy Logan for his dedicated service. Logan expressed his gratitude to the Council for the opportunity to serve. Godeke also welcomed incoming Planning Commissioner Katie Turner, providing a brief background about her and expressing enthusiasm for her upcoming contributions to the Planning Commission.

Public Comment: Jacob Patterson, Jeremy Logan, Gabriel Quinn Maroney, Andrew Jordan.

Discussion: City Clerk Diana Sanchez administered the Oath of Office to incoming Commissioner Turner, officially swearing her in to begin her term on the Planning Commission.

A motion was made by Vice Mayor Godeke, seconded by Councilmember Rafanan, that the Appointment be approved. The motion carried by the following vote:

Aye: 5 - Mayor Norvell, Vice Mayor Godeke, Councilmember Albin-Smith, Councilmember Peters and Councilmember Rafanan

- 8B. [24-850](#)** Receive Report and Consider Adoption of City Council Resolution Authorizing the City Manager to Execute Agreement with Sherwood Valley Band of Pomo Indians for Tribal Monitoring During Excavation for the City's Raw Water Line Replacement Project, City Project No. WTR-00016

Mayor Norvell recessed the meeting at 7:31 PM; the meeting reconvened at 7:38 PM.

Public Works Director John Smith presented on this item.

Public Comment: None.

Discussion: None.

A motion was made by Councilmember Peters, seconded by Councilmember Rafanan, that the Resolution be adopted. The motion carried by the following vote:

Aye: 5 - Mayor Norvell, Vice Mayor Godeke, Councilmember Albin-Smith, Councilmember Peters and Councilmember Rafanan

8C. [24-853](#) Receive Report and Provide Direction Regarding a Potential 2023-2024 HOME Investment Partnerships Program (HOME) Grant Application

Grants Coordinator Lacy Peterson presented on this item.

Public Comment: Paul Clark, Jacob Patterson, Shelley Green, Jaclyn Moura.

Discussion: After some discussion, the council directed staff to arrange for the developer to come and speak to the council about the proposed project.

8D. [24-851](#) Receive Report and Presentation of the City's Unfunded Accrued Liability with CalPERS and Pension Cost Management Strategies

City Manager Isaac Whippy and Eric Scriven of NHA Advisors presented on this item.

Public Comment: Jacob Patterson, Paul Clark, Andrew Jordan.

Discussion: After discussing other possible alternatives, it was clarified that it was not possible to opt out of the CalPERS plan.

8E. [24-852](#) Receive Report and Consider Adoption of City Council Resolution and Ordinances Submitting a Three-Eighths Cent Transactions and Use (Sales) Tax and/or 2% Transient Occupancy Tax to the Voters; and Taking Certain Related Actions

City Manager Isaac Whippy presented on this item.

Public Comment: Shelley Green, Jacob Patterson, Andrew Jordan, Scott Schneider, Paul Clark.

Discussion: After much discussion, the council decided to direct staff to place the proposed measures on the ballot and allow the voters to decide the outcome.

A motion was made by Vice Mayor Godeke, seconded by Councilmember Rafanan, that the Resolution be adopted. The motion carried by the following vote:

Aye: 5 - Mayor Norvell, Vice Mayor Godeke, Councilmember Albin-Smith, Councilmember Peters and Councilmember Rafanan

A motion was made by Councilmember Peters, seconded by Councilmember Albin-Smith, that the Ordinance be introduced. The motion carried by the following vote:

Aye: 5 - Mayor Norvell, Vice Mayor Godeke, Councilmember Albin-Smith, Councilmember Peters and Councilmember Rafanan

A motion was made by Councilmember Albin-Smith, seconded by Vice Mayor Godeke, that the Ordinance be introduced. The motion carried by the following vote:

Aye: 5 - Mayor Norvell, Vice Mayor Godeke, Councilmember Albin-Smith, Councilmember Peters and Councilmember Rafanan

8F. [24-836](#) November 5, 2024 Election Update

City Clerk Diana Sanchez presented the Election Update.

9. CLOSED SESSION

None.

ADJOURNMENT

Mayor Norvell adjourned the meeting at 9:16 PM.

BERNIE NORVELL, MAYOR

Diana Sanchez, 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: 24-856

Agenda Date: 7/22/2024

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Minutes

Agenda Number: 5H.

Approve Minutes of City Council-Special Closed Session of July 8, 2024



City of Fort Bragg

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

Meeting Minutes Special 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*

Monday, July 8, 2024

4:30 PM Town Hall, 363 N Main Street and Via Video Conference

Special Closed Session

CALL TO ORDER

Mayor Norvell called the meeting to order at 4:38 PM.

ROLL CALL

Present: 5 - Mayor Bernie Norvell, Vice Mayor Jason Godeke, Councilmember Tess Albin-Smith, Councilmember Lindy Peters and Councilmember Marcia Rafanan

1. PUBLIC COMMENTS ON CLOSED SESSION ITEMS

Jacob Patterson.

2. CLOSED SESSION

Mayor Norvell recessed the meeting at 4:42 PM; the meeting reconvened to Closed Session at 4:44 PM.

2A. [24-844](#) Conference with Labor Negotiators: Pursuant to Government Code Section 54957.6: City Negotiator: Isaac Whippy, City Manager; Employee Organizations: Fort Bragg Police Association

Mayor Norvell reconvened the meeting to Open Session at 5:15 PM and reported that no reportable action was taken on the Closed Session item.

ADJOURNMENT

Mayor Norvell adjourned the meeting at 5:15 PM.

BERNIE NORVELL, MAYOR

Diana Sanchez, 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: 24-859

Agenda Date: 7/22/2024

Version: 1

Status: Public Hearing

In Control: City Council

File Type: Staff Report

Agenda Number: 7A.

Receive Report, Conduct Public Hearing, and Consider Adoption of City Council Resolution Approving an Application for Funding and the Execution of a Grant Agreement and Any Amendments Thereto from the 2023 and/or 2024 Funding Year of the State CDBG Program



AGENCY: City Council
MEETING DATE: July 22, 2024
DEPARTMENT: Economic Development
PRESENTED BY: L. Peterson
EMAIL ADDRESS: lpeterson@fortbragg.com

AGENDA ITEM SUMMARY

TITLE:

RECEIVE REPORT, CONDUCT PUBLIC HEARING, AND CONSIDER ADOPTION OF A CITY COUNCIL RESOLUTION APPROVING AN APPLICATION FOR FUNDING AND THE EXECUTION OF A GRANT AGREEMENT AND ANY AMENDMENTS THERETO FROM THE 2023 AND/OR 2024 FUNDING YEAR OF THE STATE CDBG PROGRAM

ISSUE:

Every year, the California Department of Housing and Community Development (HCD) releases a funding opportunity under the Community Development Block Grant (CDBG) program. Funds for the program are made available to HCD from the United States Department of Housing and Urban Development (HUD). As a non-entitlement jurisdiction, the City is eligible to apply for grants through the CDBG program.

The City held a design phase hearing during a regular meeting of the City Council on July 8, 2024, in order to give the public an opportunity to comment regarding potential projects and programs for CDBG applications using Program Income (PI). At this meeting, staff brought forward two potential activities for Council consideration, and Council gave direction to staff to prepare an application for the 2023 PI Only solicitation in the amount of \$570,000 for a Business Assistance Loan Program.

The PI Only solicitation is currently open, and applications are accepted on a rolling basis. A public hearing must be held before submittal of an application, to allow the public an opportunity to provide feedback regarding the proposed application. Following the public hearing, Council may consider adopting a resolution approving the application and authorizing the Mayor to execute the contract and any amendments thereto.

ANALYSIS:

About the Business Assistance Loan Program

The Business Assistance Loan Program serves start-ups or existing businesses within City limits. Funds may be used for purchase of equipment, inventory, real property, working capital, debt consolidation, and construction (Davis-Bacon Labor Law requirements must be followed for construction). Businesses may be loaned up to \$300,000, depending on available funds. For every \$35,000 loaned, one full-time job is created or retained, and 51% of those jobs are filled by members of the low to moderate-income group. Loan amounts and terms are determined on a case by case basis, with interest rates starting as low as 1%. Terms are dependent on the recipient's cash flow needs and risk level of the loan. Repayment terms are based on the capacity of the business to repay, with deferral of payments possible based on income and expense projections. There are no loan fees.

Business Assistance Loan Program Budget

The Business Assistance Loan Program would be funded entirely with CDBG Program Income funding, with the following activities and amounts:

Funding Category	Amount
Activity (Direct Loans to Businesses & Activity Delivery)	\$487,180
General Administration (17%)	\$82,820
Total	\$570,000

Activity

Activity costs include direct loans to businesses and Activity Delivery (AD) costs. AD costs include staff and consultant expenses in support of the specific activity, such as application processing and loan underwriting. There is no specific cap on AD costs, though costs of less than twenty-five percent (25%) of the total activity costs is recommended as a reasonable amount. Typically, the City’s loan programs operate with AD costs of approximately fifteen percent (15%).

General Administration

General Administration (GA) allows for ongoing administration of the CDBG program and includes any allowable expense on a CDBG-eligible activity. Under the annual CDBG funding cycle, GA is typically capped at seven percent (7%) of the total award. In the case of Program Income, GA is allowed at seventeen percent (17%) of the total award.

RECOMMENDED ACTION:

Conduct the Public Hearing and adopt a City Council resolution approving an application for funding and the execution of a grant agreement and any amendments thereto from the 2023 and/or 2024 funding year of the State CDBG program.

ALTERNATIVE ACTION(S):

Conduct the Public Hearing and direct staff not to prepare an application for 2023 PI Only CDBG solicitation. The City would instead need to apply to use PI under the 2024 NOFA solicitation in order to encumber and expend Program Income.

FISCAL IMPACT:

CDBG funds allow the City to conduct activities and complete projects to benefit the community, in particular the City’s low and moderate-income residents, for which funding would otherwise be unavailable. CDBG activities also create job opportunities in the community. CDBG grant administration requires significant commitment of staff time, but CDBG provides funding for administrative activities that is generally adequate to service the program.

CONSISTENCY:

The State CDBG mission is to improve the lives of low and moderate-income residents through the creation and expansion of community and economic development opportunities, which supports livable communities for all residents. This mission is consistent with City Priority Areas established in City Council’s April 2019 Goal Setting process including Priority Area “Jobs/Industry” (Economic Development loans and grants, Business Assistance Program); Priority Area “Quality of Life” (public improvements

projects); and Priority Area “Infrastructure” (community development capital projects).

IMPLEMENTATION/TIMEFRAMES:

If, after holding the Public Hearing, Council adopts the proposed resolution, staff will submit an application for 2023 PI Only CDBG solicitation as soon as possible. The resulting contract will be for a three-year term, and will likely be executed in the fall.

ATTACHMENTS:

1. 2023 Community Development Block Grant Program Notice of Funding Availability – Amendment #1.
2. Proposed Resolution Approving Application Submittal
3. Exhibit A - Proposed Resolution Approving Application Submittal – CDBG Required Format
4. Public Hearing Notice for Application Submittal (English)
5. Public Hearing Notice for Application Submittal (Spanish)

NOTIFICATION:

1. CDBG “Notify Me” Subscribers

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF FEDERAL FINANCIAL ASSISTANCE**

2020 W. El Camino Avenue, Suite 200, 95833
P.O. Box 952054
Sacramento, CA 94252-2054
(916) 263-2771
www.hcd.ca.gov



January 31, 2024

MEMORANDUM FOR: All Potential Applicants

FROM: Sasha Hauswald, Deputy Director
Division of Federal Financial Assistance

**SUBJECT: 2023 Community Development Block Grant Program
Notice of Funding Availability – Amendment #1**

The California Department of Housing and Community Development (Department) is announcing the release of an amendment to the Community Development Block Grant (CDBG) Program 2023 Notice of Funding Availability (NOFA) issued on September 29, 2023. The original NOFA was for approximately \$19 million in federal funds for the Community Development Block Grant Program only for applications from projects that remain on the waitlist established for Over-the-Counter projects after the 2019-2020 CDBG NOFA. **This Amendment #1 makes available another \$19 million for Housing, Community Development, and Economic Development Projects in an Over-the-Counter process.**

Funding for this NOFA is available to the state from the United States Department of Housing and Urban Development (HUD), pursuant to the Housing and Community Development Act of 1974, as amended, and 24 Code of Federal Regulation (CFR) Part 570 Subpart I "State Community Development Block Grant Program." These regulations require the state to make funds available to the state's non-entitlement Units of General Local Government (UGLGs). Units of General Local Government are defined by HUD as political subdivisions of the state, which in California are towns, cities, and counties. Only non-federally recognized Tribes can receive funding through applications submitted by non-entitlement Units of General Local Government. No direct funding from the Department can be provided to Tribes, Tribally-Designated Housing Entities, or nonprofits.

To award the balance of available 2023 funding, the Department is amending the original September 29, 2023 NOFA as follows:

1. To make an additional \$19 million available for Housing, Community Development, and Economic Development Projects. Applications for new projects are due on or before **Tuesday, April 30, 2024.**

2. To include in the additional \$19 million available, a 5% set-aside for Colonias as required under Section 916 of the National Affordable Housing Act
3. To include in the additional \$19 million available, a 1.25% set-aside for Non-federally recognized Tribes as required by HSC 50831.

Applicants are encouraged to set-up profiles in the eCivis Portal at [eCivis Portal | Login](#) as early as possible. Profile set-up instructions and other technical assistance can be found in the [eCivis Grants Network External User Manual](#) found on the [Department's CDBG webpage](#) under the "Resources" tab.

Applicants are encouraged to begin the application process early to ensure successful submission before the application deadline. If you have issues logging into the portal or have questions on how to complete the online application, please contact the Department at cdbg@hcd.ca.gov.

To receive CDBG program NOFA FAQs, emails, and other information and updates, please [sign up for emails](#) and check the "Federal Programs" box. **If you have any questions, please submit them to cdbg@hcd.ca.gov.**

All activities in this NOFA are subject to availability of funds and continuing HUD and legislative authority.

Attachments

Community Development Block Grant Program

2023 Notice of Funding Availability



**Gavin Newsom, Governor State of
California**

**Tomiquia Moss, Secretary Business, Consumer
Services and Housing Agency**

**Gustavo Velasquez, Director
California Department of Housing and Community Development**

Division of Financial Assistance, Federal Programs Branch
[Community Development Block Grant Program](#)
2020 W. El Camino Avenue, Suite 200, Sacramento, CA 95833
Email: cdbg@hcd.ca.gov

September 29, 2023

Amended January 31, 2024

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II. Overview

A. Notice of Funding Availability

The California Department of Housing and Community Development (Department) announces the availability of approximately ~~\$49-38~~ million in funding available through the federal Small Cities Community Development Block Grant Program (CDBG) for the 2023 funding year.

Under this NOFA as amended, \$19 million in CDBG funds are provided as grants to Non-Entitlement Units of General Local Government (UGLGs) for project applications for CDBG-eligible activities that were waitlisted under the 2019-2020 Over-the-Counter waitlist (Waitlisted Projects), and pursuant to this Amendment, another \$19 million in CDBG funds are provided as grants to Non-Entitlement Units of General Local Government (UGLGs) for applications for new CDBG-eligible Housing, Community Development, and Economic Development Projects (New Projects) in an Over-the-Counter process.-

All CDBG activities must meet one of the following National Objectives:

- Benefit low- and moderate-income persons
- Aid in the prevention or elimination of slums and blight
- Meet certain urgent community needs

The objectives of the CDBG program are to develop viable communities by the provision of decent affordable housing, a suitable living environment, and to expand economic opportunities, principally for the benefit of Low- and Moderate-Income (LMI) persons, families, households, and neighborhoods.

Applicants are expected to plan activities that will reduce disparities and increase racial and socioeconomical equity in their communities. Applicants are to ensure all eligible persons receive equitable access to services, and are served with dignity, respect, and compassion regardless of circumstance, ability, or identity, which includes marginalized populations, including but not limited to, Black, Native and Indigenous, Latinx, Asian, Pacific Islanders and other people of color, immigrants, people with criminal records, people with disabilities, people with mental health and substance abuse vulnerabilities, people with limited English proficiency, people who identify as LGBTQ+, and other individuals that may not traditionally access mainstream support.

All applications will be reviewed for completeness and compliance with state and federal requirements. Only complete and compliant applications will be eligible for application review, approval, and potential funding.

B. Tentative Estimated Timeline

<u>Original</u> CDBG NOFA and application release	September 29, 2023
Application <u>for Waitlisted Projects</u> opens for submittal	October 30, 2023
Application <u>for Waitlisted Projects</u> deadline	-When funds are exhausted or 60 days from application open date, whichever comes first
HCD announces awards <u>for Waitlisted Projects</u>	Rolling basis (January – April 2024)
Contract Execution <u>for Waitlisted Projects</u>	Rolling basis (March – May 2024)
<u>Expenditure Deadline</u>	-2 years, 9 months from contract execution
<hr/>	
<u>CDBG NOFA amendment for New Projects</u> release	<u>January 31, 2024</u>
<u>Application for New Projects</u> Opens for Submittal	<u>March 1, 2024</u>
<u>Application for New Projects</u> deadline	<u>When funds are exhausted or 60 days from application open date, whichever comes first</u>
<u>HCD announces awards for New Projects</u>	<u>Rolling basis (May – July 2024)</u>
<u>Contract Execution for New Projects</u>	<u>Rolling basis (July – September 2024)</u>
<u>Expenditure Deadline</u>	<u>-2 years, 9 months from contract execution</u>

Applications submitted before the application start open date or after the respective due date or closing date will not be accepted. There will be no exceptions. The Department **recommends Applicants plan to submit their application(s) well before the application deadline** to provide opportunity for troubleshooting if needed.

Each application will be digitally time-stamped upon submittal.

If theis NOFA is undersubscribed, unawarded funds will be made available under the a subsequent NOFA ~~January 2024 Competitive and Over the Counter NOFA~~. If funds become disencumbered between theis NOFA release and the application deadline, the disencumbered funds will be made available to Waitlisted or New Projects under this NOFA. If disencumbered funds exceed applications, the disencumbered funds will be made available under the January 2024 Competitive and Over the Counter a subsequent NOFA.

C. What is new in this NOFA

This is a limited NOFA.- Funding will only be made available to shovel-ready projects from the OTC-waitlisted projects (Waitlist Waitlisted Projects) submitted under the 2019-2020 NOFA and new shovel-ready Housing, Community Development, and Economic Development Projects (New Projects). -

- Waitlist Applicants will have 60 days from the applicable application open date to submit a complete application.
- After the 60-day period, the application will close and no additional applications or changes will be accepted.
- Awards will be made on a first-come, first-served basis.
- Waitlisted Project aApplicants will only be allowed to apply for up to the originally applied for amount of funds. Any cost increases must be covered by other funding sources or scope must be reduced to fit within the available budget. Applicants who applied for funding for a Waitlisted Project may also apply for funds for a New Project.
- Each jurisdiction can apply for one (1) New Housing, Community Development, and Economic Development Projects (New Projects) will be allowed to apply for one (1) application per jurisdiction in an amount not to exceed \$3.253 million.
- All Applicant projects must pass threshold, including sufficiently demonstrating readiness as detailed in the threshold section of this NOFA.
- There is expected to be sufficient funding available to fund all Waitlisted Projects, but projects will only be funded if they meet threshold requirements prior to the application deadline.
- The Standard Agreement term has been adjusted to require full expenditure of funds within 33 months (2 years 9 months), leaving 90 days (3 months) for final reimbursement and activity closeout.
- State Objectives have been removed from the Threshold criteria and have been replaced with questions on how the applied for activity “Affirmatively Furthers Fair Housing” and supports Disaster Resiliency.
- All Applicants and Applicant partners must not be debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded from participation, and/or unregistered in SAM from federally-assisted programs. However, submittal of an incomplete or incorrect debarment check will no longer disqualify an Applicant. HCD will work with Applicants to ensure correct submittal of debarment checks for Applicants and all Applicant Partners before award of funds.
- If project/activity is in a public right of way or easement, Applicant must submit an opinion of counsel that all rights, easements, and permits have been obtained.
- Successful Applicants will be subject to requirements of phased

implementation of the [federal](#) Build America, Buy America Act (BABA). For 2023 CDBG funds, covered infrastructure projects will have to use iron and steel produced in the United States.

- Applicants will be required to certify participating in the CDBG Application training to apply for [funding under this](#)~~the 2023~~ NOFA [funding, as amended herein](#).

D. Authorizing Legislation

Funding under this NOFA is made available pursuant to the Housing and Community Development Act of 1974. This NOFA should be read in conjunction with the following statutes, regulations, and guidelines that establish state and federal CDBG requirements. Relevant legal authorities include, but are not limited to, the following:

- [24 Code of Federal Regulations \(CFR\) §570.480, et. Seq.](#), Federal CDBG Regulations
- [24 CFR Part 58](#), Environmental Review Procedures
- [2 CFR Part 200](#), Uniform Grant Administration Requirements
- [Health & Safety Code \(HSC\) §§50825-50834](#), State of California CDBG program
- [2020-2024 State of California Consolidated Plan](#)
- [2022-2023 State of California Annual Action Plan](#)
- [CDBG Program Guidelines, California Department of Housing and Community Development](#)

If there are changes to federal or state statutes or regulations, other laws governing the CDBG program, or funding is modified by Congress, HUD, the Department, or the state Legislature, these changes may become effective immediately and apply to funded activities under this NOFA.

Note: The Housing and Community Development Act of 1974 (HCDA) is codified as Title [42 U.S.C. §5301, et. seq.](#); thus, those citations are interchangeable and cite the same statute language. For example, the citation of HCDA 105(a)(22) and [42 U.S.C. §5305\(a\)\(22\)](#) are references to the same statute language. For the purposes of this NOFA, we will use the [42 U.S.C. §5301](#) citations for references to the federal statutes.

In administering this NOFA, if there is a conflict between the federal statutes or regulations and state statutes or guidelines, the federal statutes and regulations shall prevail. All activities in this NOFA are subject to availability of funds and continuing HUD and California legislative authority. The Department reserves the right, at its sole discretion and at any time, to rescind, suspend or amend this NOFA and any or all its provisions.

The Department will notify interested parties through listserv emails and by posting notification on the Department website if the Department rescinds,

suspends, or amends this NOFA. This NOFA is not a commitment of funds to any Activity or Applicant.

E. Allocation and Funding

Funds will be allocated in accordance with federal regulations found in [24 CFR §570](#) and state statute, as found in [HSC §50827, et seq.](#) For more information, please reference the [CDBG Guidelines, Section 200.](#)

The table below include the estimated percentage of Funding Allocations for the 2023 [NOFA, as amended](#):

Funding Allocation	Percentage	Estimated Dollar Amount
State Operations	3% + \$100,000 <u>of 2023 CDBG Award from HUD Award</u>	\$670,000 <u>\$1,000,000</u>
Local Administration	7%	\$1,330,000 <u>\$2,660,000</u>
Over-the-Counter Awards to 2019-2020 Waitlisted Projects (Infrastructure, Public Facilities, Housing Projects, Economic Development Projects)	90 <u>45</u> %	\$17,000,000
<u>Over-the-Counter Awards to New Projects (Housing, Community Development, and Economic Development Projects Infrastructure, Public Facilities, Housing Projects, Economic Development Projects)</u>	<u>45%</u>	<u>\$17,000,000</u>
<u>Colonias Set-Aside (Section 916 of the National Affordable Housing Act)</u>	<u>Set-aside of 5%</u>	<u>\$1,500,000 (Included in the New Projects funding allocation)</u>
<u>Non-federally recognized Tribes sSet-aside (HSC §50831)</u>	<u>Set-aside of 1.25%</u>	<u>\$375,000 (Included in the New Projects funding allocation)</u>

***Note:** The amount of total funding available and the allocations of those funds are only estimates and are subject to change without notice. Funding awarded through this NOFA will have a 33-month (two (2) years and nine (9) months) expenditure and liquidation period.

Awards for New Projects will be limited to \$3.253 million per application, limit one (1) application per Jurisdiction, -except jurisdictions applying on behalf of a Colonia or a non-federally recognized Tribe which may additionally apply for funds under those set-asides allocations.

F. Definitions

Except as otherwise defined herein, all defined terms have the meaning set forth in [42 U.S.C. §5302\(a\)](#), [24 CFR Part 570](#) and the [State CDBG Guidelines.](#)

III. Program Requirements

All Program Requirements, Application, Application Threshold, and Initial Requirements set forth in Sections III-V must be met. Failure to ~~include~~ timely satisfy all of the requirements will result in disqualification.

A. Eligible Applicants

Only non-entitlement Units of General Local Government such as cities, counties and municipalities that had a ~~waitlisted Over-the-Counter application~~ Waitlisted Project under the 2019-2020 NOFA or are submitting an application for a new Community Development, Housing, or Economic Development Project are eligible to apply. Waitlisted Project Applications can only be submitted for previously-applied for waitlisted projects that have not yet been funded. Federally-recognized Tribes, non-federally-recognized Tribes and nonprofits may receive assistance only by entering into a subrecipient agreement*, a Memorandum of Understanding, or a contract with an eligible Applicant.

*A subrecipient agreement is a written agreement in effect for each subrecipient before giving out any CDBG funds and remaining in effect for the period during which a subrecipient has control over any CDBG funds, including Program Income. At a minimum, a subrecipient agreement must contain content required by the federal CDBG regulations at [24 CFR §570.503](#).

B. Non-Entitlement Status

CDBG program funds are provided as grants to Non-Entitlement Units of General Local Government (UGLGs). These UGLGs are encouraged to partner with federally- and non-federally recognized Tribes, districts, agencies, nonprofit service providers, and other community organizations, whenever appropriate, to prepare and submit applications for CDBG funding, and to administer and complete CDBG-funded programs and projects.

Incorporated cities located in an urban county as defined by [42 U.S.C. §5302 \(a\)\(6\)](#) must formally elect to be excluded from participation in the urban county entitlement status. HUD and the Department must be notified that the city has elected to be excluded from the urban county participation as per [24 CFR 570.307\(g\)](#) for it to be eligible for the state CDBG program. Only eligible activities from eligible Applicants will be considered for an award.

Applications for eligible activities outside the Applicant's Jurisdiction must include a legally binding agreement, acceptable to the Department, with the city or county in which the eligible Activity is located. Applicants may not apply to both the state CDBG program and to a CDBG program administered by an Urban County or other entitlement entity during the same program year.

C. Housing Element Compliance

As per [HSC §50829](#), the Applicant must submit a draft or adopted housing element to the Department in accordance with the requirements listed in [Government Code \(GC\)](#)

[§65580, et seq.](#), and [GC §65585](#) (see Appendix B) prior to an award being granted. ~~Per CDBG Guidelines, Section 202(d)(1), by the time of award funding, the applicant must have complied with all the Housing Element requirements listed in H.S.C. 50829 and 50830. Applicants that fail to comply with all the Housing Element requirements listed in H.S.C. 50829 and 50830 at the time of award w are ineligible for funding through the state CDBG program. Eligibility cannot be restored until the Applicant has met such requirements.~~

D. ~~Wh~~Growth Control Limitations

Applicants that have adopted growth controls, including, but not limited to, restrictions on residential building permits and residential buildable lots, that do not meet the exception criteria in [HSC §50830 \(b\) and \(c\)](#) are ineligible for funding as per [HSC §50830](#). Applicants intending to apply for CDBG funds are required to submit a signed 2023 CDBG Application Certifications and Statement of Assurances form that certifies the Applicant has not adopted any residential growth controls or adopted residential growth controls meet the applicable exception criteria. Failure to submit an executed Application Certifications and Statement of Assurances at the time of application will result in Applicant ineligibility.

E. Application Submittal

Applicants must meet the following requirements when the application is submitted to be eligible to apply for funding under this NOFA:

- An eligible Applicant may apply on its own behalf.
- An eligible Applicant may apply on behalf of one or more other eligible Applicants.
- Two or more eligible Applicants, which share an activity, may submit a joint application.
- An eligible Applicant may apply on behalf of an eligible subrecipient including a non-federally recognized Tribe or nonprofit.
- Awards for Waitlisted Projects will be limited to the amount previously applied for under the 2019-2020 NOFA.
- Awards for New Projects will be limited to one (1) application per jurisdiction in an amount not to exceed \$3.253 million.
- ~~—~~
- In addition to Activity and application limits identified in the is NOFA, an eligible Applicant may apply for activities in service areas within or outside of the Applicant's Jurisdiction when the Applicant is applying for funds set aside by the California State Legislative for non-federally recognized Tribes ([HSC §50831](#)) and/or Colonias.
- ~~—Awards will be limited to the amount previously applied for under the 2019-2020 NOFA.~~

F. Limits for Administration and Planning

1. Program Administration

The Department can use 3% of total funding for administration costs.

2. General Administration

Applicants may request up to a flat 7% of the total CDBG grant funding requested by that Applicant for General Administration (GA). GA costs may include, but are not limited to, the following categories:

- Salaries, wages, and related costs of the Grantee's staff engaged in activities associated with the general administration of the CDBG program, including general management, general legal services, accounting, and auditing.
- Travel costs incurred in carrying out the general management of the program.
- Administrative services performed under third-party contracts, including contracts for such services as general legal services, accounting services, and ad services.
- Costs for goods and services related to the general management of the program, including rental and maintenance of office space, insurance utilities, office supplies, and rental or purchase of office equipment.
- Costs incurred in providing information and resources to individuals, families, and households in the LMI group, and to citizen organizations participating in the planning, implementation, or assessment of the Grantee's program.
- Administrative funding can also be used for fair housing activities in compliance with the requirements of state [CDBG Guidelines §103](#).
- Completion of the NEPA Environmental Review Record for General Administration Activities (GA NEPA)
- All costs must be reasonable, necessary, allocable and otherwise allowable in relation to the administration of the CDBG award and in accordance with [2 CFR 200 Subpart E](#).
- If a cost cannot be associated with one of the above listed groups and cannot be associated with direct project costs, the Department will, upon the Grantee's request, review and determine whether it is an administrative cost, an Activity Delivery cost, or an ineligible cost according to [24 CFR §§570.489](#) and [§570.482](#).

The calculation to determine the maximum allowable General Administration amount is the amount of Activity expenses plus Activity Delivery expenses, multiplied by 7%.

Applicants may elect to assign more funds to Activity costs and take less than the 7% as their GA allocation.

GA for Program Income (PI) funds is **17% of the annual PI receipts for the most recently completed HCD Program Year (e.g., for PY 2023, receipts PY 2022 (July 1, 2022 – June 30, 2023)).**

For project budgets with both grant award and PI as funding sources, please identify how much GA will be from each source to ensure that GA stays within the appropriate program caps.

G. Activity Delivery

Activity Delivery Costs (ADCs) are any allowable costs incurred by the grantee for implementing and carrying out eligible CDBG activities that are separate from the cost of the actual activity (construction reimbursement, Economic Development loan payments, substance payments, etc.). All ADCs are allocable to a CDBG-eligible activity that meets a National Objective, including all costs integral to the delivery of the final CDBG-assisted activity. ADCs are not Administration or funds used for the general operation of CDBG programs, but rather the costs incurred to achieve the specific eligible activity and meet a National Objective. ADCs may include, but are not limited to:

- Costs for completing a project-specific environmental review and publication.
- Engineering/design/architectural services for the specific project
- Marketing for the specific CDBG program
- Applicant intake/assistance, staff time to sit with applicants to fill out an application or collecting income and application documentation.
- Completing reports or meetings for the specific CDBG grant

HUD does not establish a maximum ADC percentage, as the level of effort and reasonable costs for ADCs will vary by program type, location, and scale. While HCD is not establishing an ADC cap in this NOFA, this section is designed to provide grantees with guidance to ensure program costs and ADCs are reasonable and necessary. Past HUD trainings have indicated, that in general ADCs costs between 15-25%, are reasonable for most CDBG programs. This range can be considered a safe harbor for reasonable ADCs. However, there may be times when significant investment in outreach, application assistance, complex environmental mitigation, etc. could significantly increase the ratio between ADCs and Activity Costs. Grantees must ensure that proper documentation demonstrating that ADCs are cost reasonable and necessary is included in the program file if the ratio of those costs is outside of this safe harbor range.

ADCs are generally eligible as pre-agreement costs provided that the initial funding

for those costs is identified as a temporary funding source (such as a loan from a local fund whereby the loan is float-funding the CDBG Activity pre-agreement costs, but such costs must be repaid so that the temporary loaned funds may be used as originally intended) and that the costs are budgeted to be part of the CDBG Activity.

Note: ADC is NOT a separate category when completing the Budget in the eCivis Portal. If budgeting for ADC, ADC should be a line item under the “Activity” category for the Budget when completing the application.

H. Insufficient Demand

If there is insufficient demand under this NOFA, HCD will make the unused funding available under a subsequent NOFA.

I. Eligible Activities

For a complete list of eligible activities allowed under the HCDA, go to [42 U.S.C. §5305](#) and [Chapter 2](#) of the current version of the CDBG Grants Management Manual which is found on the CDBG page of HCD’s website.

J. Application Limits

Pursuant to both federal and state laws all CDBG costs must:

- (1) be eligible;
- (2) be necessary;
- (3) be reasonable;
- (4) demonstrate no duplication of benefit;
- (5) not be used to supplant local or state resources; and
- (6) be guarded against fraud

Each ~~J~~jurisdiction can submit applications only for the projects waitlisted under the 2019-2020 Waitlist (a Waitlisted Project) and for no more than one (1) application for a New Project during this NOFA cycle. The maximum award amount per jurisdiction is the amount previously applied for under the 2019-2020 NOFA for a Waitlisted Project, plus \$3.253 million for a New Project application. The \$3.253 million per jurisdiction limits do not apply to Colonias and Native American set-asides. Program Income (PI) included in an activity budget does not count against the ~~J~~jurisdiction’s maximum award limits.

Each -Project must have a unique application with a complete budget, National Objective, scope of work, and milestone timeline.

Applicants are encouraged to review the sample draft Standard Agreement in

Appendix E as a sample of the applicable terms and conditions required for CDBG funded activities. The form and content of the sample draft Standard Agreement is subject to revision without prior notice.

IV. Application Requirements

A. National Objectives

CDBG-funded activities must meet one of three National Objectives:

- Benefit LMI persons
- Aid in the prevention or elimination of slums or blight
- Meet an urgent need

At least 70% of the funds awarded must benefit LMI individuals or households. No Activity or portion of a program assisted by these funds may exclude from its benefits the lowest income-eligible group. Individual activities must meet one of the following National Objectives which are defined and described in detail in [Chapter 2](#) of the CDBG Grants Management Manual:

1. Low- to Moderate-Income
2. Slums and Blight on an area basis (SBA) and on a spot basis (SBS)
3. Urgent Need

For the purposes of this NOFA, no Urgent Need applications will be accepted through the NOFA application process without prior Department approval. If you have a program or a project that meets the criteria of Urgent Need, as established by [24 CFR §570.483\(d\)](#) and you believe your proposed project or program must use Urgent Need as a National Objective to be program eligible, please contact your Department representative for further instructions.

Special requirements apply to Urgent Need. Please contact the Department for more information.

B. Milestones

All CDBG program-funded activities must be timely implemented in accordance with the milestones defined in the Standard Agreement. Applicants must include at least five (5) milestones per Activity application. The first and last milestone and the expenditure deadline will be prepopulated and cannot be edited by Applicants, nor can they be changed without a contractual signed amendment to the Department's Standard Agreement:

- First Milestone: Activity Initiation. Must be completed no later than 60 days from ~~contract execution~~ the Effective Date of the Standard Agreement.
- Milestone Two: [populated by Applicant – examples below]
- Milestone Three: [populated by Applicant]”
- Milestone Four: [populated by Applicant]
- Final Milestone: Activity closeout (must be completed no later than 90 days after the Expenditure Deadline.)

Additional milestones are optional, though encouraged for best practice of Activity implementation. Milestones may be adjusted for delays in application review and Standard Agreement execution. Applicants are encouraged to evaluate feasibility of meeting milestones and build time for unexpected delays into the milestone schedules. Milestones may not extend beyond the ~~T~~ term of the Standard Agreement. All milestones proposed by Applicants are subject to the review and approval of the Department in its discretion.

TIP: The Department realizes that Applicants’ proposed milestone dates are estimates. Instead of using an actual date for all optional milestones, please put a time frame.

For example:

Milestone Two: First submittal of a request for reimbursement no later than XX days from the effective date of the Standard Agreement~~contract execution~~.

Milestone Three: 50 percent completion no later than XX days from the Effective Date of the Standard Agreement~~contract execution~~.

Milestone Four:- Final Building Permits issued no later than XX days from the Effective Date of Standard Agreement

These milestones ~~can~~may be updated by your CDBG representative if changes ~~are needed~~ to be made.

C. Conditions

Applicants and awardees acknowledge that the funding opportunities referenced in this NOFA, and all obligations of the Department herein, are expressly subject to and conditioned upon the ongoing availability of funds, as well as the continued authority of the Department to operate the CDBG program. In the event that funds are not available, the CDBG Program or Act

under this NOFA is eliminated, or in any way restricted, the Department shall have the option, at its sole discretion, to amend, rescind, suspend, or terminate this NOFA and any associated funding pursuant to the provision set forth immediately above.

This NOFA is not a commitment of funds to any Activity or Applicant.

V. Application Threshold and Initial Requirements

All applications are required to pass threshold requirements. Over-the-Counter applications that do not meet threshold will not be reviewed for award and will be immediately disqualified.

The Department **strongly recommends** a careful review of the application and application instructions **PRIOR** to beginning the application.

A. Threshold Requirements

The following threshold requirements must be met at the time of application:

1. Applicant must be an **Eligible Applicant as defined under Program Requirements of this NOFA.**
2. Applicant must demonstrate to the satisfaction of the Department that it is compliant with the financial management requirements of [2 CFR §200](#).
3. Applicant must provide the Department with its most recent single audit (as submitted to the State Controller's Office), if applicable. **If the Applicant had or has single audit findings identified in the audit, the Applicant must include the remediation plan/agreement; the Applicant will be deemed ineligible for funding through the CDBG program until the findings are resolved or a remediation plan or agreement is established. Any and all single audit findings are included in this evaluation.**

This requirement is **not** limited to federal funds administered by the Department. If an Applicant is not subject to single audit requirements, the Applicant is not required to submit an audit.

If an Applicant is not required to submit an annual single audit, **they must provide a certification to such affect.**

4. Applicant must submit evidence of site control in accordance with [24 CFR §578.25](#).
 - a. If securing federal funding is contemplated for any stage of a

project at the time a project site is acquired, grantee must complete a NEPA environmental review record prior to completing the acquisition. **Failure to do this will result in a choice limiting action, which prohibits the project from receiving any federal funds in the future.** If a site is to be acquired for a CDBG-funded project, regardless of whether CDBG funds are used for acquisition or development and construction, acceptable evidence of site control will be a conditional purchase contract that is contingent on completion of a NEPA environmental review record and securing federal funds.

- b. Construction-related activities must have documented site control for the year in which the application is submitted and for the duration of the Standard Agreement. Public facilities are subject to a five-year no change in use restriction. This restriction will be recorded against the property, will runs with the land, and remains in effect regardless of the ownership of the property.
 - c. If project/activity is in athe public right of way or easement, the grantee must submit an opinion of counsel that all necessary rights, easements, and permits have been obtained.
 - d. If site control is expected to expire during the open activity period, the Applicant must document that either an alternative site will be made available or that the activity operators intend to extend or renew the site control on the existing site. All activities will need to provide proof of intent to extend site control and submit documentation upon site control extension. Site control must be maintained through the operation period of the activity.
 - e. Acceptable evidence of site control include: a conditional purchase agreement or enforceable option for projects involving acquisition, a deed or lease, or a title report showing ownership of the property vested in the- applicable entity.
5. Applicant must submit the fully executed Certifications and Statement of Assurances (see Appendix D), including but not limited to, using the current form, including the Jurisdiction's name, initialing all pages [where applicable], and completing the last page. Please review the Statement and confirm compliance with each requirement. Failure to comply with the certifications and assurances may result in disqualification, recapture of federal funds, and debarment.

6. Pursuant to [24 CFR §570.486](#), Applicants must follow CDBG Public

Participation regulations. Applicants must provide documentation that the [Citizen Participation Plan](#) requirements have been met. Note that previously-conducted public hearings when applications were submitted under the 2019-2020 NOFA will not satisfy this requirement. A new public hearing that references the current NOFA cycle must be conducted to satisfy this requirement. Documentation must include proof of public noticing, information provided during the public hearing or public meeting, and public comments received during the public participation, including Jurisdiction responses to comments. Additional information about public participation requirements can be found in [CDBG Grants Management Manual Chapter 4](#).

6.7. Applicant must submit a completed Authorizing Resolution **using the required Department-approved Authorizing Resolution form, which has been duly** ~~and~~ approved by the Applicant's governing board. The Authorizing Resolution designates a person or persons responsible for, and authorized to, execute and deliver all documents related to the application of CDBG funds and, if awarded, the execution of a Standard Agreement with the Department.

Please see Appendix C for ~~instructions for completing the resolution along with~~ the Department-approved Authorizing Resolution form as well as instructions on how to complete it.

If a governing body must prepare a separate resolution concurrently that conforms to its local standard, it may do so **in addition to** preparing the ~~Authorizing R~~esolution form provided by the Department. **Applicants must submit their approved resolutions on the form provided by the Department by the application due date. Failure to provide an acceptable resolution at the time of application will result in a delay executing the Standard Agreement.**

7.8. Applicant must submit the required [Government Agency Taxpayer ID \(TIN\) Form](#) found in the Files tab of each program solicitation. The submitted TIN form must include FEIN, accurate payment information to be complete, and must not have been signed more than one (1) year before submission.

8.9. Applicant must complete CDBG budget found in the Grants Network portal. Required budget information includes direct costs only. Direct costs for Activity, GA, and Program Income, if applicable, must be completed and clearly identified. Do **not** include any information on indirect cost, match, or cost share.

9.10. Applicants must submit a Sources and Uses Chart which evidences the commitment of all funds required to complete the applied for CDBG project

or program. The application will guide Applicants that are using multiple funding sources to upload a comprehensive Activity Sources and Uses Chart. Grantees may use their own form or the template Sources and Uses Chart found in the Files tab of each solicitation. Evidence of commitment of any funding sources other than CDBG needed for a project to be feasible must be uploaded at application.

~~10.~~11. Pursuant to [24 CFR Part 5](#), all CDBG Applicants are required to verify they and their principals, or any/all persons, contractors, consultants, businesses, subrecipients, etc., that are conducting business with the Applicant are not presently debarred, proposed for debarment, suspended, declared ineligible, or voluntarily excluded from participation in the covered transaction or in any proposal submitted in connection with the covered transaction. Applicants and their partners, contractors, consultants, and subrecipients must register with the [System for Award Management \(SAM\)](#) to do business with the U.S. government and have debarment checks that return a registration status of “Active” and “No Active Exclusion Records” under the Exclusion Summary. See [Chapter 5](#) of the CDBG Grants Management Manual for additional guidance.

~~11.~~12. The Department will not award any CDBG program funds to Applicants and Applicant partners, including contractors, subrecipients, and consultants that are debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded from participation, and/or unregistered in SAM from federally-assisted programs. Applicants are not required to perform debarment checks on individual Applicant or partner employees or individual persons unless that person is acting as a contractor, consultant, subrecipient, or program partner and will be receiving payment directly from CDBG funds. Debarment checks for Applicant and all applicant partners must be completed before award of funds.

~~12.~~13. The Applicant must answer the questions regarding Affirmatively Furthering Fair Housing and Disaster Resiliency in the application form.

~~13.~~14. Pursuant to the National Environmental Policy Act of 1969 (NEPA), Environmental Standards must be met. Applicant must demonstrate compliance by submission of fully complete, current, and applicable Environmental Review Record forms and supporting documentation. Required NEPA process, training, and current forms are available on the [HUD Exchange](#) under the ‘Formats’ option. Additional HUD guidance can be found at the [Orientation to Environmental Reviews](#) page also on the HUD Exchange and in [Chapter 3](#) of the CDBG Grants Management Manual.

~~14.15.~~ If Applicants intend to use CDBG funding for GA Activities, a GA NEPA Environmental Review Record must be submitted, specifying the applicable exemption in [24 CFR §58.34\(a\)](#).

~~15.16.~~ All construction projects applying for funding under this NOFA must submit the following documentation demonstrate of readiness at the time of application, - including but not limited to, the submission of the following items:

- a. Independent Cost Estimate
- b. Completed NEPA Environmental Review Record for the project
- c. Bid-~~R~~ready Plans and Specs
- d. Certification from Engineer that Plans and Specs are bid-ready
- e. Certification from City that bid docs are ready
- f. Construction timeline
- g. Demonstration and Certification that Jurisdiction has the capacity and knowledge to manage the project
- h. Demonstration and Certification that Developer mustis be experienced

16-

D.B. Application and Activity Requirements

1. Compliance with federal cross-cutting requirements:
At time of application submission, all applications must comply with and provide documentation of HUD's federal cross-cutting requirements found at [24 CFR §570.600, et seq](#), and summarized in Section XI: Federal Program Requirements of this NOFA.
2. Application verification:
Applicants must certify upon submission that their application is true and correct to the best of their knowledge: ~~the required application input fields, attachment uploads, and budget(s).~~ **Selecting an input field or uploading a blank document to circumvent the application requirements invalidates the application certification and will result in immediate disqualification.** Applicants that intentionally input false information or that intentionally upload blank documents will have their good standing with the Department revoked and may be determined to be ineligible for other Department funding. Applicants are warned that intentionally providing false information to the Department may constistute is-fraud.
3. Applicants must submit their own applications:
Applicants are ultimately responsible for what is submitted at application, even if the application was prepared by a consultant. Applicants that rely on consultants or grant writers to prepare the CDBG application must carefully

and thoroughly review the application for completeness and correctness prior to submittal. All documents requiring signature must be executed by the Authorized Representative identified in the Applicant's Authorizing Resolution.

4. Timely Submittal:

Applicants are strongly encouraged to give plenty of time for submitting prior to the application cutoff date and at least several hours prior to the cutoff time.

If an input field, upload requirement, or application component is not functioning correctly, or if there are system outages or other system failures prior to submittal, please contact cdbg@hcd.ca.gov as soon as possible prior to the cutoff time to document the issue so that applications are not disqualified due to technical difficulties. Failure to contact the Department with system issues will not exempt Applicants from application verification requirements.

5. Gap funding:

CDBG is intended to provide stop-gap funding for crucial infrastructure, public safety, housing, and social service projects. CDBG funds may not be obligated to Activities that are documented to already have sufficient funding for the Activity as described, or that have identified multiple funding sources for the same costs, resulting in overfunding of the Activity. **CDBG funds must be “but-for” funding for every Activity and may not be used to supplant local or state resources.** CDBG grant funds cannot be used to replace funds that have been budgeted and/or expended from another funding source for the same Activity (i.e., there cannot be any Duplication of Benefit.) Pre-agreement costs are generally eligible provided that the initial funding for those costs is identified as a temporary funding source (such as a loan from a local fund wherein the loan is float-funding the CDBG Activity pre-agreement costs, but such costs must be repaid so that the temporary loaned funds may be used as originally intended) and that the costs are budgeted to be part of the CDBG Activity.

5.6. Good Standing:

The Applicant, and any co-Applicant, together with all respective affiliates, must be in good standing with the Department (i.e. are current on all loan and/or grant obligations, have a satisfactory past performance history in all their prior dealings with the Department, and are in full compliance with all Department contracts and reporting requirements). Applicants not meeting the foregoing requirements shall be ineligible to apply for or receive funding under this NOFA.

6-7. Article XXXIV:

Applicants engaging in low-income housing project activities that are subject to [Article XXXIV](#) of the California Constitution must show that the project approval process complies with [Article XXXIV](#) requirements. The state statutes implementing [Article XXXIV](#) can be found at [HSC §37000](#). Exceptions to [Article XXXIV](#) can be found at [HSC §37001](#).

7-8. Racial equity:

Applicants should prioritize the advancement of racial equity in all CDBG programs and across systems and units of government in the Jurisdiction. The Department asks Applicants to be leaders in the community, facilitating partnerships among service organizations, housing providers, units of government, businesses, the homelessness response system, and other partners to promote racial equity practices.

All Applicants must identify the work performed to ensure racial equity in access to programs, projects, and activities funded with CDBG resources. Applicants must commit to analyzing disproportionality in access to housing, access to services, quality of service provision, and desired outcomes in Programs and Projects and affirmatively further equitable access, quality of service provision and outcomes for protected classes, including but not limited to Black, Native and Indigenous, Latino/Latina/ Latinx, Asian, Pacific Islanders, and other people of color who have been historically marginalized and are disproportionately impacted by housing segregation, poverty, and homelessness.

Applicants cannot simply rely on delivering a standardization of services to address equity. Applicants must commit to reviewing their current policies and procedures and examining available data to ensure all eligible persons receive equitable services, and support, and are served with dignity, respect, and compassion regardless of circumstances, ability, or identity. See Appendix B of the CDBG Grants Management Manual (pending publication) for Best Practices to Advance Equity and Accessibility.

When applying for 2023 CDBG funds, Applicants should consider:

- What are the community's racial demographics and the demographics of those experiencing homelessness, housing, and economic insecurity?
- What are the outcomes of the CDBG programs based on race? What are the requirements for all sub-grantees to look at data to determine racial disparities and then put a plan in place to address

them?

- How do underserved and marginalized communities learn about and access the CDBG program? What marketing and communication strategies are used to increase equitable access to CDBG programming?
- How does the grant-making process include prioritization for programs that are addressing the disproportionate impacts that housing insecurity, homelessness, economic insecurity, lack of access to equitable health care, and COVID-19 has on communities of color, particularly Black, Latinx, Asian, Pacific Islander, and Native and Indigenous communities?
- How are the voices of Black, Latinx, Asian, Pacific Islander, and Native and Indigenous communities and those having lived with the experience of housing insecurity, homelessness and economic insecurity being centered in a meaningful, sustained way in creating effective approaches to addressing these challenges? How are they involved in the funding decision-making process?
- How are these funds accessible to smaller and non-traditional organizations that have historically been serving communities of color but may not have previously participated formally in government grant programs? How would these funds address the capacity of organizations that are led by Black, Latinx, Asian, Pacific Islander, and Native and Indigenous people?

At application, applicants should provide a list of organizations with which the jurisdiction has partnerships that are addressing racial equity in the housing and homelessness response system, the Economic Development sector, and the health care sector and describe how you partner with them.

The Department will require successful Applicants to submit related racial and ethnic data metrics of their CDBG programming on a **quarterly reporting basis**.

VI. Application Review

All applications that pass the threshold evaluation phase will be reviewed for Activity eligibility. Activities that do not meet program eligibility requirements will be disqualified for funding.

The Department reserves the right, at its sole discretion, to suspend, amend, or modify the

provisions of this NOFA at any time, including, without limitation, the amount of funds available hereunder. This includes, but is not limited to, authorizing an [eligible](#) increase in funding to any Applicant after the Department makes an award under this NOFA.

VII. Award Recommendations

Applications that are eligible, complete, timely submitted, and that satisfy all threshold requirements may be recommended for funding, [subject to the availability of funds for the activity\(ies\) applied for](#). Applicants recommended for award will officially be notified of awards via an award letter sent via email. Subsequently, the grantee will receive award notification through the eCivis Grants Network. The award notification will include instructions for accepting or declining the award, as well as an executable Standard Agreement. Applicants that are not recommended for awards or that fail threshold will be officially notified via email that their application was not awarded or failed to pass threshold. The Final Award List will be posted on the [Department's](#) CDBG webpage. Applicants may request a copy of their application reviews after the review has been completed and the Applicant has been notified of the results.

VIII. Application Submission

A. Workshops

The Department is conducting a series of [both live and pre-recorded](#) application workshops. These workshops will include training on:

- Resolutions: What is required and why
- How to complete the correct level of Environmental Review
- How to pull a debarment check
- How to complete the eCivis Grants Network Budget
- How to pick the correct National Objective
- How to pick the correct Matrix Code
- How to write a narrative
- How to address racial equity in your CDBG funded projects and programs
- ~~How to complete the September 2023 NOFA Application~~
- September 2023 NOFA review
- [CDBG 2023 NOFA Amendment #1 Review](#)

Applicants are required to attend these virtual workshop sessions. If they are unable to attend the live virtual workshop, Applicants must certify that they have reviewed these workshops on the CDBG website. This website also provides

Training and Technical Assistance materials on the CDBG program, the CDBG Program Redesign, using Grants Network, and preparing a CDBG program application in Grants Network.

Please visit the Department's [website](#) for upcoming information.

B. Submission Process

Applicants must follow instructions in this NOFA, the online application, and the CDBG program Guidelines. The Department strongly encourages Applicants to have all required documents on hand when completing the application. Failure to follow instructions and **timely** submit all required documentation **may result in disqualification**. Once submitted, applications must stand on their own. It is the Applicant's responsibility to ensure that the submitted application is clear, complete, and accurate. Department staff may request clarifying information but are unable to accept any new documentation that would provide an unfair advantage over other applications. It is **strongly** recommended that all documents be reviewed and saved to their own electronic files PRIOR to submission.

The CDBG Application and all required attachments must be submitted to the Department through the [eCivis Portal](#). Applicants must certify that all information is true and complete to the best of their knowledge, under penalty of perjury. Per [83 FR 5848](#) "Any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. §287, 1001 and 31 U.S.C. §3729."

Applicants that do not have an account with the eCivis Portal should create an account through the eCivis website. Use the "Create an account" option to initiate a profile. See the available [training on](#) the CDBG webpage to learn how to open an account. There is no cost associated with an eCivis Portal account.

C. Applicant Responsibility

It is the duty and responsibility of each Applicant to review the provisions, requirements, and limitations of all funding sources applied for and obtained for a particular project, program, or activity to ensure that each and every requirement of those funding sources is compatible with all Department program requirements and restrictions. Incompatibility of funding sources may result in the denial or cancellation of an award or may result in the placement of conditions or limitations on an award, all as determined by Department in its sole and absolute discretion.

D. Disclosure of application

Information provided in the Application will become public record available for review by the public pursuant to the California Public Records Act ([GC §7920, et. seq.](#)). As such, the Department may disclose any materials provided by the Applicant to any person making a request under this Act, without prior notice to the Applicant. The Department cautions Applicants to use discretion in providing information not specifically requested, including, but not limited to, bank account numbers, personal phone numbers, home addresses, or other personally-identifying information. By providing this information to the Department, the Applicant is waiving any claims of confidentiality, and consents to the Department's disclosure of the Applicant's material upon receipt of a Public Records Act request and without advance notice to the Applicant.

IX. Appeal Criteria and Process

A. Appeal process and deadlines

To lodge an appeal, Applicants must submit to the Department a written appeal by the filing deadline set forth below, which states all relevant facts, arguments, and evidence upon which the appeal is based. Furthermore, the Applicant must provide a detailed reference to the area(s) of the Application that provide clarification and substantiation for the basis of the appeal. No new or additional information will be accepted if this information would result in a competitive advantage to an Applicant. Once the written appeal is submitted to the Department, no further information or materials will be accepted or considered thereafter.

All Appeals must be submitted to the Department via email at
cdbq@hcd.ca.gov

PLEASE do not send Appeals to Department staff directly.

Emails to the email address listed above will be accepted so long as the email time stamp is prior to the appeal deadline.

Filing Deadline: Appeals must be received by the Department no later than ten (10) business days from the date the Department notifies the Applicant that their application has failed to meet eligibility, threshold, or was not timely submitted. Late appeals will not be reviewed.

E.B. Appeal decisions

It is the Department's intent to render its decision in writing within fifteen (15) business days of receipt of the Applicant's written appeal. All decisions rendered shall be final, binding, and conclusive, and shall constitute the final action of the Department with respect to the appeal.

F.C. Effectiveness

If the applicable statutes and/or Guidelines governing the CDBG program contain an existing process for appealing decisions of the Department with respect to NOFA awards, then this section shall be inapplicable, and such existing authority shall govern all appeals.

X. Awards announcement and grant implementation

A. Awards announcements

The Department anticipates that Waitlisted Project awards will be announced no later than April 31, 2024 and that New Project awards will be announced no later than July 31, 2024. OTC awards will be announced on a rolling basis as applications are approved for funding. All awards are subject to availability of funds and compliance with all applicable legal requirements of the Program. Until awards are announced, the CDBG staff will not be able to discuss applications or the status of applications.

B. Standard Agreements

Successful Applicants (awardees) will enter into a Standard Agreement with the Department. A draft, sample Standard Agreement is included as Appendix E to this NOFA. The Standard Agreement contains all the relevant state and federal requirements, Activity performance and management requirements, and disbursement requirements. The form and content of the sample draft Standard Agreement is subject to revision without prior notice. A condition of award will be that a Standard Agreement must be executed by the awardee within 30 days (contracting period) of the awardee's receipt of the Standard Agreement(s). Failure to execute and return the Standard Agreement(s) to the Department within the contracting period may result in award cancellation. Award cancellations are final.

To ensure that the Standard Agreements are being sent to the correct individual, **Applicants MUST complete ALL required sections of the profile section of the application and must let HCD know in writing if the contact information has changed since the time of application submittal by emailing cdbg@hcd.ca.gov.**

XI. Federal program requirements

A. Federal Cross-Cutting Requirements

The CDBG program is administered under the rules and regulations promulgated

primarily in [24 CFR §570.600, et seq.](#) These primary regulations are known as the federal cross-cutting requirements and form the basis of the programmatic requirements. The Department incorporates all federal cross-cutting requirements into the state CDBG program, and the regulations in Part 570 are translated into required actions on the part of all Grantees of the state CDBG program.

The following is a list of some of the most commonly applicable federal cross-cutting requirements. This is not an exhaustive list.

- Environmental Standards (based on National Environmental Policy Act of 1969 [NEPA])
- Labor Standards (Davis-Bacon and related laws)
- Achieving a HUD National Objective
- Public participation requirements
- Fair Housing and Affirmatively Furthering Fair Housing
- Equal Opportunity and Non-Discrimination in federal Grant Programs
- Federal Procurement Guidelines
- National Flood Insurance Program compliance
- Relocation and displacement requirements
- Employment and Contracting Opportunities Section 3 Compliance
- Lead-based paint requirements
- No use of debarred, ineligible, or suspended contractors or sub-recipients
- Uniform Administrative Requirements and Cost Principles
- Conflict of interest prohibitions
- Compliance with the Architectural Barriers Act and the Americans with Disabilities Act
- Compliance with Eligibility Restrictions for certain resident aliens
- Federal reporting requirements
- Grant and subrecipient monitoring requirements
- Build America, Buy America Act (BABA) requirements

C.B. Build America, Buy America Act (BABA)

On November 15, 2021, the Build America, Buy America Act (the Act) was enacted as part of the Infrastructure Investment and Jobs Act (IIJA). Pub. L. 117-58. The Act establishes a domestic content procurement preference, the BAP, for federal programs that permit federal financial assistance to be used for infrastructure projects. In Section 70912, the Act further defines a project to include “the construction, alteration, maintenance, or repair of infrastructure in the United States” and includes within the definition of infrastructure those items traditionally included along with buildings and real property. Starting May 14, 2022, new awards of Federal financial assistance from a program for infrastructure, and any of those funds obligated by the grantee, are covered under the Build America, Buy

America (BABA) provisions of the Act, [41 U.S.C. 8301](#). Note, while HUD has issued a waiver of the application of the BAP through HUD's Notice, "General Applicability Waiver of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" ([87 FR 26219](#)), HUD will begin requiring compliance with BAP for all new funds obligated on or after November 14, 2022, unless covered by a subsequent waiver. Additional details on fulfilling the BABA requirements can be found ~~at on HUD's website -Build America, Buy America (BABA).] and will be provided by HUD prior to the expiration of the waiver and full implementation of BABA.~~

~~Additional direction will be provided when the same is made available by HUD.~~

D.C. Relocation Plan Requirements

Applicants engaging in project-specific activities that may or will cause the temporary or permanent relocation and displacement of persons, property, or businesses must provide a project-specific relocation plan as part of the application. The plan must meet the standards established in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA). Applicants must successfully demonstrate that they have met URA requirements prior to the start of the project or displacement Activity. Applicants must include relocation costs in project budgets.

Applicants must provide relocation assistance to persons who may be displaced if the Activity in the grant application is funded. This plan must outline how the Grantee will enforce and manage the project's relocation and displacement activities and estimate what relocation benefits will be required so those costs can be included in the project's development budget.

E.D. Procurement

Pursuant to [24 CFR §570.489\(g\)](#), all Grantees must comply with federal procurement requirements. The Department will review the Grantee's procurement documents for services (*i.e.*, administrative sub-contractor, Davis- Bacon consultant, etc.) at time of monitoring or upon the Grantee's request.

Requirements for federal procurement can be found at [2 CFR §200.317-327](#). Applicants are responsible for meeting all federal procurement standards for goods and services funded through federal programs. Failure to meet procurement requirements may result in disqualification, recapture of federal funds, and debarment.

F.E. False, Fictitious or Fraudulent Claims

Warning: Any person who knowingly makes a false claim or statement to HUD or the Department may be subject to civil or criminal penalties under [18 U.S.C. §287, 1001](#) and [31 U.S.C. §3729](#).

G.F. Detecting, Preventing, and Reporting Fraud

Fraud is a white-collar crime that has a devastating effect on the CDBG program because the CDBG program beneficiaries are victims of this crime when the CDBG program is abused. The Department wants to stop any criminal assault on the CDBG program it administers, and in doing so all CDBG funds go to people it was designed to help and improve their living conditions.

H.G. Combatting Fraud

The HUD Office of Inspector General (OIG) is committed to protecting HUD's programs, operations, and beneficiaries from dishonest individuals and organizations.

HUD cannot combat fraud alone; they rely on Department and CDBG NOFA Applicants to combat CDBG program fraud.

HUD also relies on Applicants for, and people receiving, HUD benefits, such as: tenants receiving rental assistance, borrowers with HUD insured loans, or citizens having their communities restored using HUD grants.

The HUD OIG Hotline number is [1-800-347-3735](tel:1-800-347-3735). This is the primary means to submit allegations of fraud, waste, abuse, mismanagement, or Whistleblower related matters for the CDBG program to the OIG.

HUD OIG accepts reports of fraud, waste, abuse, or mismanagement in the CDBG program from HUD employees, anyone administering the CDGB program, anyone working in the CDBG program, contractors, and the public.

You can report mismanagement or violations of law, rules, or regulations by HUD employees or program participants.

Fraud, Waste and Abuse in the CDBG program and its operation may be reported in one of the following four (4) ways:

By email to: hotline@hudoig.gov

By phone: Call toll free: 1-800-347-3735

By fax: 202-708-4829

By mail: Department of Housing & Urban Development

**HUD OIG, Office of Investigation, Room 1200
Field Office**
One Sansome Street
San Francisco, CA 94104
[\(213\) 534-2518](tel:2135342518)

**HUD OIG, Office of Investigation
Suite 4070
Regional Office**
300 North Los Angeles Street
Los Angeles, CA 90012
[\(213\) 534-2518](tel:2135342518)

I.H. Whistleblower Protection Acts

(Federal Whistleblower Protection Act ([5 U.S.C Section 2302\(b\)\(8\)](#)))

The Federal Whistleblower Protection Act (WPA) protects employees from retaliation for making protected disclosures. The WPA also provides penalties for supervisors who retaliate against Whistleblowers.

1. A disclosure is protected under the WPA if the employee discloses information the employee reasonably believes to be evidence of:
 - a. a violation of any law, rule, or regulation,
 - b. gross mismanagement,
 - c. a gross waste of funds,
 - d. an abuse of authority, or
 - e. a substantial and specific danger to public health or safety.
2. In general, an employee or applicant may make a protected disclosure to anyone, including non-governmental audiences, unless the information is classified or specifically prohibited by law from release. Options for making a protected disclosure include:
 - a. Informing a supervisor or someone higher up in management,
 - b. Submitting a complaint to the OIG by emailing the OIG at oig@ftc.gov,
 - c. Filing a complaint with the [Office of Special Counsel](#) (OSC) <http://www.osc.gov/>

The California Whistleblower Protection Act (Title 2, Division 1, Chapter 6.5, Article 3.5, Gov. Code §§ 8548-8548.5)

The California Whistleblower Protection Act authorizes the California State Auditor to receive complaints from state employees and members of the public who wish to report an improper governmental activity. **An "improper governmental activity" is any action by a state agency or any action by a state employee directly related to state government that:**

- (1) Violates any state or federal law or regulation,
- (2) Violates an Executive Order of the Governor, a California Rule of Court, or any policy or procedure required by the State Administrative Manual or State Contracting Manual, or
- (3) Is economically wasteful or involves gross misconduct, incompetency, or inefficiency. Complaints received by the State Auditor are confidential, and the identity of the complainant may not be revealed without the complainant's permission, aside from to an appropriate law enforcement agency conducting a criminal investigation.

There are many ways to file a complaint:

1. By Telephone:

You may call the Whistleblower Hotline at (800) 952-5665 to file a complaint by talking to one of the State Auditor's employees. The hotline generally is staffed Monday through Friday from 8:00 a.m. to 5:00 p.m. If you call when the hotline is not being staffed, or staff is occupied with other calls, you may leave a voicemail message requesting a return call.

2. By Mail or Facsimile:

You may file a complaint in the form of a letter to the State Auditor addressed as follows:

Investigations
California State Auditor
P.O. Box 1019
Sacramento, CA 95812

Or you may fax the letter to the State Auditor at (916) 322-2603.

As an alternative, you may complete the electronic version of the complaint form (which is available on the State Auditor website at auditor.ca.gov), print it out, and return it by mail or facsimile as stated above.

3. Online:

Although the State Auditor does not accept complaints by e-mail, you may file a complaint online at <https://www.auditor.ca.gov/contactus/complaint>

The State Auditor will not undertake an investigation unless there is a basis for believing that your complaint has sufficient merit to warrant spending resources on an investigation. Your complaint should therefore include:

1. A clear and concise statement of what you are alleging to be improper activity and why you believe it is improper.
2. The name or other information that clearly identifies the person you are alleging has acted improperly and the department where that person works.
3. The names and contact information for any witnesses who can confirm the truth of what you are saying.
4. Copies of any documents that will support what you are saying. (You should not submit original documents, as they cannot be returned.)

XII. LIST OF APPENDICES

Appendices are located in the eCivis Grants Network under the 'Files' tab on within each specific program solicitation.

Appendix A: Non-Entitlement CDBG Units of Local Government Census and American Community Survey Data Need Scoring (Not applicable for the September 2023 NOFA)

Appendix B: Housing Element and Growth Control Requirements

Appendix C: HCD Resolution template (**Required**)

Appendix D: 2023 CDBG Application Certifications and Statement of Assurances

Appendix E: Sample DRAFT Standard Agreement

Appendix F: Threshold and Scoring Matrix (Not applicable for the September 2023 NOFA)

RESOLUTION NO. __-2024

RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING AN APPLICATION FOR FUNDING AND THE EXECUTION OF A GRANT AGREEMENT AND ANY AMENDMENTS THERETO FROM THE 2023 AND/OR 2024 FUNDING YEAR OF THE STATE CDBG PROGRAM

WHEREAS, the City of Fort Bragg held a Design Phase Public Hearing on July 8, 2024 to provide information about the Community Development Block Grant (CDBG) program funding opportunities and to solicit input from the community as to suggestions about possible use of CDBG Program Income funds; and

WHEREAS, the City is eligible to apply to use up to \$570,000 in CDBG Program Income funds for a CDBG-eligible project and General Administration under the 2023 -2024 CDBG Program Income Only Solicitation, which receives application on a rolling basis; and

WHEREAS, a Business Assistance Loan Program has been identified as a CDBG-eligible activity that meets the restrictions of Program Income use; and

WHEREAS, a public hearing was held on July 22, 2024, to provide information to the public regarding the proposed application as well as to receive input from the community regarding the proposed activity; and

WHEREAS, the CDBG program requires that the governing body of the grantee adopt a resolution approving an application for funding in the approved format of the Department of Housing and Community Development, included herein as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby approve the submission of a 2023-2024 CDBG Program Income Only application for a Business Assistance Loan Program utilizing Program Income funds in the amount of \$570,000, and authorizes the Mayor (or designee) to execute and amend the agreement if awarded.

The above and foregoing Resolution was introduced by _____, seconded by _____, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 22nd day of July, 2024, by the following vote:

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

ATTEST:

BERNIE NORVELL
Mayor

Diana Sanchez
City Clerk



Appendix C: Resolution Template of the Governing Body

Applicants are required to use the resolution form on the following page with no changes to content other than what is in the fillable fields.

Please note: On the next page, hidden text is used to provide instructions. Once a document is printed or converted to a pdf, the hidden text will be omitted.

To display hidden text:

1. Go to the Files Tab
2. Select Options from the bottom of the left hand column
3. Click on the “Display” option
4. Check the “Hidden Text” box.
5. Make sure the “Print hidden text” box is not checked. This will ensure that when you convert to PDF or print the document, the instructional, hidden text is not displayed.
6. ***Note: The attesting officer cannot be the person identified in the Resolution as the authorized signer.***

Resolution of the Governing Body

RESOLUTION NO. Insert Number

A RESOLUTION APPROVING AN APPLICATION FOR FUNDING AND THE EXECUTION OF A GRANT AGREEMENT AND ANY AMENDMENTS THERETO FROM THE 2023 AND/OR 2024 FUNDING YEAR OF THE STATE CDBG PROGRAM

BE IT RESOLVED by the City Council of the **City** of Fort Bragg as follows:

SECTION 1:

The City Council has reviewed and hereby approves the submission to the State of California of one or more application(s) in the aggregate amount, not to exceed, of \$570,000 for the following CDBG activities, pursuant to the 2023 and 2024 CDBG NOFAs:

List activities and amounts

Activity (e.g. <i>Public Services, Infrastructure, etc.</i>)	Dollar Amount Being Requested for the Activity
Economic Development Program	\$ 570,000
	\$
	\$
	\$
	\$

SECTION 2:

The **City Council** hereby approves the use of Program Income in an amount not to exceed \$570,000 for the CDBG activities described in Section 1.

SECTION 3:

The **City Council** acknowledges compliance with all state and federal public participation requirements in the development of its application(s).

SECTION 4:

The **City Council** hereby authorizes and directs the Mayor or designee*, to execute and deliver all applications and act on the **City's** behalf in all matters pertaining to all such applications.

SECTION 5:

If an application is approved, the Mayor or designee*, is authorized to enter into, execute and deliver the grant agreement (*i.e.*, Standard Agreement) and any and all subsequent amendments thereto with the State of California for the purposes of the grant.

SECTION 6:

If an application is approved, the City Manager or designee*, is authorized to sign and submit Funds Requests and all required reporting forms and other documentation as may be required by the State of California from time to time in connection with the grant.

PASSED AND ADOPTED at a regular meeting of the City Council of the **City** of Fort Bragg held on 7/22/2024 by the following vote:

AYES: Enter # of votes or names

ABSENT: Enter # absentees or names

NOES: Enter # of votes or names

ABSTAIN: Enter # of abstains or names

Bernie Norvell, Mayor
City Council

STATE OF CALIFORNIA
City of Fort Bragg

I, Diana Sanchez, **City** Clerk of the **City** of Fort Bragg, State of California, hereby certify the above and foregoing to be a full, true and correct copy of a resolution adopted by said City Council on this 22 day of July, 2024 and that said resolution has not been amended, modified, repealed, or rescinded since its date of adoption and is in full force and effect as of the date hereof.

Diana Sanchez, **City** Clerk of the **City** of Fort Bragg, State of California

By: Diana Sanchez, City Clerk



CITY OF FORT BRAGG

Incorporated August 5, 1889
416 N. Franklin St.
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Fort Bragg City Council will conduct a public hearing at a regular meeting to be held at **6:00 PM**, or as soon thereafter as the matter may be heard, on **MONDAY, July 22, 2024**, at Town Hall, southwest corner of Main and Laurel Streets (363 North Main Street), Fort Bragg, California 95437. The public hearing will concern the following item:

Receive Report, Conduct Public Hearing, and Consider Adoption of City Council Resolution Approving an Application for Funding and the Execution of a Grant Agreement and Any Amendments Thereto from the 2023 and/or 2024 Funding Year of the State CDBG Program

The purpose of the public hearing will be to consider submittal of an application to the State Housing and Community Development Department and to give citizens an opportunity to make their comments known on the proposed activities and application.

The City of Fort Bragg is considering applying for the use of Community Development Block Grant (CDBG) Program Income of up to \$570,000 under the 2023 and/or 2024 Notice of Funding Availability Program Income Only solicitation for eligible activities and allowable general administration funds.

If you are not able to attend the public hearing, you may direct written comments to the City of Fort Bragg, Attention: Grants Coordinator Lacy Peterson, 416 N. Franklin Street, Fort Bragg, CA 95437 or email to lpeterson@fortbragg.com, or you may telephone Lacy Peterson, Grants Coordinator, at (707)961-2823 ext. 108. If you need a special accommodation because of a sensory or mobility impairment/disability, or have a need for an interpreter, please contact City Hall at (707) 961-2823 to arrange for those accommodations to be made.

The City of Fort Bragg promotes fair housing and makes all programs available to low and moderate-income families regardless of age, race, color, religion, sex, national origin, sexual preference, marital status, or handicap.

Dated: July 5, 2024

Diana Sanchez
City Clerk

POST/PUBLISH: July 11, 2024

STATE OF CALIFORNIA)
) ss.
COUNTY OF MENDOCINO)

I declare, under penalty of perjury, that I am employed by the City of Fort and that I caused this Notice to

be posted in the City Hall Notice Case on July 11, 2024.

Diana Sanchez
City Clerk



CIUDAD DE FORT BRAGG

Incorporado el 5 de Agosto de 1889
416 N. Franklin St.
Fort Bragg, CA 95437
Teléfono: (707) 961-2823
Fax: (707) 961-2802

AVISO DE AUDIENCIA PÚBLICA

POR LA PRESENTE SE NOTIFICA que el Ayuntamiento de Fort Bragg llevará a cabo una audiencia pública en una reunión ordinaria que se llevará a cabo a las **6:00 p. m.**, o tan pronto como se escuche el asunto, el **LUNES 22 de julio de 2024** en el Ayuntamiento, esquina suroeste de las calles Main y Laurel (363 North Main Street), Fort Bragg, California 95437. La audiencia pública se referirá al siguiente tema:

Recibir el informe, llevar a cabo una audiencia pública y considerar la adopción de la resolución del Concejo Municipal que aprueba una solicitud de financiamiento y la ejecución de un acuerdo de subvención y cualquier enmienda al mismo a partir del año de financiamiento 2023 y/o 2024 del programa estatal CDBG

El propósito de la audiencia pública será considerar la presentación de una solicitud al Departamento de Vivienda y Desarrollo Comunitario del Estado y dar a los ciudadanos la oportunidad de dar a conocer sus comentarios sobre las actividades propuestas y la solicitud.

La ciudad de Fort Bragg está considerando solicitar el uso de ingresos del programa de subvención en Community Development Block Grant (CDBG) de hasta \$570,000 en virtud del Aviso de disponibilidad de fondos Solicitud de solo ingresos del programa de 2023 y/o 2024 para actividades elegibles y fondos administrativos generales permitidos.

Si no puede asistir a la audiencia pública, puede enviar comentarios por escrito a la Ciudad de Fort Bragg, Atención: Coordinadora de Subvenciones Lacy Peterson, 416 N. Franklin Street, Fort Bragg, CA 95437 o enviar un correo electrónico a lpeterson@fortbragg.com, o puede llamar a Lacy Peterson, Coordinadora de Subvenciones, al (707)961-2823 ext. 108. Si necesita una adaptación especial debido a un impedimento/discapacidad sensorial o de movilidad, o si necesita un intérprete, comuníquese con el Ayuntamiento al (707) 961-2823 para hacer arreglos para que se realicen esas adaptaciones.

La ciudad de Fort Bragg promueve la vivienda justa y pone todos los programas a disposición de las familias de ingresos bajos y moderados, independientemente de su edad, raza, color, religión, sexo, origen nacional, preferencia sexual, estado civil o discapacidad.

FECHA: 5 de julio de 2024

Diana Sanchez
Secretario Municipal

PUBLICAR: 11 de julio de 2024

ESTADO DE CALIFORNIA)

COUNTY OF MENDOCINO) ss.
)

Declaro, bajo pena de perjurio, que soy empleado de la Ciudad de Fort y que hice que este Aviso se publicara en el Quiosco de Aviso del Ayuntamiento el 11 de julio de 2024.

Diana Sanchez
Secretario Municipal



**Community
Development Block
Grant (CDBG) Program
Income (PI) Application**

CDBG Background

- Funds are released annually through a Notice of Funding Availability (NOFA).
- The next NOFA is expected to be released in late July.
- The primary federal objective of the CDBG program is the development of viable urban communities by providing decent housing and a suitable living environment and through expanding economic opportunities, principally, for persons of low- and moderate-income.
- “Persons of low and moderate income” are defined as families, households, and individuals whose incomes do not exceed 80 percent of the county median income, adjusted for family or household size.

Current Income Limits

Persons in Household	1	2	3	4	5	6	7	8
Extremely Low 30%	\$19,000	\$21,700	\$24,400	\$27,100	\$29,300	\$31,450	\$33,650	\$35,800
Low 50%	\$31,650	\$36,200	\$40,700	\$45,200	\$48,850	\$52,450	\$56,050	\$59,700
60% Limit	\$37,980	\$43,440	\$48,840	\$54,240	\$58,620	\$62,940	\$67,260	\$71,640
Moderate 80%	\$50,650	\$57,850	\$65,100	\$72,300	\$78,100	\$83,900	\$89,700	\$95,450

CDBG Requirements:

National Objectives

- All CDBG activities must meet one of the following National Objectives:
- (1) benefit low- and moderate-income persons;
- (2) aid in the prevention or elimination of slums and blight; or
- (3) meet certain urgent community needs.
- Depending on the type of project or program, benefit can be provided directly to low-moderate-income persons, or to a predominantly low-moderate income area

Program Income

- Program Income (PI) is generated as loans are repaid to the City.
- The City has \$570,000 in current and anticipated PI funds (projected over the next three years).
- The City held a Design Phase Public Hearing on July 8, 2024 regarding the use of PI funds. Council directed staff to prepare a PI application for a Business Assistance Loan Program.
- Before application submittal, the public must be allowed to comment on the proposed application and Council must adopt a resolution approving it.

Business Assistance Loan Program

- Serves start-ups or existing businesses within City limits.
- Funds may be used for purchase of equipment, inventory, real property, working capital, debt consolidation, and construction (Davis-Bacon Labor Law requirements must be followed for construction).
- Businesses may be loaned up to \$300,000, depending on available funds.
- For every \$35,000 loaned, one full-time job is created or retained, and 51% of those jobs are filled by members of the low- to moderate-income group.
- Loan amounts and terms are determined on a case by case basis, with interest rates starting as low as 1%.
- Terms are dependent on the recipient's cash flow needs and risk level of the loan. Repayment terms are based on the capacity of the business to repay, with deferral of payments possible based on income and expense projections.
- There are no loan fees.

Business Assistance Loan Program Budget

Funding Category	Amount
Activity	\$487,180
Direct Loans to Businesses (85% of Activity)	\$414,103
Activity Delivery - Consultant & Staff (15% of Activity)	\$73,077
General Administration (17%)	\$82,820
Total	\$570,000

Anticipated Job Creation / Retention: 12 jobs
(at least 50% filled by low-moderate income persons)

Timeline for PI Only Application

(Subject to Change)

- July 08, 2024: Design Phase Public Hearing was held
- July 22, 2024: Application Approval (Public Hearing + Resolution)
- July 26, 2024: Application Submission
- December 31, 2024: Executed Contract (Program begins)
- December 30, 2027: Contract Expiration (Program completion)
- Ongoing: Loan repayments become future Program Income



City of Fort Bragg

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

Text File

File Number: 24-874

Agenda Date: 7/22/2024

Version: 2

Status: Business

In Control: City Council

File Type: Resolution

Agenda Number: 8A.

Receive Report and Consider Adoption of City Council Resolution Authorizing the Execution and Delivery of an Equipment Lease/Purchase Agreement and Escrow Agreement with Bank of America, National Association Relating to the Financing of Energy Efficiency Projects to be Undertaken Pursuant to an Agreement with Syserco Energy Solutions, Inc., and Approving Related Documents and Actions



AGENCY:	City Council
MEETING DATE:	July 22, 2024
DEPARTMENT:	City Manager
PRESENTED BY:	I. Whippy/Consultants
EMAIL ADDRESS:	iwhippy@fortbragg.com

AGENDA ITEM SUMMARY

TITLE:

Consider adoption of City Council Resolution No. [REDACTED] authorizing the execution and delivery of an Equipment Lease/Purchase Agreement and Escrow Agreement with Bank of America, National Association relating to the financing of energy efficiency projects to be undertaken pursuant to an agreement with Syserco Energy Solutions, Inc., and approving related documents and actions.

ISSUE:

On June 10, 2024, the City Council approved entering into an Energy Services Agreement with Syserco Energy Solutions, Inc. (“SES”), which authorized SES to proceed with solar photovoltaic (“PV”) implementation at the following six City sites:

1. City Hall (416 North Franklin St.)
2. Corp Yard / Water Treatment Plant (31301 Cedar St.)
3. CV Starr Center (300 South Lincoln St.)
4. Fire Department (141 North Main St.)
5. Police Station (250 East Cypress St.)
6. Wastewater Treatment Plant (100 W Cypress St.)

In addition to the solar PV improvements at the six City sites above, the roof of the Police Station will be replaced before the solar panels are installed. The total cost of these projects is \$7,501,224. The total project cost will be financed with proceeds from a tax-exempt municipal equipment lease.

There are two project incentives available from the federal government under the Inflation Reduction Act (“IRA”) that can potentially reduce the net cost to the City. The first project incentive under the IRA is the “direct-pay” project incentive, valued at 25.5% of solar project costs, or approximately \$1,811,389, which is available in the form of a refundable tax credit at the conclusion of the project (once permission to operate has been granted by PG&E). All eligible projects nationwide can receive this direct-pay incentive, without regard to volume cap limitations. The second, more competitive, project incentive is the low-income communities bonus credit incentive valued at 8.5% of solar project costs (or approximately \$603,796). Unlike the direct-pay incentive, the low-income bonus incentive requires an application and has a volume cap limitation. More information on how these two project incentives will be used to reduce the overall cost to the City is included in the Discussion/Analysis section below.

DISCUSSION/ANALYSIS:

To assist with (1) reviewing the financial feasibility of the energy efficiency projects process and (2) executing a tax-exempt municipal equipment lease, City staff engaged NHA Advisors (“NHA”), a municipal advisor, in September 2023. NHA has worked with City staff to review the feasibility of the proposed projects and projected energy savings, manage the financing process, and assist in structuring the tax-exempt municipal equipment lease payments.

Due to the relatively small size of the tax-exempt municipal equipment lease and the equipment lease structure, NHA and City staff decided to utilize a private placement process (direct loan with a bank), rather than a public offering (bond issued to investors). The City therefore engaged Oppenheimer & Co. Inc. (“Oppenheimer”) as the placement agent for the transaction. Oppenheimer has a 10+ year history with the City, having previously served as underwriter on the City’s 2021 Lease Revenue Bonds and 2015 Tax Allocation Bonds, and as placement agent on the 2014 Water Revenue Refinancing. Oppenheimer contacted 12 banks in a formalized lender RFP process, requesting interest rates for a 20-year tax-exempt lease. Five banks responded to the lender RFP, with interest rates ranging from 4.46% to 5.59%.

The 4.46% interest rate, proposed by Bank of America, National Association (“BANA”), was the lowest bid, and the only bid under 4.50%. BANA’s bid also offered a beneficial financing structure for the City, including no capitalized interest requirement and favorable terms for extraordinary prepayment from the IRA incentives. The City Manager signed BANA’s term sheet on July 3, 2024, to lock in the terms of BANA’s proposal, subject to City Council’s final approval. Accordingly, City staff are now recommending that the City enter into a 2024 Equipment Lease/Purchase Agreement (“2024 Lease”) with BANA.

The 2024 Lease will have a 20-year term, maturing August 1, 2044, with annual debt service payments escalating at approximately 5.3% to align with the escalation of projected energy savings. BANA has provided a fixed 4.46% interest rate for the 2024 Lease. This interest rate is locked through August 27, 2024, which removes the risk that interest rates rise before the 2024 Lease closes and funds on August 1, 2024. The City’s first payment on the 2024 Lease is scheduled for August 1, 2026.

As noted above, there are two project incentives available from the federal government under the IRA that can potentially reduce the net cost to the City: the direct-pay incentive and the low-income communities bonus credit incentive, available in a combined estimated amount of \$2,415,186. The direct-pay incentive is available to all eligible projects, while the low-income bonus incentive is subject to a nationwide competition, for which the City has applied. Instead of front loading the City’s repayment and assuming the IRA incentives will be available to pay the large upfront payments, the plan is to prepay a portion of the 2024 Lease with the IRA incentives once one or both incentives become available to the City. Front loading the repayment of the 2024 Lease potentially exposes the City to an excessive debt service payment in the event one or both of the IRA incentives arrives late or does not arrive at all. BANA’s proposal features an extraordinary optional prepayment provision that allows for partial prepayment of the 2024 Lease using the IRA incentives. There will be a 0.5% premium associated with an extraordinary optional prepayment.

Due to the competitiveness and uncertainty of the low-income bonus, the analysis below considers two prepayment scenarios. In Scenario #1, only the direct-pay IRA incentive, in the amount of \$1,811,389, is available in time for partial prepayment on August 1, 2026. In Scenario #2, the direct-pay IRA incentive and the low-income bonus, in the aggregate amount of \$2,415,186, is available in time for a partial prepayment on August 1, 2026; however, this may not be the case.

The 2024 Lease is estimated to have a par amount of \$7,606,000, which will cover the solar PV and roof replacement costs (\$7,501,224) and the financing costs relating to the 2024 Lease (\$104,776).

Based upon the energy savings pro-forma prepared by SES, implementing the energy efficiency projects is estimated to generate energy savings of approximately \$20.6 million for the City through 2055. Once the debt service cost of the 2024 Lease is factored in, as well as the costs associated with operation, maintenance, and management of the solar PV improvements, the net savings through 2055 is estimated to be approximately \$10.4 million on a cumulative basis and \$3.6 million on a present value basis under Scenario #1, and approximately \$11.4 million on a cumulative basis and \$4.2 million on a present value basis under Scenario #2.

Next Steps & Timeline:

For the City to enter into the 2024 Lease, City Council will need to approve the 2024 Lease documents and a related Escrow and Account Control Agreement (the “Escrow Agreement”) and authorize City staff to sign the documents and take other necessary actions. Once City staff have City Council approval and authorization, they expect to finalize and sign the 2024 Lease documents and close the financing on or about August 7, 2024.

Discussion of Lease Documents:

- **Equipment Lease/Purchase Agreement:** The Equipment Lease/Purchase Agreement (“ELPA”) outlines the terms governing the 2024 Lease. The ELPA also identifies the location of the energy improvements and that the security for the 2024 Lease is a lien on the equipment. This lien will be in place until the 2024 Lease matures in August 2044 or is otherwise prepaid in accordance with the 2024 Lease terms. The ELPA also contains the payment details, prepayment provisions, and other covenants of the City. As an appropriation lease, the City will, as part of the annual budget process, appropriate sufficient amounts each fiscal year to make payments on the ELPA and, if an appropriation is not made, the sole remedy is for the bank to re-possess the equipment that was financed.
- **Escrow and Account Control Agreement:** The Escrow Agreement is among BANA, the City, and Wilmington Trust, National Association, as escrow agent (the “Escrow Agent”). Under the Escrow Agreement, the proceeds of the 2024 Lease will be held by the Escrow Agent and disbursed to pay costs of the energy efficiency projects based on requisitions filed by the City with the Escrow Agent.

2024 Lease Financing Team:

As part of City Council Resolution No. [REDACTED], the Special Legal Counsel (Jones Hall), the Municipal Advisor (NHA Advisors), and the Placement Agent (Oppenheimer & Co. Inc.) will be formally engaged. Fees and expenses of the financing team members are payable from a portion of the proceeds of the 2024 Lease, not any other City funds. BANA does not charge any upfront fees. All participants of the 2024 Lease financing team are listed below.

- **Special Legal Counsel:** Jones Hall
- **Energy Solutions Company:** Syserco Energy Solutions
- **Escrow Agent:** Wilmington Trust
- **Lessee:** City of Fort Bragg
- **Lessor:** Bank of America, National Association
- **Lessor's Counsel:** Chapman and Cutler LLP
- **Municipal Advisor:** NHA Advisors
- **Placement Agent:** Oppenheimer & Co. Inc.

Good Faith Estimates:

NHA Advisors (the City's municipal advisor) and Oppenheimer (the City's placement agent) have provided good faith estimates on the cost of the 2024 Lease, as required by California Government Code Section 5852.1. All amounts and percentages are estimates and are made in good faith based on current information available.

1. True Interest Cost of the 2024 Lease: 4.434%.
2. Finance charge of the 2024 Lease, being the sum of all fees and charges paid to third parties in the amount of \$104,776.
3. Amount of proceeds of the 2024 Lease expected to be received by the City, net of proceeds for Costs of Issuance in (2) above and net of capitalized interest (if any) and reserves (if any) paid or funded with the proceeds of the 2024 Lease: \$7,501,224.
4. Total payment amount for the 2024 Lease, being the sum of (a) debt service to be paid to final maturity, plus (b) any financing costs not paid from proceeds of the 2024 Lease: \$12,586,225.

RECOMMENDED ACTION:

Consider adoption of City Council Resolution No. [REDACTED] authorizing the execution and delivery of an Equipment Lease/Purchase Agreement and Escrow Agreement with Bank of America, National Association relating to the financing of energy efficiency projects to be undertaken pursuant to an agreement with Syserco Energy Solutions, Inc., and approving related documents and actions.

ALTERNATIVE ACTION(S):

An alternative action is to not proceed with adoption of City Council Resolution No. [REDACTED] authorizing the execution and delivery of an Equipment Lease/Purchase Agreement and Escrow Agreement. This alternative action means the City will need to find financing from another source, at potentially a higher interest rate or a less favorable financing structure.

FISCAL IMPACT:

The 2024 Lease has ascending debt service payments. Under Scenario #1, where partial prepayment of the 2024 Lease occurs on August 1, 2026 from the direct-pay IRA incentive, the City's debt service payments range from \$331,000 in 2027 to \$812,000 in 2042. Under Scenario #2, where partial prepayment of the 2024 Lease occurs on August 1, 2026 from both the direct-pay and low-income bonus IRA incentives, the City's debt service payments range from \$305,000 in 2027 to \$740,000 in 2041. The costs associated with issuing the 2024 Lease will be paid out of the proceeds of the 2024 Lease (no direct budgetary impact).

GREENHOUSE GAS EMISSIONS IMPACT:

The projects to be implemented by SES are estimated to reduce the City's greenhouse gas emissions by 882 metric tons of Carbon Dioxide per year. This is roughly equivalent to 210 gas-powered vehicles driven for one year or 971,558 pounds of coal burned.

CONSISTENCY:

N/A

ATTACHMENTS:

1. City Council Resolution No. [REDACTED]
2. Equipment Lease/Purchase Agreement
3. Escrow and Account Control Agreement

NOTIFICATION:

N/A

RESOLUTION NO. _____-2024

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN EQUIPMENT LEASE/PURCHASE AGREEMENT AND ESCROW AGREEMENT WITH BANK OF AMERICA, NATIONAL ASSOCIATION RELATING TO THE FINANCING OF ENERGY EFFICIENCY PROJECTS TO BE UNDERTAKEN PURSUANT TO AN AGREEMENT WITH SYSERCO ENERGY SOLUTIONS, INC., AND APPROVING RELATED DOCUMENTS AND ACTIONS

RESOLVED, by the City Council (the “Council”) of the City of Fort Bragg (the “City”), that:

WHEREAS, the City is authorized by the laws of the State of California to acquire, finance and lease real and personal property for the benefit of the City and its inhabitants and to enter into contracts with respect thereto, including pursuant to California Government Code Section 37350; and

WHEREAS, on June 10, 2024, the City Council approved entering into an Energy Services Agreement with Syserco Energy Solutions, Inc. for the installation of solar photovoltaic improvements at various sites, and in connection with the installation of the solar improvements, the roof of the police station will be replaced before the solar panels are installed; and

WHEREAS, the City desires to acquire, finance and lease certain property described in said Energy Services Agreement having a project cost of approximately \$7.5 million (collectively, the “*Equipment*”) pursuant to an Equipment Lease/Purchase Agreement (the “*Agreement*”) with Bank of America, National Association (or one of its affiliates), as lessor (the “*Lessor*”), the form of which has been presented to the City Council of the City at this meeting; and

WHEREAS, the City Council of the City deems it for the benefit of the City and for the efficient and effective administration thereof to enter into the Agreement and the other documentation relating to the acquisition, financing and leasing of the Equipment to be therein described on the terms and conditions therein and herein provided;

WHEREAS, the information required to be obtained and disclosed by the City Council pursuant to Section 5852.1 of the California Government Code with respect to the financing of the Equipment is set forth in the staff report accompanying this Resolution; and

NOW, THEREFORE, IT IS HEREBY ORDERED AND DETERMINED as follows:

Section 1. Findings and Determinations. It is hereby found and determined that the terms of the Agreement, in the form presented to the governing body of City at this meeting, are in the best interests of the City for the acquisition, financing and leasing of the Equipment.

Section 2. Approval of Documents. The Agreement and the related Escrow and Account Control Agreement by and among Bank of America, National Association, the City and Wilmington Trust, National Association are hereby approved in substantially the forms presented at this meeting, with such insertions, omissions and changes as shall be approved by the City Attorney, working with special legal counsel Jones Hall, to put the Agreement and the Escrow Agreement in final form, the execution and delivery of such documents by the City being conclusive evidence of such approval; provided, that the par amount of the Agreement shall not exceed \$7,750,000 and the initial, tax-exempt interest rate shall not exceed 4.71% (exclusive of adjustments to the rate upon an event of default or event of taxability). Subject to the foregoing, the City Manager of the City, or his or her designee, is hereby authorized and directed to execute (in writing or electronically), and the City Clerk of the City is hereby authorized and directed to attest (if necessary), the Agreement, the Escrow Agreement and any other related exhibits attached thereto and to deliver the Agreement, the Escrow Agreement (including such other exhibits) to the respective parties thereto, and the City Clerk of the City is hereby authorized to affix the seal of the City to such documents, to the extent deemed necessary.

Section 3. Other Actions Authorized. The City Manager and the other officers and employees of the City shall take all action necessary or reasonably required by the parties to the Agreement to carry out, give effect to and consummate the transactions contemplated thereby (including the execution (in writing or electronically) and delivery of a final acceptance certificate, the Escrow Agreement, disbursement requests and any tax certificates, as contemplated in the Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution (in writing or electronically) and delivery of any closing and other documents required to be delivered in connection with the Agreement or the Escrow Agreement, including without limitation any memorandum of understanding regarding the vendor contract..

Section 4. No General Liability. Nothing contained in this Resolution, the Agreement, the Escrow Agreement nor any other instrument shall be construed with respect to the City as incurring a pecuniary liability or charge upon the general credit of the City or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Agreement, the Escrow Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the City or any charge upon its general credit or against its taxing

power, except to the extent that the Rental Payments payable under the Agreement are limited obligations of the City, subject to annual appropriation, as provided in the Agreement.

Section 5. Appointment of Authorized City Representatives. The City Manager, Director of Public Works, and City Clerk are each hereby designated to act as authorized representatives of the City for purposes of the Agreement and the Escrow Agreement until such time as the governing body of the City shall designate any other or different authorized representative for purposes of the Agreement or the Escrow Agreement. Whenever in this Resolution any officer of the City is authorized to execute or attest to any document or take any other action, such execution, attestation, or other action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer is absent or unavailable.

Section 6. Appointment of Financing Team. In connection with the transactions described in this Resolution, the City Council hereby authorizes, ratifies and confirms the appointment of NHA Advisors, LLC to serve as municipal advisor, Jones Hall, A Professional Law Corporation, to serve as special legal counsel, and Oppenheimer & Co. Inc., to serve as placement agent, with the fees and expenses of each such firm payable from the proceeds of the financing. The City Manager, or his or her designee, is authorized to execute professional services agreements or a placement agent agreement, as applicable, with each such firm, as and to the extent deemed necessary.

Section 7. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 8. Repealer. All bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency with respect to this Resolution. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

Section 9. Effective Date. This Resolution shall be effective immediately upon its approval and adoption.

* * * * *

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 July 2024, by the following vote:

AYES:

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

BERNIE NORVELL
Mayor

ATTEST:

Diana Sanchez
City Clerk

**EQUIPMENT LEASE/PURCHASE AGREEMENT
(ESCROW ACCOUNT)**

This Equipment Lease/Purchase Agreement (this “*Agreement*”) dated as of August 7, 2024, and entered into by and between Bank of America, National Association, a national banking association (together with its successors, assigns and transferees, and as more particularly defined herein, “*Lessor*”), and City of Fort Bragg, a general law city existing under the laws of the State of California (“*Lessee*”).

WITNESSETH:

WHEREAS, Lessee desires to lease and acquire from Lessor certain Equipment (as such term is defined herein), subject to the terms and conditions hereof; and,

WHEREAS, Lessee is authorized under the constitution and laws of the State (as such term is defined herein) to enter into this Agreement for the purposes set forth herein;

NOW, THEREFORE, for good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

ARTICLE I

Section 1.01. Definitions. The following terms will have the meanings indicated below unless the context clearly requires otherwise:

“*Acquisition Amount*” means \$7,606,000. The Acquisition Amount is the amount represented by Lessee to be sufficient, together with other funds of Lessee (if any) that are legally available for the purpose of acquiring and installing the Equipment.

“*Acquisition Period*” means the period ending five (5) business days prior to February 7, 2026.

“*Agreement*” means this Equipment Lease/Purchase Agreement, including the exhibits hereto, together with any amendments and modifications to this Agreement pursuant to Section 13.04.

“*Code*” means the Internal Revenue Code of 1986, as amended. Each reference to a Section of the Code herein shall be deemed to include the relevant United States Treasury Regulations proposed or in effect thereunder.

“*Collateral*” has the meaning set forth in Section 6.02.

“*Commencement Date*” means the date when Lessee’s obligation to pay rent commences hereunder, which shall be the date on which the Acquisition Amount is deposited with the Escrow Agent.

“*Contract Rate*” means the rate identified as such in the Payment Schedule.

“*Disbursement Request*” means the disbursement request attached to the Escrow Agreement as Schedule 1 and made a part thereof.

“*Equipment*” means the equipment, fixtures and other goods and property listed in the Equipment Schedule and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to Article V or Section 8.01. Whenever reference is made in this Agreement to Equipment, such reference shall be deemed to include all such replacements, repairs, restorations, modifications and improvements of or to such Equipment.

“*Equipment Costs*” means the total cost of the Equipment, including related soft costs such as freight, installation and taxes and other capitalizable costs, and other costs incurred in connection with the acquisition, installation and/or financing of the Equipment.

“*Equipment Schedule*” means the Equipment Schedule attached hereto as *Exhibit A* and made a part hereof (including any duly authorized and executed amendments thereto).

“*Escrow Account*” means the account established and held by the Escrow Agent pursuant to the Escrow Agreement.

“*Escrow Agent*” means the Escrow Agent identified in the Escrow Agreement, and its successors and assigns.

“*Escrow Agreement*” means the Escrow and Account Control Agreement in form and substance acceptable to and executed by Lessee, Lessor and the Escrow Agent, pursuant to which the Escrow Account is established and administered.

“*Event of Default*” means an Event of Default described in Section 12.01.

“*Event of Non-appropriation*” means the failure of Lessee’s governing body to appropriate or otherwise make available funds to pay Rental Payments under this Agreement following the Original Term or then current Renewal Term sufficient for the continued performance of this Agreement by Lessee.

“*Lease Term*” means the Original Term and all Renewal Terms.

“*Lessee*” means the entity referred to as Lessee in the first paragraph of this Agreement.

“*Lessor*” means (a) the entity referred to as Lessor in the first paragraph of this Agreement and its successors or (b) any assignee or transferee of any right, title or interest of Lessor in and to this Agreement pursuant to Section 11.01 hereof, including the right, title and interest of Lessor in

and to the Equipment, the Rental Payments and other amounts due hereunder, the Escrow Agreement and Escrow Account and other Collateral, but does not include any entity solely by reason of that entity retaining or assuming any obligation of Lessor to perform hereunder.

“Lien” means any lien (statutory or otherwise), security interest, mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, preference, priority or other security or preferential arrangement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing and the filing of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction).

“Material Adverse Change” means any change in Lessee’s creditworthiness that could have a material adverse effect on (i) the financial condition or operations of Lessee, or (ii) Lessee’s ability to perform its obligations under this Agreement.

“Original Term” means the period from the Commencement Date until the end of the fiscal year of Lessee in effect at such Commencement Date.

“Outstanding Balance” means the amount that is shown for each Rental Payment Date under the column titled “Outstanding Balance” on the Payment Schedule.

“Payment Schedule” means the Payment Schedule attached hereto as *Exhibit B* and made a part hereof.

“Prepayment Price” means the amount that is shown for each Rental Payment Date under the column titled “Prepayment Price” on the Payment Schedule.

“Principal Portion” means the amount that is shown for each Rental Payment Date under the column titled “Principal Portion” on the Payment Schedule.

“Project Grant” means a grant, subsidy, or other incentive that the Lessee receives for the Equipment.

“Related Documents” means this Agreement and the Escrow Agreement, each as may be amended and supplemented.

“Renewal Terms” means the consecutive renewal terms of this Agreement, the first of which commences immediately after the end of the Original Term and each having a duration and a term coextensive with each successive fiscal year of Lessee; *provided* that the final such Renewal Term shall commence on the first day of the last such fiscal year and end on the first business day after the last scheduled Rental Payment Date.

“Rental Payment Date” means each date on which Lessee is required to make a Rental Payment under this Agreement as specified in the Payment Schedule.

“*Rental Payments*” means the basic rental payments payable by Lessee on the Rental Payment Dates and in the amounts as specified in the Payment Schedule, consisting of a principal component and an interest component, and in all cases sufficient to repay such principal component and interest thereon at the applicable Contract Rate (or Taxable Rate if then in effect).

“*Scheduled Term*” means the Original Term and all scheduled Renewal Terms, with a final Renewal Term ending on August 1, 2044, as set forth in *Exhibit B* attached hereto.

“*SEC*” means the U.S. Securities and Exchange Commission.

“*Special Counsel*” means Jones Hall, A Professional Law Corporation.

“*State*” means the State of California.

“*Syserco Contract*” means certain Energy Services Contract dated as of June 16, 2024, between Lessee and Syserco, as modified by that certain Memorandum of Understanding dated as of August 7, 2024, among Lessee, Lessor and Syserco.

“*Taxable Rate*” means, for each day that the interest component of Rental Payments is taxable for Federal income tax purposes, an interest rate equal to the Contract Rate plus a rate sufficient such that the total interest to be paid on any Rental Payment Date would, after such interest was reduced by the amount of any Federal, state or local income tax (including any interest, penalties or additions to tax) actually imposed thereon, equal the amount of interest otherwise due to Lessor.

“*Vendor*” means the manufacturer, installer or supplier of the Equipment or any other person as well as the agents or dealers of the manufacturer, installer or supplier with whom Lessee arranged Lessee’s acquisition, installation, maintenance and/or servicing of the Equipment, and includes, without limitation, Syserco Energy Solutions, Inc. (“*Syserco*”).

“*Vendor Agreement*” means any contract entered into by Lessee and any Vendor for the acquisition, installation, maintenance and/or servicing of the Equipment, and includes, without limitation, the Syserco Contract.

ARTICLE II

Section 2.01. Representations and Covenants of Lessee. Lessee represents, covenants and warrants for the benefit of Lessor on the date hereof as follows:

(a) Lessee is a political subdivision of the State within the meaning of Section 103(c) of the Code, duly organized and existing under the constitution and laws of the State, with full power and authority to enter into the Related Documents and the transactions contemplated thereby and to perform all of its obligations thereunder.

(b) Lessee has duly authorized the execution and delivery of the Related Documents by proper action of its governing body at a meeting duly called, regularly

convened and attended throughout by the requisite quorum of the members thereof, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of the Related Documents.

(c) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the date hereof. No Event of Non-appropriation has occurred or is threatened with respect to this Agreement.

(d) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a city of the State.

(e) Lessee has complied with such procurement and public bidding requirements as may be applicable to the Related Documents and the acquisition and installation by Lessee of the Equipment.

(f) During the Lease Term, the Equipment will be used by Lessee only for the purpose of performing essential governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority. Lessee does not intend to sell or otherwise dispose of the Equipment or any interest therein prior to the last Rental Payment (including all Renewal Terms) scheduled to be paid hereunder.

(g) Lessee has kept, and throughout the Lease Term shall keep, its books and records in accordance with generally accepted accounting principles and practices consistently applied, and shall deliver to Lessor (i) annual audited financial statements (including (1) a balance sheet, (2) statement of revenues, expenses and changes in fund balances for budget and actual, (3) statement of cash flows, and (4) footnotes, schedules and attachments to the financial statements) within two hundred seventy (270) days after the end of its fiscal year, (ii) such other financial statements and information as Lessor may reasonably request, and (iii) upon Lessor's request, its annual budget for any prior or current fiscal year or for the following fiscal year when approved but not later than thirty (30) days prior to the end of its current fiscal year. The financial statements described in this subsection (g)(i) shall be accompanied by an unqualified opinion of Lessee's independent auditor. Credit information relating to Lessee may be disseminated among Lessor and any of its affiliates and any of their respective successors and assigns.

(h) Lessee has an immediate need for the Equipment and expects to make immediate use of the Equipment. Lessee's need for the Equipment is not temporary and Lessee does not expect the need for any item of the Equipment to diminish during the Scheduled Term.

(i) The payment of the Rental Payments or any portion thereof is not (under the terms of this Agreement or any underlying arrangement) directly or indirectly (x) secured by any interest in property used or to be used in any activity carried on by any person other than a state or local governmental unit or payments in respect of such property; or (y) on a present value basis, derived from payments (whether or not to Lessee) in respect of property, or borrowed money, used or to be used in any activity carried on by any person

other than a state or local governmental unit. The Equipment will not be used, directly or indirectly, in any activity carried on by any person other than a state or local governmental unit. No portion of the Acquisition Amount will be used, directly or indirectly, to make or finance loans to any person other than Lessee. Lessee has not entered into any management or other service contract with respect to the use and operation of the Equipment.

(j) There is no pending litigation, tax claim, proceeding or dispute that may adversely affect Lessee's financial condition or impairs its ability to perform its obligations under the Related Documents. Lessee will, at its expense, maintain its legal existence and do any further act and execute, acknowledge, deliver, file, register and record any further documents Lessor may reasonably request in order to protect Lessor's first priority security interest in the Equipment and the Escrow Account and Lessor's rights and benefits under the Related Documents.

(k) Lessee is the fee owner of the real estate where the Equipment is and will be located (the "*Real Property*") and has good and marketable title thereto, and there exists no mortgage, pledge, Lien, security interest, charge or other encumbrance of any nature whatsoever on or with respect to such Real Property. In the event any lien, encumbrance, restriction, asserted encumbrance, claim, dispute or other issue exists or arises with respect to the Lessee's legal title to or valid and marketable, beneficial use and enjoyment of the Real Property or impairs or adversely impacts Lessor's right, title or interest in the Equipment or any of Lessor's rights or remedies under this Agreement with respect to the Equipment (each of the foregoing referred to as a "*Real Property Issue*"), Lessee will take all steps necessary to promptly quiet, resolve and/or eliminate such Real Property Issue to the satisfaction of Lessor and ensure that Lessee and Lessor have adequate access to and use of (including beneficial use and enjoyment of) the Real Property for all purposes of the Equipment contemplated herein and Lessee shall ensure that its fee interest in the Real Property and Lessor's right, title or interest in the Equipment and rights or remedies under this Agreement with respect to the Equipment remain free and clear of Real Property Issues.

(l) No lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase to which Lessee has been a party at any time has been terminated by Lessee as a result of insufficient funds being appropriated in any fiscal year. No event has occurred which would constitute an event of default under any debt, revenue bond or obligation which Lessee has issued during the past ten (10) years.

(m) Lessee represents to Lessor that it has adopted a debt policy in compliance with SB 1029 and Section 8855 of the Government Code of California *et seq.* and covenants that it shall comply with Section 8855 of the Government Code of California *et seq.* as amended (the "*CDIAC Act*") throughout the Lease Term, including (i) preparing, submitting and filing the report of the proposed debt issuance relating to this Agreement by the method required by the California Debt and Investment Advisory Commission ("*CDIAC*"), (ii) preparing, submitting and filing the report of final sale (and accompanying documents) relating to this Agreement by the method required by CDIAC, (iii) submitting an annual report relating to the report of final sale for this Agreement by the method

required by CDIAC, and (iv) paying all fees charged by CDIAC or the CDIAC Act relating to this Agreement, including, but not limited to the fee in an amount equal to one-fortieth of one percent of the Acquisition Amount or as otherwise prescribed by the CDIAC Act.

(n) As of the date of execution and delivery of this Agreement, Lessee has not granted any Lien on the Collateral that would be senior in priority to, or *pari passu* with, the first priority Lien on the Collateral granted to Lessor under Section 6.02 of this Agreement.

(o) The street addresses and legal descriptions affixed to the UCC-1 financing statements and fixture filings filed and recorded pursuant to Section 3.04(vi), Section 6.01 and/or Section 6.02 hereof are true, accurate and complete street addresses and legal descriptions of all the properties on which the Equipment is located or to be installed. In the event any street address, legal description, other information, UCC-1 financing statement or fixture filing (or continuations or amendments thereof) filed or recorded with respect to the Lessor's interests in the Equipment or any of the real property on which the Equipment is located or to be installed reflects any incorrect or incomplete street address, real property legal description, equipment description or other information, Lessee shall take all steps necessary at its expense (with the Lessor's prior written approval) to promptly correct any errors or deficiencies with respect to such legal descriptions, street address, equipment description, other information, UCC-1 financing statements and/or fixture filings and to protect Lessor's interests in the Equipment.

(p) Lessee will pay all Equipment Costs and costs of issuance in excess of the Acquisition Amount available therefor out of its own funds. Lessor shall not have any responsibility to pay amounts for any Equipment Costs or costs of issuance with respect to the Related Documents or the Equipment that individually or collectively exceed the Acquisition Amount.

(q) Lessee has complied with California Government Code Section 4217.10 *et seq.*, as and to the extent applicable, and other applicable law pertaining to the authorization of this Agreement and the financing and acquisition by the Lessee of the Equipment.

(r) To the extent applicable, as determined by Lessee in its sole discretion, Lessee has complied with the requirements of California Government Code Section 5852.1 *et seq.* in connection with this Agreement and the Equipment.

(s) In connection with the Lessee's compliance with any continuing disclosure undertakings (each, a "*Continuing Disclosure Agreement*") entered into by the Lessee pursuant to SEC Rule 15c2-12 promulgated pursuant to the Securities and Exchange Act of 1934, as amended (the "*Rule*"), the Lessee may be required to file with the Municipal Securities Rulemaking Board's Electronic Municipal Market Access system, or its successor ("*EMMA*"), notice of its incurrence of its obligations under the Related Documents and notice of any accommodation, waiver, amendment, modification of terms or other similar events reflecting financial difficulties in connection with the Related

Documents, in each case including posting a full copy thereof or a description of the material terms thereof (each such posting, an “EMMA Posting”). Except to the extent required by applicable law, including the Rule, the Lessee shall not file or submit or permit the filing or submission of any EMMA Posting that includes the following unredacted confidential information about the Lessor or its affiliates and the Escrow Agent in any portion of such EMMA Posting: address, account information and logos of the Lessor or its affiliates and the Escrow Agent; e-mail addresses, telephone numbers, fax numbers, names and signatures of officers, employees and signatories of the Lessor or its affiliates and the Escrow Agent; and the form of Disbursement Request that is attached to the Escrow Agreement.

(t) *Tax Covenants.*

(A) *Private Activity Bond Limitation.* Lessee will assure that the proceeds of the Agreement are not so used as to cause the obligations of Lessee under the Agreement to satisfy the private business tests of section 141(b) of the Code or the private loan financing test of section 141(c) of the Code.

(B) *Federal Guarantee Prohibition.* Lessee will not take any action or permit or suffer any action to be taken if the result of such action would be to cause any of the obligations of Lessee under the Agreement to be “federally guaranteed” within the meaning of section 149(b) of the Code.

(C) *Rebate Requirement.* Lessee will take any and all actions necessary to assure compliance with section 148(f) of the Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Agreement.

(D) *No Arbitrage.* Lessee will not take, or permit or suffer to be taken, any action with respect to the proceeds of the Agreement which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of delivery of the Agreement would have caused any of the obligations of Lessee under the Agreement to be “arbitrage bonds” within the meaning of section 148 of the Code.

(E) *Maintenance of Tax-Exemption.* Lessee will take all actions necessary to assure the exclusion of interest with respect to the Agreement from the gross income of the owner of the Agreement to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the date of delivery of the Agreement.

(F) *Record Retention.* Lessee will retain its records of all accounting and monitoring it carries out with respect to the Agreement for at least 3 years after the Agreement matures or is prepaid (whichever is earlier); *provided*, that if Lessee’s Rental Payments under the Agreement are prepaid and refunded, Lessee

will retain its records of accounting and monitoring at least 3 years after the earlier of the maturity or prepayment of the obligations that refunded the Agreement.

(G) *Compliance with Tax Documents.* Lessee will comply with the provisions of the tax certificate and use of proceeds certificate with respect to the Agreement, which are incorporated herein as if fully set forth herein.

The representations, warranties and covenants of this clause (t) will survive payment in full of the Agreement.

The Lessee acknowledges and agrees that the Lessor and its affiliates are not responsible for the Lessee's or any other entity's (including, but not limited to, any broker-dealer's) compliance or noncompliance (or any claims, losses or liabilities arising therefrom) with the Rule, any Continuing Disclosure Agreement or any applicable securities or other laws, including but not limited to those relating to the Rule.

ARTICLE III

Section 3.01. Lease of Equipment. Subject to the terms and conditions of this Agreement, Lessor agrees to provide the Acquisition Amount to acquire the Equipment. Lessor hereby demises, leases and transfers to Lessee, and Lessee hereby acquires, rents and leases from Lessor, the Equipment. The Lease Term may be continued, solely at the option of Lessee, at the end of the Original Term or any Renewal Term for the next succeeding Renewal Term up to the maximum Scheduled Term as set forth in the Payment Schedule. At the end of the Original Term and at the end of each Renewal Term until the maximum Scheduled Term has been completed, Lessee shall be deemed to have exercised its option to continue this Agreement for the next Renewal Term unless Lessee shall have terminated this Agreement pursuant to Section 3.03 or Section 10.01 of this Agreement. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Rental Payments shall be as provided in the Payment Schedule.

Section 3.02. Continuation of Lease Term. Lessee intends, subject to Section 3.03 hereof, to continue the Lease Term through the Original Term and all Renewal Terms and to pay the Rental Payments due hereunder. Lessee affirms that sufficient funds are legally available to pay all Rental Payments when due during the current fiscal year, and Lessee reasonably believes that an amount sufficient to make all Rental Payments during the entire Scheduled Term can be obtained from legally available funds of Lessee. Lessee further intends to do all things lawfully within its power to obtain and maintain funds sufficient and available to discharge its obligation to make Rental Payments due hereunder, including making provision for such payments to the extent necessary in each budget or appropriation request submitted and adopted in accordance with applicable provisions of law. Notwithstanding the foregoing, the decision whether or not to budget and appropriate funds or to extend the Lease Term for any Renewal Term is within the sole discretion of the governing body of Lessee.

Section 3.03. Non-appropriation. Lessee is obligated only to pay such Rental Payments as may lawfully be made during Lessee's then current fiscal year from funds budgeted and

appropriated for that purpose. Should Lessee fail to budget, appropriate or otherwise make available funds to pay Rental Payments following the then current Original Term or Renewal Term, this Agreement shall be deemed terminated at the end of the then current Original Term or Renewal Term. Lessee agrees to deliver notice to Lessor of such termination promptly after any decision to non-appropriate is made, but failure to give such notice shall not extend the term beyond such Original Term or Renewal Term. If this Agreement is terminated in accordance with this Section 3.03, Lessee agrees to cease use of the Equipment and peaceably remove and deliver to Lessor, at Lessee's sole expense (from legally available funds), the Equipment to Lessor at the location(s) to be specified by Lessor.

Section 3.04. Conditions to Lessor's Performance. (a) As a prerequisite to the performance by Lessor of any of its obligations under this Agreement, Lessee shall deliver to Lessor, in form and substance satisfactory to Lessor, the following:

(i) An Escrow Agreement substantially in the form attached hereto as *Exhibit I*, satisfactory to Lessor and executed by Lessee and the Escrow Agent and a Vendor Agreement satisfactory to Lessor and executed by Lessee and the Vendor;

(ii) A certified copy of a resolution, ordinance or other official action of Lessee's governing body, substantially in the form attached hereto as *Exhibit C-1*, authorizing the execution and delivery of this Agreement and the Escrow Agreement and performance by Lessee of its obligations under this Agreement and the Escrow Agreement;

(iii) A Certificate completed and executed by the Clerk or Secretary or other comparable officer of Lessee, substantially in the form attached hereto as *Exhibit C-2*, completed to the satisfaction of Lessor;

(iv) Opinions of general counsel and Special Counsel to Lessee, which in the aggregate opine on the matters set forth in the form attached hereto as *Exhibit D-1* and *Exhibit D-2*, respectively, and which are otherwise satisfactory to Lessor;

(v) Evidence of insurance as required by Section 7.02 hereof;

(vi) All documents, including financing statements, affidavits, notices and similar instruments which Lessor deems necessary or appropriate at that time pursuant to Section 6.02 hereof;

(vii) A waiver or waivers of interest in the Equipment from any mortgagee or any other party having an interest in the real estate on which the Equipment will be located and/or landlord of the real estate on which the Equipment will be located and amendments and agreements releasing liens and encumbrances, if any, on the real property where the Equipment is and will be located;

(viii) If Lessee has designated this Agreement as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code, a certificate substantially in the form attached hereto as *Exhibit G* executed by an authorized official of Lessee;

(ix) A copy of the Form 8038-G, fully completed by Special Counsel as paid preparer and executed by Lessee;

(x) In the event that Lessee is to be reimbursed for expenditures that it has paid more than sixty (60) days prior to the Commencement Date, evidence of the adoption of a reimbursement resolution or other official action covering the reimbursement from tax exempt proceeds of expenditures incurred not more than sixty (60) days prior to the date of such resolution;

(xi) Copies of invoices (and proofs of payment of such invoices, if Lessee seeks reimbursement) and bills of sale (if title to Equipment has passed to Lessee), to the extent required by Section 5.01(b) hereof;

(xii) Wire instructions for payments to be made to Vendors and Form W-9 from each such Vendor;

(xiii) A certified copy of any Surety Bond satisfying the conditions set forth in Section 7.04 hereof, or, at Lessor's sole discretion, such Surety Bonds may be provided after the Commencement Date, *provided however*, that no "Disbursement Request" pursuant to the Escrow Agreement (other than for costs of issuance) shall be authorized by Lessor until such Surety Bonds satisfying the conditions set forth in Section 7.04 have been delivered to Lessor; and

(xiv) Such other items reasonably required by Lessor.

(b) In addition to satisfaction of the conditions set forth in subsection (a) of this Section 3.04, the performance by Lessor of any of its obligations under the Related Documents shall be subject to: (i) no Material Adverse Change having occurred since the date of this Agreement, (ii) no Event of Default having occurred and then be continuing and (iii) no Event of Non-appropriation having occurred or being threatened with respect to this Agreement.

(c) Subject to satisfaction of the foregoing, Lessor will deposit the Acquisition Amount with the Escrow Agent to be held and disbursed pursuant to the Escrow Agreement.

Section 3.05. Evidence of Filing Form 8038-G. As soon as it is available, Lessee shall provide to Lessor evidence that it, or its paid preparer, has filed the Form 8038-G for this Agreement with the Internal Revenue Service by delivering to Lessor proof of mailing such Form 8038-G. Notwithstanding anything to the contrary in this Agreement, it shall not be an Event of Default hereunder if Lessee does not provide to Lessor evidence that it (or its paid preparer) filed the Form 8038-G for this Agreement with the Internal Revenue Service.

ARTICLE IV

Section 4.01. Rental Payments. Subject to Section 3.03 of this Agreement, Lessee shall promptly pay Rental Payments, in lawful money of the United States of America, to Lessor on the Rental Payment Dates and in such amounts as provided in the Payment Schedule. If any Rental

Payment or other amount payable hereunder is not paid within ten (10) days of its due date, Lessee shall pay an administrative late charge of five percent (5%) of the amount not timely paid or the maximum amount permitted by law, whichever is less. Lessee shall not permit the Federal Government to guarantee any Rental Payments under this Agreement. Rental Payments consist of principal and interest components as more fully detailed on the Payment Schedule, the interest on which begins to accrue as of the Commencement Date.

Section 4.02. Interest and Principal Components. A portion of each Rental Payment is paid as, and represents payment of, interest, and the balance of each Rental Payment is paid as, and represents payment of, principal as more fully detailed on the Payment Schedule.

Section 4.03. Rental Payments to Constitute a Current Expense of Lessee. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments shall constitute a current expense of Lessee payable solely from its general fund or other funds that are legally available for that purpose and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of Lessee.

Section 4.04. Rental Payments to be Unconditional. Except as provided in Section 3.03 of this Agreement, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in this Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation any failure of the Equipment, disputes with the Lessor or the Vendor of any Equipment, any defects, malfunctions, breakdowns or infirmities in the Equipment or any accident, condemnation or unforeseen circumstances, or failure of any Vendor to deliver any Equipment or otherwise perform any of its obligations for whatever reason, including bankruptcy, insolvency, reorganization or any similar event with respect to any Vendor or under any Vendor Agreement, or the failure or inability (for whatever reason) of Lessee to receive (or delay in receipt of) all or any portion of any grant, subsidy, or other incentive, including but not limited to the Project Grant or any refundable tax credit under Section 6417 of the Internal Revenue Code of 1986, as amended by the Inflation Reduction Act of 2022 (Pub. L. No. 117-169), any amounts described or derived from California Assembly Bill AB 841, any federal, state, local, private or other incentives or rebates or any substantially similar (to any of the foregoing) provision of federal, state, local or foreign tax or other law (including regulations or other guidance from any taxing or other authority).

Section 4.05. Tax Covenants. Lessee agrees that it will not take any action that would cause the interest component of Rental Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for Federal income tax purposes, nor will it omit to take or cause to be taken, in a timely manner, any action, which omission would cause the interest component of Rental Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for Federal income tax purposes. In furtherance of the foregoing, Lessee shall comply with all the provisions of Section 2.01(t).

Section 4.06. Event of Taxability. Upon the occurrence of an Event of Taxability, the interest component of Rental Payments and any charge on Rental Payments or other amounts payable based on the Contract Rate shall have accrued and be payable at the Taxable Rate retroactive to the date as of which the interest component is determined by the Internal Revenue Service to be includible in the gross income of the owner or owners thereof for Federal income tax purposes (which retroactive date shall be the earliest date as of which the interest component of any Rental Payment is deemed includible in the gross income of the owner or owners thereof for Federal income tax purposes, which may be earlier than the date of delivery of such determination by the Internal Revenue Service), and Lessee will pay such additional amount as will result in the owner receiving the interest component at the Taxable Rate.

For purposes of this Section, “*Event of Taxability*” means the circumstance of the interest component of any Rental Payment paid or payable pursuant to this Agreement becoming includible for Federal income tax purposes in an owner’s gross income as a consequence of any act, omission or event whatsoever, including but not limited to the matters described in the immediately succeeding sentence, and regardless of whether the same was within or beyond the control of Lessee. An Event of Taxability shall be presumed to have occurred upon (a) the receipt by Lessor or Lessee of an original or a copy of an Internal Revenue Service Technical Advice Memorandum or Statutory Notice of Deficiency or other written correspondence which legally holds that the interest component of any Rental Payment is includable in the gross income of the owner thereof; (b) the issuance of any public or private ruling of the Internal Revenue Service that the interest component of any Rental Payment is includable in the gross income of the owner thereof; or (c) receipt by Lessor or Lessee of a written opinion of a nationally recognized firm of attorneys experienced in matters pertaining to the tax-exempt status of interest on obligations issued by states and their political subdivisions, selected by Lessor and acceptable to Lessee, to the effect that the interest component of any Rental Payment has become includable in the gross income of the owner thereof for Federal income tax purposes. For all purposes of this definition, an Event of Taxability shall be deemed to occur on the date as of which the interest component of any Rental Payment is deemed includable in the gross income of the owner thereof for Federal income tax purposes.

Section 4.07. Mandatory Prepayment. (a) Any funds not applied to Equipment Costs and remaining in the Escrow Account on the earliest of (i) the expiration of the Acquisition Period, (ii) the date on which Lessee delivers to the Lessor the executed Disbursement Request to effect the final disbursement to pay (or reimburse) Equipment Costs from the Escrow Account or (iii) a termination of the Escrow Account as provided in the Escrow Agreement shall be applied by Lessor on each successive Rental Payment Date thereafter to pay all or a portion of the Rental Payment due and owing in the succeeding twelve (12) months and any remaining amounts (“*Excess Proceeds*”) shall be applied by Lessor as prepayment to the applicable unpaid Principal Portion of Rental Payments owing hereunder in the inverse order of the Rental Payment Dates at a price of 100% of such prepaid Principal Portion plus accrued interest thereon to the prepayment date.

(b) In connection with any partial prepayment of Rental Payments, Lessor shall prepare a new Payment Schedule and deliver the same to the Lessee, which shall be binding, absent manifest error.

(c) Lessee will give Lessor notice of any such prepayment in accordance with this Section 4.07 not less than 30 days in advance of the prepayment date.

(d) In lieu of prepayment, Lessee may apply Excess Proceeds to the acquisition of other capital equipment that Lessee identifies and with Lessor's prior written approval, given in Lessor's sole and absolute discretion, and subject to such conditions as Lessor may require, including but not limited to execution of an appropriate amendment to the Equipment Schedule, the filing of financing statements with respect to personal property and fixtures under Article 9 of the California Commercial Code and Lessee's delivery to Lessor of a written opinion of a nationally recognized firm of attorneys experienced in matters pertaining to the tax-exempt status of interest on obligations issued by states and their political subdivisions, selected by Lessee and acceptable to Lessor, to the effect that Lessee's acquisition of such other capital equipment and the taking of other actions in connection therewith will not adversely affect the tax-exempt status of interest components of Rental Payments pursuant to this Agreement.

ARTICLE V

Section 5.01. Acquisition, Delivery, Installation and Acceptance of Equipment. (a) Lessee shall order the Equipment to be acquired and financed hereunder, cause the Equipment to be delivered and installed at the location specified in the Equipment Schedule and pay any and all delivery and installation costs and other Equipment Costs in connection therewith. Lessee shall conduct such inspection and testing of the Equipment as it deems appropriate in order to unconditionally accept such Equipment. When the Equipment has been delivered and installed, including any component of Equipment, Lessee shall promptly accept such Equipment and evidence said acceptance by executing and delivering Disbursement Requests to the Lessor pursuant to the Escrow Agreement for the purpose of effecting disbursements from the Escrow Account to pay (or reimburse) Equipment Costs for the Equipment so acquired and installed. In connection with the execution and delivery by Lessee to Lessor of the final Disbursement Request, Lessee shall deliver to Lessor a "Final Acceptance Certificate" in the form attached hereto as Exhibit E.

(b) Lessee shall deliver to Lessor together with each Disbursement Request copies of invoices (and proof of payment of such invoices if Lessee seeks reimbursement for prior expenditures) and bills of sale or other evidence of title transfer to Lessee relating to each item of Equipment accepted by Lessee as evidenced by such Disbursement Request. Once approved, Lessor shall deliver such Disbursement Request to the Escrow Agent for disbursement from the Escrow Account in accordance with the Escrow Agreement.

Section 5.02. Quiet Enjoyment of Equipment. So long as no Event of Default and no Event of Non-appropriation exists hereunder, neither Lessor nor any entity claiming by, through or under Lessor, shall interfere with Lessee's quiet use and enjoyment of the Equipment during the Lease Term.

Section 5.03. Location; Inspection. Once installed, no item of the Equipment will be moved or relocated from the location specified for it in the Equipment Schedule without Lessor's prior written consent, which consent shall not be unreasonably withheld. Lessor shall have the

right at all reasonable times during regular business hours to enter into and upon the property where the Equipment is located for the purpose of inspecting the Equipment.

Section 5.04. Use and Maintenance of the Equipment. Lessee shall not install, use, operate or maintain the Equipment (or cause the Equipment to be installed, used, operated or maintained) improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated hereby. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative, or judicial body, including, without limitation, all anti-money laundering laws and regulations; *provided* that Lessee may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Equipment or its interest or rights hereunder.

Lessee agrees that it shall (a) maintain, preserve, and keep the Equipment in good repair and working order, in a condition comparable to that recommended by the manufacturer; (b) proceed promptly, at its expense, to protect its rights and exercise its remedies under any warranty then in effect with respect to the Equipment; and (c) replace or rebuild any component of the Equipment that becomes permanently unfit for normal use or inoperable during the Lease Term (herein, the *"Inoperable Component"*) in order to keep the Equipment as a whole in good repair and working order during the Lease Term. Lessee shall promptly notify Lessor in writing when any component of the Equipment is reasonably expected within forty-five (45) days to become an Inoperable Component. Lessee shall promptly replace or rebuild the Inoperable Component with a similar component of comparable or improved make and model that has at least the equivalent value and utility of the Inoperable Component, a remaining useful life of no less than the remaining Scheduled Term and such replacement or rebuilt component shall be in good operating condition. Lessor shall have no responsibility to maintain, repair or make improvements or additions to the Equipment. In all cases, Lessee agrees to pay any costs necessary for the manufacturer to re-certify the Equipment as eligible for manufacturer's maintenance upon the return of the Equipment to Lessor as provided for in Sections 3.03 and 12.02(b) of this Agreement.

Lessee shall not alter any item of Equipment or install any accessory, equipment or device on an item of Equipment if that would impair any applicable warranty, the originally intended function or the value of that Equipment. All repairs, parts, accessories, equipment and devices furnished, affixed to or installed on any Equipment, excluding temporary replacements, shall thereupon become subject to the security interest of Lessor.

ARTICLE VI

Section 6.01. Title to the Equipment. During the Lease Term, so long as Lessee is not in default under Article XII hereof and an Event of Non-appropriation has not occurred, all right, title and interest in and to each item of the Equipment shall be vested in Lessee immediately upon its acceptance of each item of Equipment, subject to the terms and conditions hereof. Lessee shall at all times protect and defend, at its own cost and expense, its title, and Lessor's first priority security interest, in and to the Equipment (and Lessor's other Collateral as defined in Section 6.02 hereof) from and against all claims, Liens and legal processes of its creditors, and keep all Equipment (and

such other Collateral) free and clear of all such claims, Liens and processes. Lessee will, at its expense, do any further act and execute, acknowledge, deliver, file, register and record any further documents the Lessor may reasonably request in order to protect Lessor's first priority security interest in the Collateral. Upon the occurrence of an Event of Default or upon termination of this Agreement pursuant to Section 3.03 hereof, full and unencumbered legal title to the Equipment shall, at Lessor's option, pass to Lessor, and Lessee shall have no further interest therein. In addition, upon the occurrence of such an Event of Default or such termination, Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the passage of such legal title to Lessor and the termination of Lessee's interest therein, and upon request by Lessor shall deliver possession of the Equipment to Lessor in accordance with Section 3.03 or 12.02 of this Agreement, as applicable. Upon payment of all amounts due and owing hereunder by Lessee in accordance with Section 10.01 hereof, Lessor's security interest or other interest in the Equipment shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may reasonably request to evidence the termination of Lessor's security interest in the Equipment.

Section 6.02. Security Interest. As additional security for the payment and performance of all of Lessee's obligations hereunder, Lessee hereby grants to Lessor a first priority security interest constituting a first Lien on (a) the Equipment, together with all replacements, repairs, restorations, modifications and improvements thereof or thereto and all accessories, equipment, parts and appurtenances appertaining or attached to any of the Equipment, and all substitutions, renewals, or replacements of and additions, improvements, accessions and accumulations to any and all of such Equipment, together with all the rents, issues, income, profits, proceeds and avails therefrom, (b) moneys and investments held from time to time in the Escrow Account, (c) all accounts, chattel paper, deposit accounts, documents, instruments, general intangibles and investment property (including any securities accounts and security entitlements relating thereto) evidenced by or arising out of or otherwise relating to the foregoing collateral described in clauses (a) and (b) above, as such terms are defined in Article 9 of the California Commercial Code, and (d) any and all proceeds of any and all of the foregoing, including, without limitation, insurance proceeds (collectively, the "*Collateral*"). Lessee authorizes Lessor to file (and Lessee agrees to execute, if applicable) such notices of assignment, chattel mortgages, financing statements and other documents, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain Lessor's security interest in the Collateral, including, without limitation, such financing statements with respect to personal property and fixtures under Article 9 of the California Commercial Code and treating such Article 9 as applicable to entities such as Lessee.

Section 6.03. Personal Property, No Encumbrances. Lessee agrees that, to the extent permitted by State law, the Equipment is deemed to be and will remain personal property, and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. Lessee shall not create, incur, assume or permit to exist any mortgage, pledge, Lien, security interest, charge or other encumbrance of any nature whatsoever on any of the real estate where the Equipment is or will be located or enter into any agreement to sell or assign or enter into any sale/leaseback arrangement of such real estate without the prior written consent of Lessor; *provided*, that if Lessor or its assigns is furnished with a waiver of interest in the Equipment acceptable to Lessor or its assigns in their

respective discretion from any party taking an interest in any such real estate prior to such interest taking effect, such consent shall not be unreasonably withheld.

ARTICLE VII

Section 7.01. Liens, Taxes, Other Governmental Charges and Utility Charges. Lessee shall keep the Equipment free of all levies, Liens, and encumbrances except those created by this Agreement. The parties to this Agreement contemplate that the Equipment will be used for a governmental or proprietary purpose of Lessee and that the Equipment will therefore be exempt from all property taxes. If the lease, sale, purchase, operation, use, possession or acquisition of any Equipment is nevertheless determined to be subject to taxation, Lessee shall pay when due all sales and other taxes, special assessments, governmental and other charges of any kind that are at any time lawfully assessed or levied against or with respect to the Equipment, the Rental Payments or any part of either thereof, or which become due during the Lease Term, whether assessed against Lessee or Lessor. Lessee shall pay all utility and other charges incurred in the operation, use and maintenance of the Equipment. Lessee shall pay such taxes, assessments or charges as the same may become due; *provided* that, with respect to any such taxes, assessments or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the Lease Term. Lessor will not claim ownership of the Equipment under this Agreement for the purposes of any tax credits, benefits or deductions with respect to such Equipment. Lessee shall pay the fee charged by the California Debt and Investment Advisory Commission with respect to this Agreement pursuant to Section 8856 (or any successor provision) of the California Government Code.

Section 7.02. Insurance. Lessee shall during the Lease Term maintain or cause to be maintained (a) casualty insurance naming Lessor and its assigns as loss payee and insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State, and any other risks reasonably required by Lessor, in an amount at least equal to the greater of (i) the then applicable Prepayment Price of the Equipment or (ii) the replacement cost of the Equipment; (b) liability insurance naming Lessor and its assigns as additional insureds that protects Lessor from liability with limits of at least \$5,000,000 per occurrence for bodily injury and property damage coverage (such liability insurance coverage may be in a combination of primary general liability and/or excess liability umbrella coverage), and in all events under clauses (a) and (b) above issued in form and amount satisfactory to Lessor and by an insurance company that is authorized to do business in the State and having a financial strength rating by A.M. Best Company of "A-" or better; and (c) worker's compensation coverage as required by the laws of the State. Notwithstanding the foregoing, Lessee may self-insure against the risks described in clauses (a) and/or (b) through a government pooling arrangement, self-funded loss reserves, risk retention program or other self-insurance program, in each case with Lessor's prior written consent (which Lessor may grant, withhold or deny in its sole discretion) and *provided* that Lessee has delivered to Lessor such information as Lessor may request with respect to the adequacy of such self-insurance to cover the risks proposed to be self-insured and otherwise in form and substance acceptable to Lessor. In the event Lessee is permitted, at Lessor's sole discretion, to self-insure as provided in this Section 7.02, Lessee shall provide to Lessor a self-insurance letter in substantially the form attached hereto as *Exhibit F*. Lessee shall furnish to Lessor evidence of such insurance or self-insurance coverage throughout

the Lease Term. Lessee shall not cancel or modify such insurance or self-insurance coverage in any way that would affect the interests of Lessor without first giving written notice thereof to Lessor at least thirty (30) days in advance of such cancellation or modification.

Section 7.03. Risk of Loss. Whether or not covered by insurance or self-insurance, Lessee hereby assumes all risk of loss of, or damage to and liability related to injury or damage to any persons or property arising from the Equipment from any cause whatsoever, and no such loss of or damage to or liability arising from the Equipment shall relieve Lessee of the obligation to make the Rental Payments or to perform any other obligation under this Agreement. Whether or not covered by insurance or self-insurance, Lessee hereby agrees to reimburse Lessor (to the fullest extent permitted by applicable law, but only from legally available funds) for any and all liabilities, obligations, losses, costs, claims, taxes or damages suffered or incurred by Lessor, regardless of the cause thereof and all expenses incurred in connection therewith (including, without limitation, counsel fees and expenses, and penalties connected therewith imposed on interest received) arising out of or as a result of (a) entering into this Agreement or any of the transactions contemplated hereby (except to the extent caused by Lessor's own gross negligence or willful misconduct), (b) the ordering, acquisition, ownership use, operation, condition, purchase, delivery, acceptance, rejection, storage or return of any item of the Equipment, (c) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury to or death to any person, and/or (d) the breach of any covenant of Lessee under or in connection with this Agreement or any material misrepresentation provided by Lessee under or in connection with this Agreement. The provisions of this Section 7.03 shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

Section 7.04. Surety Bonds; Lessee to Pursue Remedies Against Contractors and Sub-Contractors and Their Sureties. Lessee shall secure from each Vendor directly employed by Lessee in connection with the acquisition, construction, installation, improvement or equipping of the Equipment, a payment and performance bond ("Surety Bond") executed by a surety company authorized to do business in the State, having a financial strength rating by A.M. Best Company of "A-" or better, and otherwise satisfactory to Lessor and naming Lessor as a co-obligee in a sum equal to the entire amount to become payable under each Vendor Agreement. Each bond shall be conditioned on the completion of the work in accordance with the plans and specifications for the Equipment and upon payment of all claims of subcontractors and suppliers. Lessee shall cause the surety company to add Lessor as a co-obligee on each Surety Bond, and shall deliver a certified copy of each Surety Bond to Lessor promptly upon receipt thereof by Lessee. Any proceeds from a Surety Bond shall be applied in accordance with such Surety Bond to the payment and performance of the Vendor's obligations in accordance with the related Vendor Agreement and, if for whatever reason such proceeds are not so applied, first to amounts due Lessor under this Agreement, and any remaining amounts shall be payable to Lessee.

In the event of a material default by any Vendor under any Vendor Agreement in connection with the acquisition, construction, maintenance and/or servicing of the Equipment or in the event of a material breach of warranty with respect to any material workmanship or performance guaranty with respect to the Equipment, Lessee will promptly proceed to exhaust its remedies against the Vendor in default. Lessee shall advise Lessor of the steps it intends to take

in connection with any such default. Any amounts received by Lessee in respect of damages, refunds, adjustments or otherwise in connection with the foregoing shall be paid to Lessor and applied against Lessee's obligations hereunder.

Section 7.05. Advances. In the event Lessee shall fail to keep the Equipment in good repair and working order or shall fail to maintain any insurance required by Section 7.02 hereof, Lessor may, but shall be under no obligation to, maintain and repair the Equipment or obtain and maintain any such insurance coverages, as the case may be, and pay the cost thereof. All amounts so advanced by Lessor shall constitute additional rent for the then current Original Term or Renewal Term and Lessee covenants and agrees to pay such amounts so advanced by Lessor with interest thereon from the due date until paid at a rate equal to the Contract Rate (or the Taxable Rate if then in effect) *plus* five percent (5%) per annum or the maximum amount permitted by law, whichever is less.

ARTICLE VIII

Section 8.01. Damage, Destruction and Condemnation. If, prior to the termination of the Lease Term, (a) the Equipment or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Equipment or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, (i) Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award or sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment or such part thereof and any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee or (ii) Lessee shall exercise its option to prepay the obligations hereunder in accordance with Section 10.01(a)(ii) hereof.

If Lessee elects to replace any item of the Equipment (the "*Replaced Equipment*") pursuant to this Section 8.01, the replacement equipment (the "*Replacement Equipment*") shall be new or of a quality, type, utility and condition at least as good as the Replaced Equipment, shall be of equal or greater value than the Replaced Equipment and shall provide at least the same level of energy and/or operational savings expected in the aggregate from the Replaced Equipment prior to such casualty, destruction or condemnation and shall have an expected remaining useful life at least through the Scheduled Term. Lessee shall grant to Lessor a first priority security interest in any such Replacement Equipment. Lessee shall represent, warrant and covenant to Lessor that each item of Replacement Equipment is free and clear of all claims, Liens, security interests and encumbrances, excepting only those Liens created by or through Lessor, and shall provide to Lessor any and all documents as Lessor may reasonably request in connection with the replacement, including, but not limited to, documentation in form and substance satisfactory to Lessor evidencing Lessor's security interest in the Replacement Equipment. Lessor and Lessee hereby acknowledge and agree that any Replacement Equipment acquired pursuant to this paragraph shall constitute "Equipment" for purposes of this Agreement. Lessee shall complete the documentation of Replacement Equipment on or before the next Rental Payment Date after the occurrence of a casualty event, or be required to exercise its option to prepay the obligations hereunder with respect to the damaged Equipment in accordance with Section 10.01(a)(ii) hereof.

For purposes of this Article VIII, the term “*Net Proceeds*” shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award or sale under threat of condemnation after deducting all expenses, including attorneys’ fees, incurred in the collection thereof.

Section 8.02. Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 8.01, Lessee shall either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds, or (b) pay or cause to be paid to Lessor the amount of the then applicable Prepayment Price *plus* all other amounts then owing hereunder, and, upon such payment, the Lease Term shall terminate and Lessor’s security interest in the Equipment shall terminate as provided in Section 6.01 hereof. The amount of the Net Proceeds remaining, if any, after completing such repair, restoration, modification or improvement or after paying such Prepayment Price *plus* all other amounts then owing hereunder shall be retained by Lessee. If Lessee shall make any payments pursuant to this Section 8.02, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article IV.

ARTICLE IX

Section 9.01. Disclaimer of Warranties. Lessor makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for use of any of the Equipment, or any other warranty or representation, express or implied, with respect thereto and, as to Lessor, Lessee’s acquisition of the Equipment shall be on an “as is” basis. In no event shall Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement, the Equipment or the existence, furnishing, functioning or Lessee’s use of any item, product or service provided for in this Agreement.

Section 9.02. Vendor Agreements; Warranties. Lessee covenants that it shall not in any material respect amend, modify, rescind or alter any Vendor Agreement without the prior written consent of Lessor. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee shall not be in default under this Agreement and so long as no Event of Non-appropriation has occurred, to assert from time to time whatever claims and rights (including without limitation warranties) relating to the Equipment that Lessor may have against a Vendor. Lessee’s sole remedy for the breach of such warranty, indemnification or representation shall be against the applicable Vendor of the Equipment, and not against Lessor. Any such matter shall not have any effect whatsoever on the rights and obligations of Lessor under this Agreement, including the right to receive full and timely Rental Payments and other payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties relating to any of the Equipment.

ARTICLE X

Section 10.01. Prepayment; Payment in Full or in Part.

(a) *Prepayment.* Lessee shall have the option to prepay or satisfy some or all of its obligations hereunder, at the following times and upon the following terms:

(i) *Optional Prepayment in Whole.* From and after the date specified (if any) in the Payment Schedule (the “*Prepayment Option Commencement Date*”), on the Rental Payment Dates specified in the Payment Schedule, upon not less than thirty (30) days prior written notice, and upon payment in full of the sum of all Rental Payments then due *plus* the then applicable Prepayment Price, which shall include a prepayment premium on the unpaid Outstanding Balance as set forth in the Payment Schedule *plus* all other amounts then owing hereunder; or

(ii) *Casualty or Condemnation Prepayment.* In the event of substantial damage to or destruction or condemnation of substantially all of the Equipment, on the day specified in Lessee’s notice to Lessor of its exercise of the prepayment option (which shall be the earlier of the next Rental Payment Date or sixty (60) days after the casualty event) upon payment in full to Lessor of (A) in the event such prepayment occurs on a Rental Payment Date, the sum of (i) all Rental Payments then due *plus* (ii) the then applicable Prepayment Price *plus* (iii) all other amounts then owing hereunder OR, (B) in the event such prepayment occurs on a date other than a Rental Payment Date, the sum of (i) the applicable Prepayment Price shown on the Payment Schedule for the Rental Payment Date immediately preceding the applicable date of such prepayment (or if the date of such prepayment occurs prior to the first Rental Payment Date, the earliest Prepayment Price shown on the Payment Schedule) *plus* (ii) accrued interest at the Contract Rate (or the Taxable Rate if then in effect) on the Outstanding Balance as of the Rental Payment Date immediately preceding the applicable date of such prepayment from such Rental Payment Date (or if the date of such prepayment occurs prior to the first Rental Payment Date, the Commencement Date) to the date of such prepayment *plus* (iii) all other amounts then owing hereunder; or

(iii) *Extraordinary Prepayment in Part.* Prior to August 7, 2029, on any Rental Payment Date following the District’s receipt of the Project Grant, upon not less than thirty (30) days prior written notice, the Lessee may exercise a one-time extraordinary prepayment up to a total amount of \$2,420,000 which shall be applied by Lessor to the applicable unpaid Principal Portion of Rental Payments owing hereunder in the inverse order of the Rental Payment Dates at a price of 100.5% of such prepaid Principal Portion plus accrued interest thereon to the prepayment date.

(b) *Payment in Full.* Lessor’s security interests in and to the Equipment will be terminated and Lessee will own such Equipment free and clear of Lessor’s security interest in such Equipment, after either (i) payment of the applicable Prepayment Price and all other amounts then owing hereunder in accordance with either Section 10.01(a)(i) or Section 10.01(a)(ii) of this Agreement or (ii) upon the expiration of the Scheduled Term and payment in full of all Rental

Payments then due and all other amounts then owing hereunder in accordance with this Agreement. Notwithstanding anything herein to the contrary, no portion of Lessor's security interests in and to the Equipment or other Collateral will be terminated due to any partial prepayment pursuant to Section 10.01(a)(iii) of this Agreement.

ARTICLE XI

Section 11.01. Assignment by Lessor. (a) Lessor's right, title and interest in and to this Agreement, the Rental Payments and any other amounts payable by Lessee hereunder, the Escrow Agreement, its security interest in the Collateral (collectively, the "*Assigned Rights*"), may be assigned and reassigned by Lessor at any time, in whole or in part, to one or more assignees or sub-assignees without the necessity of obtaining the consent of Lessee; *provided*, that any such assignment, transfer or conveyance (i) shall be made only to investors each of whom Lessor reasonably believes is a "*qualified institutional buyer*" as defined in Rule 144A(a)(1) promulgated under the Securities Act of 1933, as amended, or an "*accredited investor*" as defined in Section 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act of 1933, as amended, and in either case is purchasing the Assigned Rights (or any interest therein) for its own account with no present intention to resell or distribute such Assigned Rights (or interest therein), subject to each investor's right at any time to dispose of the Assigned Rights (or any interest therein) as it determines to be in its best interests, (ii) shall not result in more than 35 owners of the Assigned Rights or the creation of any interest in the Assigned Rights in an aggregate principal component that is less than \$100,000 and (iii) shall not require Lessee to make Rental Payments, to send notices or otherwise to deal with respect to matters arising hereunder or under the Escrow Agreement with or to more than one Lease Servicer (as such term is defined below), and any trust agreement, participation agreement or custodial agreement under which multiple ownership interests in the Assigned Rights are created shall provide the method by which the owners of such interests shall establish the rights and duties of a single entity, trustee, owner, servicer or other fiduciary or agent acting on behalf of all of the assignees (herein referred to as the "*Lease Servicer*") to act on their behalf with respect to the Assigned Rights, including with respect to the exercise of rights and remedies of Lessor on behalf of such owners upon the occurrence of an Event of Default or an Event of Non-appropriation under this Agreement. Lessor and Lessee hereby acknowledge and agree that the restrictions and limitations on transfer as provided in this Section 11.01 shall apply to the first and subsequent assignees and sub-assignees of any of the Assigned Rights (or any interest therein).

(b) Unless to an affiliate controlling, controlled by or under common control with Lessor, no assignment, transfer or conveyance permitted by this Section 11.01 shall be effective as against Lessee until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee; *provided*, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, participation interests, trust certificates or partnership interests with respect to the Rental Payments payable under this Agreement, it shall thereafter be sufficient that Lessee receives notice of the name and address of the bank, trust company or other entity that acts as the Lease Servicer. Notices of assignment provided pursuant to this Section 11.01(b) shall contain a confirmation of compliance with the transfer requirements imposed by Section 11.01(a) hereof. During the Lease Term, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary

to comply with Section 149 of the Code. Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees or Lease Servicer last designated in such register. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right Lessee may have against Lessor or the Vendor. Assignments in part may include without limitation assignment of all of Lessor's security interest in and to the Equipment and all rights in, to and under this Agreement related to such Equipment, and all of Lessor's security interest in and to the Collateral, or all rights in, to and under the Escrow Agreement.

(c) If Lessor notifies Lessee of its intent to assign this Agreement, Lessee agrees that it shall execute and deliver to Lessor a Notice and Acknowledgement of Assignment substantially in the form of *Exhibit H* attached hereto within five (5) business days after its receipt of such request.

Section 11.02. Assignment and Subleasing by Lessee. **None of Lessee's right, title, and interest in, to and under this Agreement or any portion of the Equipment, the Escrow Agreement, the Escrow Account or any of the other Collateral may be assigned, encumbered or subleased by Lessee for any reason, and any purported assignment, encumbrance or sublease without Lessor's prior written consent shall be null and void.**

ARTICLE XII

Section 12.01. Events of Default Defined. Any of the following events shall constitute an "Event of Default" under this Agreement:

(a) Failure by Lessee to (i) subject to Section 3.03, pay any Rental Payment or other payment required to be paid under this Agreement within ten (10) days after the date when due as specified herein, (ii) maintain insurance as required herein, or (iii) observe and perform any covenant, condition or agreement on its part to be observed or performed under Section 6.01 or 6.02 hereof;

(b) Failure by Lessee to observe and perform any covenant, condition or agreement contained in this Agreement on its part to be observed or performed, other than as referred to in subsection (a) above, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; *provided* that, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;

(c) Any statement, representation or warranty made by Lessee in or pursuant to this Agreement or its execution, delivery or performance shall prove to have been false, incorrect, misleading, or breached in any material respect on the date when made;

(d) Any default occurs under any other agreement for borrowing money, lease financing of property or otherwise receiving credit under which Lessee is an obligor, if such default (i) arises under any other agreement for borrowing money, lease financing of property or provision of credit provided by Lessor or any affiliate of Lessor, or (ii) arises under any obligation under which there is outstanding, owing or committed an aggregated amount in excess of \$100,000.00; *provided*, that agreements and obligations referenced in the preceding sentence do not include bonds issued by Lessee solely as a conduit issuer and special tax or assessment bonds and other similar obligations for which Lessee is never ultimately responsible to pay from its own funds;

(e) Lessee shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable Federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, liquidation, readjustment, reorganization, moratorium or insolvency proceeding; or

(f) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator for Lessee or of all or a substantial part of the assets of Lessee, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of thirty (30) consecutive days.

Section 12.02. Remedies on Default. Whenever any Event of Default exists, Lessor shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

(a) By written notice to Lessee, Lessor may declare all Rental Payments payable by Lessee and other amounts payable by Lessee hereunder to the end of the then current Original Term or Renewal Term to be immediately due and payable;

(b) With or without terminating the Lease Term, Lessor may enter the premises where the Equipment is located and retake possession of such Equipment or require Lessee at Lessee's expense to promptly return any or all of such Equipment to the possession of Lessor at such place within the United States as Lessor shall specify, and sell or lease such Equipment or, for the account of Lessee, sublease such Equipment, continuing to hold Lessee liable, but solely from legally available funds, for the difference between (i) the Rental Payments payable by Lessee and other amounts hereunder that are payable by Lessee to the end of the then current Original Term or Renewal Term, as the case may be, and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of Lessor in exercising its remedies hereunder, including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing such Equipment and all brokerage, auctioneer's and attorney's fees), subject, however, to the

provisions of Section 3.03 of this Agreement. The exercise of any such remedies respecting any such Event of Default shall not relieve Lessee of any other liabilities hereunder or with respect to the Equipment;

(c) Lessor may terminate the Escrow Agreement and apply any proceeds in the Escrow Account to the Rental Payments scheduled to be paid hereunder; and/or

(d) Lessor may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under this Agreement or the Escrow Agreement or as a secured party in any or all of the Equipment or the Escrow Account.

Section 12.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Article XII it shall not be necessary to give any notice other than such notice as may be required in this Article XII.

ARTICLE XIII

Section 13.01. Notices. All notices, certificates or other communications under this Agreement shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, or delivered by overnight courier, or sent by facsimile transmission (with electronic confirmation) to the parties hereto at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto shall designate in writing to the other for notices to such party) and to any assignee at its address as it appears on the registration books maintained by Lessee.

Section 13.02. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

Section 13.03. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 13.04. Amendments, Changes and Modifications. This Agreement may only be amended by Lessor and Lessee in writing.

Section 13.05. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument; *provided*, that only Counterpart No. 1 of this Agreement shall constitute chattel paper for purposes of the applicable Uniform Commercial Code.

Section 13.06. Applicable Law; Venue; Waiver of Jury Trial. This Agreement shall be governed by and construed in accordance with the laws of the State. The parties hereto consent and submit to the jurisdiction of the State and venue in any state or Federal court of such State for the purposes of any suit, action or other proceeding arising in connection with this Agreement, and each party expressly waives any objections that it may have to the venue of such courts. The parties hereto expressly waive any right to trial by jury in any action brought on or with respect to this Agreement. If the waiver of jury trial contained herein is unenforceable for any reason, then the parties hereto agree that the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision.

Section 13.07. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 13.08. No Advisory or Fiduciary Relationship. In connection with all aspects of each transaction contemplated by this Agreement (including in connection with any amendment, waiver or other modification hereof or of any other related document), the Lessee acknowledges and agrees that: (a) (i) the transactions regarding this Agreement provided by the Lessor and any affiliate thereof are arm's-length commercial transactions between the Lessee, on the one hand, and the Lessor and its affiliates, on the other hand, (ii) the Lessee has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Lessee is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated by this Agreement and by the other related documents; (b) (i) the Lessor and its affiliates each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for the Lessee, or any other person and (ii) neither the Lessor nor any of its affiliates has any obligation to the Lessee with respect to the transactions contemplated by this Agreement except those obligations expressly set forth herein and in the other related documents; and (c) the Lessor and its affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Lessee, and neither the Lessor nor any of its affiliates has any obligation to disclose any of such interests to the Lessee. To the fullest extent permitted by law, the Lessee, hereby waives and releases any claims that it may have against the Lessor or any of its affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated by this Agreement.

Section 13.09. Entire Agreement. The parties agree that this Agreement constitutes the final and entire agreement between the parties superseding all conflicting terms or provisions of any prior proposals, term sheets, solicitation documents, requests for proposals, award notices, approval letters or any other agreements or understandings between the parties.

Section 13.10. Electronic Signatures. The Related Documents may be executed and delivered by facsimile signature or other electronic or digital means (including, without limitation, Adobe's Portable Document Format ("PDF")). Any such signature shall be of the same force and effect as an original signature, it being the express intent of the parties to create a valid and legally

enforceable contract between them. The exchange and delivery of the Related Documents and the related signature pages via facsimile or as an attachment to electronic mail (including in PDF) shall constitute effective execution and delivery by the parties and may be used by the parties for all purposes. Notwithstanding the foregoing, at the request of either party, the parties hereto agree to exchange inked original replacement signature pages as soon thereafter as reasonably practicable.

[Remainder of Page Intentionally Left Blank]

[Signature Page Follows]

IN WITNESS WHEREOF, Lessor and Lessee have caused this Equipment Lease/Purchase Agreement to be executed in their names by their duly authorized representatives as of the date first above written.

LESSOR:

LESSEE:

BANK OF AMERICA, NATIONAL ASSOCIATION

CITY OF FORT BRAGG

11333 McCormick Road
Hunt Valley II
M/C MD5-031-06-05
Hunt Valley, MD 21031
Attention: Contract Administration
Fax No.: (443) 541-3057

416 North Franklin Street
Fort Bragg, CA 95437
Attention: City Manager / Finance Director
Telephone: (707) 961-2825 x123
Fax No.: (707) 961-2802
Email: iwhippy@fortbragg.com

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Counterpart No. ____ of ____ manually executed and serially numbered counterparts. To the extent that this Agreement constitutes chattel paper (as defined in the applicable Uniform Commercial Code), no security interest or ownership herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

LIST OF EXHIBITS

EXHIBIT A	—	Form of Equipment Schedule
EXHIBIT B	—	Form of Payment Schedule
EXHIBIT C-1	—	Form of Authorizing Resolution
EXHIBIT C-2	—	Form of Incumbency and Authorization Certificate
EXHIBIT D	—	Form of Opinion of Lessee's Counsel
EXHIBIT E	—	Form of Final Acceptance Certificate
EXHIBIT F	—	Form of Self-Insurance Certificate
EXHIBIT G	—	Form of Bank Qualification Certificate
EXHIBIT H	—	Form of Notice and Acknowledgement of Assignment
EXHIBIT I	—	Form of Escrow and Account Control Agreement

EXHIBIT A

EQUIPMENT SCHEDULE

The Equipment includes, but is not limited to, the equipment, fixtures and other goods and property acquired with the proceeds of the Agreement or pursuant to the terms of the Agreement and includes, but is not limited to, the energy conservation and production measures such as rooftop replacement and Solar Photovoltaic System (Solar PV), as all such Equipment is further described in “Exhibit A: Energy Services Proposal, dated May 29, 2024” to the Syserco Contract and located at the following locations:

<u>Site Name</u>	<u>Roof Replacement</u>
Fort Bragg Police Station	~10,000 square feet

<u>Solar Photovoltaic System (Solar PV)</u>				
<u>Site Name</u>	<u>Nominal Array Size (kW DC)</u>	<u>Nominal System Size (kW AC)</u>	<u>Target Array Production (kWh)</u>	<u>Mounting Type</u>
Police Station	46	50	65,051	PV Roof Mount
Fire Department	22	17	31,120	PV Roof Mount
C.V. Starr Community Center	372	332	495,347	PV Carport
Corporate Yard / Water Treatment Facility	127	120	171,010	PV Shade Structure
City Hall	40	34	53,084	PV Carport
Wastewater Treatment Plant	327	280	446,316	PV Shade Structure
Total	934	833	1,261,928	

<u>Site Name and Address</u>	<u>APN#</u>
Police Station 250 Cypress Street Fort Bragg, CA 95437	APN: 018-040-57
Fire Department 141 N. Main Street Fort Bragg, CA 95437	APN: 008-161-04,12
C.V. Starr Community Center 300 S. Lincoln Street Fort Bragg, CA 95437	APN: 008-280-62
Corporate Yard / Water Treatment Facility 31301 E. Cedar Street Fort Bragg, CA 95437	APN: 020-500-13-00

<u>Site Name and Address</u>	<u>APN#</u>
City Hall 416 N. Franklin Street Fort Bragg, CA 95437	APN: 008-092-05,06,07
Wastewater Treatment Plant 281 Jere Melo Street Fort Bragg, CA 95437	APN: 008-020-07-00

EXHIBIT B

PAYMENT SCHEDULE

RENTAL PAYMENT DATE	RENTAL PAYMENT AMOUNT	INTEREST PORTION	PRINCIPAL PORTION	OUTSTANDING BALANCE	PREPAYMENT PRICE* (including prepayment premium, if applicable)
8/7/24				\$7,606,000.00	
8/1/26	\$682,801.41	\$672,801.41	\$10,000.00	7,596,000.00	NA
2/1/27	169,390.80	169,390.80	0.00	7,596,000.00	NA
8/1/27	242,390.80	169,390.80	73,000.00	7,523,000.00	NA
2/1/28	167,762.90	167,762.90	0.00	7,523,000.00	NA
8/1/28	265,762.90	167,762.90	98,000.00	7,425,000.00	NA
2/1/29	165,577.50	165,577.50	0.00	7,425,000.00	NA
8/1/29	290,577.50	165,577.50	125,000.00	7,300,000.00	\$7,446,000.00
2/1/30	162,790.00	162,790.00	0.00	7,300,000.00	7,446,000.00
8/1/30	317,790.00	162,790.00	155,000.00	7,145,000.00	7,287,900.00
2/1/31	159,333.50	159,333.50	0.00	7,145,000.00	7,287,900.00
8/1/31	346,333.50	159,333.50	187,000.00	6,958,000.00	7,097,160.00
2/1/32	155,163.40	155,163.40	0.00	6,958,000.00	7,097,160.00
8/1/32	378,163.40	155,163.40	223,000.00	6,735,000.00	6,869,700.00
2/1/33	150,190.50	150,190.50	0.00	6,735,000.00	6,869,700.00
8/1/33	411,190.50	150,190.50	261,000.00	6,474,000.00	6,603,480.00
2/1/34	144,370.20	144,370.20	0.00	6,474,000.00	6,603,480.00
8/1/34	446,370.20	144,370.20	302,000.00	6,172,000.00	6,295,440.00
2/1/35	137,635.60	137,635.60	0.00	6,172,000.00	6,295,440.00
8/1/35	484,635.60	137,635.60	347,000.00	5,825,000.00	5,941,500.00
2/1/36	129,897.50	129,897.50	0.00	5,825,000.00	5,941,500.00
8/1/36	524,897.50	129,897.50	395,000.00	5,430,000.00	5,484,300.00
2/1/37	121,089.00	121,089.00	0.00	5,430,000.00	5,484,300.00
8/1/37	568,089.00	121,089.00	447,000.00	4,983,000.00	5,032,830.00
2/1/38	111,120.90	111,120.90	0.00	4,983,000.00	5,032,830.00
8/1/38	615,120.90	111,120.90	504,000.00	4,479,000.00	4,523,790.00
2/1/39	99,881.70	99,881.70	0.00	4,479,000.00	4,523,790.00
8/1/39	664,881.70	99,881.70	565,000.00	3,914,000.00	3,953,140.00
2/1/40	87,282.20	87,282.20	0.00	3,914,000.00	3,953,140.00
8/1/40	717,282.20	87,282.20	630,000.00	3,284,000.00	3,316,840.00
2/1/41	73,233.20	73,233.20	0.00	3,284,000.00	3,316,840.00
8/1/41	774,233.20	73,233.20	701,000.00	2,583,000.00	2,608,830.00
2/1/42	57,600.90	57,600.90	0.00	2,583,000.00	2,608,830.00
8/1/42	834,600.90	57,600.90	777,000.00	1,806,000.00	1,824,060.00

RENTAL PAYMENT DATE	RENTAL PAYMENT AMOUNT	INTEREST PORTION	PRINCIPAL PORTION	OUTSTANDING BALANCE	PREPAYMENT PRICE* (including prepayment premium, if applicable)
2/1/43	40,273.80	40,273.80	0.00	1,806,000.00	1,824,060.00
8/1/43	899,273.80	40,273.80	859,000.00	947,000.00	956,470.00
2/1/44	21,118.10	21,118.10	0.00	947,000.00	956,470.00
8/1/44	968,118.10	21,118.10	947,000.00	-	-
TOTAL	<u>\$12,586,224.81</u>	<u>\$4,980,224.81</u>	<u>\$7,606,000.00</u>		

Contract Rate. The Contract Rate is 4.46% per annum.

Prepayment Option Commencement Date. For purposes of Section 10.01 of the Agreement, the Prepayment Option Commencement Date is August 1, 2029.

* *Prepayment from Project Grant.* Prior to August 7, 2029, on any Rental Payment Date following the District’s receipt of the Project Grant, upon not less than thirty (30) days prior written notice, the Lessee may exercise a one-time extraordinary prepayment up to a total amount of \$2,420,000 which shall be applied by Lessor to the applicable unpaid Principal Portion of Rental Payments owing hereunder in the inverse order of the Rental Payment Dates at a price of 100.5% of such prepaid Principal Portion plus accrued interest thereon to the prepayment date.

LESSOR:

LESSEE:

BANK OF AMERICA, NATIONAL ASSOCIATION

CITY OF FORT BRAGG

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT C-1

FORM OF AUTHORIZING RESOLUTION

See Item #3(a) in Transcript

EXHIBIT C-2

FORM OF INCUMBENCY AND AUTHORIZATION CERTIFICATE

The undersigned, a duly elected or appointed and acting City Clerk of the City of Fort Bragg (“*Lessee*”) certifies as follows:

A. The following listed persons are duly elected or appointed and acting officials of Lessee (the “*Officials*”) in the capacity set forth opposite their respective names below and the facsimile signatures below are true and correct as of the date hereof;

B. The Officials are duly authorized, on behalf of Lessee, to negotiate, execute, in writing or electronically, and deliver the Equipment Lease/Purchase Agreement dated as of August 7, 2024 by and between Lessee and Bank of America, National Association (“*Lessor*”), the Escrow and Account Control Agreement dated as of August 7, 2024 by and among Lessor, Lessee and Wilmington Trust, National Association, as Escrow Agent, all documents related thereto and delivered in connection therewith, and any future modification(s) or amendments thereof (collectively, the “*Operative Agreements*”), and the Operative Agreements each are the binding and authorized agreements of Lessee, enforceable in all respects in accordance with their respective terms.

NAME OF OFFICIAL	TITLE	SIGNATURE
_____	_____	_____
_____	_____	_____
_____	_____	_____

Dated: August 7, 2024

By: _____
Name: _____
Title: _____

(The signer of this Certificate cannot be listed above as authorized to execute the Operative Agreements.)

EXHIBIT D-1

**FORM OF OPINION OF GENERAL COUNSEL TO LESSEE
(TO BE TYPED ON LETTERHEAD OF CITY ATTORNEY)**

[Closing Date]

City of Fort Bragg
416 North Franklin Street
Fort Bragg, California 95437

Bank of America, National Association
11333 McCormick Road
Mail Code: MD5-031-06-05
Hunt Valley, MD 21031
Attn: Contract Administration

Jones Hall, A Professional Law Corporation
475 Sansome Street, Suite 1700
San Francisco, CA 94111

Re: Equipment Lease/Purchase Agreement,
 dated as of August 7, 2024, by and between
 Bank of America, National Association, as Lessor,
 and the City of Fort Bragg, as Lessee

Ladies and Gentlemen:

As City Attorney to the City of Fort Bragg (“*Lessee*”), I have examined (a) an executed counterpart of that certain Equipment Lease/Purchase Agreement, dated as of August 7, 2024, and Exhibits thereto by and between Bank of America, National Association (“*Lessor*”) and Lessee (the “*Agreement*”), which, among other things, provides for the lease of certain property (the “*Equipment*”) and a certain Escrow and Account Control Agreement dated as of August 7, 2024 by and among Lessor, Lessee, and Wilmington Trust, National Association as Escrow Agent (the “*Escrow Agreement*”), (b) an executed counterpart of the ordinances or resolutions of Lessee with respect to authorization of the transaction contemplated by the Agreement, the Escrow Agreement and documents related thereto, and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions. The Agreement, the Escrow Agreement, and the documents relating thereto are herein collectively referred to as the “*Transaction Documents*”.

Based on the foregoing, I am of the following opinions:

1. Lessee is a general law city, duly organized and existing under the laws of the State, and is a political subdivision of the State within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the “Code”) and the obligations of Lessee under the Agreement will constitute an obligation of Lessee within the meaning of Section 103(a) of the Code, notwithstanding Section 103(b) of the Code.

2. Lessee has the requisite power and authority to lease and acquire the Equipment and to execute and deliver the Transaction Documents and to perform its obligations under the Transaction Documents.

3. The Transaction Documents have been duly authorized, approved, executed and delivered by and on behalf of Lessee and the Transaction Documents are legal, valid and binding obligations of Lessee, enforceable against Lessee in accordance with their respective terms, except to the extent limited by state and federal law affecting creditor’s remedies and by bankruptcy, reorganization, moratorium or other laws of general application relating to or affecting the enforcement of creditors’ rights.

4. The authorization, approval, execution and delivery of the Transaction Documents and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, procurement and public bidding laws and all other applicable State or Federal laws.

5. There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Transaction Documents or the security interest of Lessor or its assigns, as the case may be, in the Equipment, the Escrow Account or other Collateral thereunder.

6. The portion of Rental Payments designated as interest is excluded from gross income for Federal income tax purposes under Section 103 of the Code and is exempt from State of California personal income taxes; and such interest is not a specific item of tax preference for purposes of the federal alternative minimum tax.

All capitalized terms herein shall have the same meanings as in the Transaction Documents unless otherwise provided herein. Lessor and its successors and assigns are entitled to rely on this opinion.

Sincerely,

EXHIBIT D-2

**FORM OF OPINION OF SPECIAL COUNSEL TO LESSEE
(TO BE TYPED ON LETTERHEAD OF SPECIAL COUNSEL)**

City Council
City of Fort Bragg
416 North Franklin Street
Fort Bragg, California 95437

Bank of America, National Association
11333 McCormick Road
Mail Code: MD5-031-06-05
Hunt Valley, MD 21031
Attn: Contract Administration

OPINION: \$_____ aggregate principal amount of Rental Payment obligations of the City of Fort Bragg under that certain Equipment Lease/Purchase Agreement, dated as of August 7, 2024, by and between City of Fort Bragg and Bank of America, National Association

Ladies and Gentlemen:

We have acted as special counsel to the City of Fort Bragg (the “City”) in connection with the delivery by the City of the Equipment Lease/Purchase Agreement, dated as of August 7, 2024 (the “Agreement”), by and between the City and Bank of America, National Association (the “Lessor”). The City is obligated under the Agreement to pay certain rental payments thereunder (the “Rental Payments”) to Lessor. This opinion is being delivered in our capacity as special counsel to the City, and not as counsel to the other addressee.

We have examined the Agreement and such other documents and matters of law as we have deemed necessary in connection with the following opinions.

As to questions of fact material to our opinion, we have relied upon representations of the City contained in the Agreement, and in certified proceedings and other certifications of public officials furnished to us, without undertaking to verify the same by independent investigation. Regarding certain questions of law material to our opinion, we have assumed the correctness of certain legal conclusions contained in the written opinions of the city attorney to the City, and others, without undertaking to verify the same by independent investigation.

Based on the foregoing, we are of the opinion, under existing law, as follows:

1. The portion of the Rental Payments designated as interest and received by Lessor is excluded from gross income for federal income tax purposes and is not an item

of tax preference for purposes of the federal alternative minimum tax. The Agreement is a “qualified tax-exempt obligation” within the meaning of section 265(b)(3) of the Internal Revenue Code of 1986 (the “Tax Code”), and, in the case of certain financial institutions (within the meaning of section 265(b)(5) of the Tax Code), a deduction is allowed for 80 percent of that portion of such financial institutions’ interest expense allocable to interest payable with respect to the Agreement.

The opinions set forth in the preceding paragraph are subject to the condition that the City comply with all requirements of the Tax Code that must be satisfied subsequent to the execution and delivery of the Agreement in order that the interest with respect thereto be, and continue to be, excludable from gross income for federal income tax purposes, and that the Agreement be, or continue to be, a “qualified tax-exempt obligation” within the meaning of Section 265(b)(3) of the Tax Code. The City has made certain representations and covenants in order to comply with each such requirement. Inaccuracy of those representations, or failure to comply with certain of those covenants, may cause the inclusion of such interest in gross income for federal income tax purposes, which may be retroactive to the date of delivery of the Agreement, or may cause the Agreement not to be a “qualified tax-exempt obligation” within the meaning of Section 265(b)(3) of the Tax Code.

2. The portion of the Rental Payments designated as interest and received by Lessor is exempt from personal income taxation imposed by the State of California.

We express no opinion regarding any other tax consequences arising with respect to the ownership, sale or disposition of, or the amount, accrual or receipt of interest on, the Agreement.

The rights of the Lessor under the Agreement and the enforceability of the Agreement are limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors’ rights generally, and by equitable principles, whether considered at law or in equity.

This opinion is given as of the date hereof, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law that may hereafter occur. Moreover, our opinions are not a guarantee of a particular result, and are not binding on the Internal Revenue Service or any court; rather, our opinions represent our legal judgment based upon our review of existing law that we deem relevant to such opinions, and any assumptions expressed herein, and in reliance upon the representations, and covenants referenced above. Our engagement with respect to this matter has terminated as of the date hereof.

Respectfully submitted,

A Professional Law Corporation

EXHIBIT E

FORM OF FINAL ACCEPTANCE CERTIFICATE

Bank of America, National Association
11333 McCormick Road
Mail Code: MD5-031-06-05
Hunt Valley, MD 21031
Attn: Contract Administration

Re: Equipment Lease/Purchase Agreement,
dated as of August 7, 2024, by and between
Bank of America, National Association, as Lessor,
and the City of Fort Bragg, as Lessee

Ladies and Gentlemen:

In accordance with the above-referenced Equipment Lease/Purchase Agreement (the "*Agreement*"), the undersigned Lessee hereby certifies and represents to, and agrees with Lessor as follows:

1. All of the Equipment has been delivered, installed and unconditionally accepted on the date hereof.
2. Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.
3. Lessee is currently maintaining the insurance coverage required by Section 7.02 of the Agreement.
4. Lessee hereby reaffirms that the representations, warranties and covenants contained in the Agreement are true and correct as of the date hereof.
5. No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default exists at the date hereof.
6. No Material Adverse Change has occurred since the date of the execution and delivery of the Agreement.
7. No Event of Non-appropriation has occurred or been threatened.

Capitalized terms used, but not defined, in this Final Acceptance Certificate shall have the same meanings as when such terms are used in the Agreement.

Date: _____ -

LESSEE:

CITY OF FORT BRAGG

By: _____

Name: _____

Title: _____

(SEAL)

EXHIBIT F

FORM OF SELF INSURANCE CERTIFICATE

Bank of America, National Association
11333 McCormick Road
Mail Code: MD5-031-06-05
Hunt Valley, MD 21031
Attn: Contract Administration

Re: Equipment Lease/Purchase Agreement,
dated as of August 7, 2024, (the "Agreement")
by and between Bank of America, National Association, as Lessor,
and the City of Fort Bragg, as Lessee

In connection with the above-referenced Agreement, the City of Fort Bragg (the "Lessee") hereby warrants and represents to Bank of America, National Association the following information. The terms capitalized herein but not defined herein shall have the meanings assigned to them in the Agreement.

1. The Lessee is self-insured for damage or destruction to the Equipment. The dollar amount limit for property damage to the Equipment under such self-insurance program is \$_____. **[The Lessee maintains an umbrella insurance policy for claims in excess of Lessee's self-insurance limits for property damage to the Equipment which policy has a dollar limit for property damage to the Equipment under such policy of \$_____.]**

2. The Lessee is self-insured for liability for injury or death of any person or damage or loss of property arising out of or relating to the condition or operation of the Equipment. The dollar limit for such liability claims under the Lessee's self-insurance program is \$_____. **[The Lessee maintains an umbrella insurance policy for claims in excess of Lessee's self-insurance limits for liability which policy has a dollar limit for liabilities for injury and death to persons as well as damage or loss of property arising out of or relating to the condition or operation of the Equipment in the amount of \$_____.]**

[3]. The Lessee maintains a self-insurance fund. Monies in the self-insurance fund **[are/are not]** subject to annual appropriation. The total amount maintained in the self-insurance fund to cover Lessee's self-insurance liabilities is \$_____. **[Amounts paid from the Lessee's self-insurance fund are subject to a dollar per claim of \$_____.]**

[3]. The Lessee does not maintain a self-insurance fund. The Lessee obtains funds to pay claims for which it has self-insured from the following sources:

_____. Amounts payable for claims from such sources are limited as follows: _____

4. Attached hereto are copies of certificates of insurance with respect to policies maintained by Lessee.

LESSEE:

CITY OF FORT BRAGG

By: _____

Name: _____

Title: _____

EXHIBIT G

FORM OF BANK QUALIFICATION CERTIFICATE

The undersigned, a duly authorized official of the City of Fort Bragg (the “*Lessee*”) certifies in connection with the Equipment Lease/Purchase Agreement dated as of August 7, 2024 (the “*Agreement*”) by and between Bank of America, National Association and Lessee as follows:

1. The obligations evidenced by the Agreement are not “private activity bonds” as defined in Section 141 of the Internal Revenue Code of 1986, as amended (the “*Code*”);

2. The Lessee hereby designates the principal components of the Rental Payments payable under the Agreement as “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code;

3. The reasonably anticipated amount of tax-exempt obligations (other than private activity bonds, treating qualified 501(c)(3) bonds as not being private activity bonds) which will be issued by the Lessee (and all entities treated as one issuer with the Lessee, and all subordinate entities whose obligations are treated as issued by the Lessee) during the current calendar year will not exceed \$10,000,000; and

4. Not more than \$10,000,000 of obligations issued by the Lessee during the current calendar year has been designated for purposes of Section 265(b)(3) of the Code.

DATE: _____

LESSEE:

CITY OF FORT BRAGG

By: _____

Name: _____

Title: _____

EXHIBIT H

FORM OF NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT

Dated _____

Bank of America, National Association (“*Assignor*”) hereby gives notice that it has assigned and sold to _____ (“*Assignee*”) all of Assignor’s right, title and interest in, to and under the Equipment Lease/Purchase Agreement dated as of August 7, 2024 (the “*Agreement*”), by and between Assignor and the City of Fort Bragg (“*Lessee*”), together with all exhibits, schedules, addenda and attachments related thereto, and all certifications and other documents delivered in connection therewith, the Rental Payments and other amounts due under the Agreement, all of Assignor’s right, title and interest in the Equipment (as defined in the Agreement), and all of Assignor’s right, title and interest in, to and under the Escrow and Account Control Agreement dated as of August 7, 2024 (the “*Escrow Agreement*”) by and among Lessee, Assignor and Wilmington Trust, National Association, as Escrow Agent, together with the Escrow Account and other Collateral (collectively, the “*Assigned Property*”). Each capitalized term used but not defined herein has the meaning set forth in the Agreement.

1. Lessee hereby acknowledges the effect of the assignment of the Assigned Property and absolutely and unconditionally agrees to deliver to Assignee all Rental Payments and other amounts coming due under the Agreement in accordance with the terms thereof on and after the date of this Acknowledgment.

2. Lessee hereby agrees that: (i) Assignee shall have all the rights of Lessor under the Agreement and all related documents, including, but not limited to, the rights to issue or receive all notices and reports, to give all consents or agreements to modifications thereto, to receive title to the Equipment in accordance with the terms of the Agreement, to declare a default and to exercise all rights and remedies thereunder in connection with the occurrence of an Event of Non-appropriation or an Event of Default; and (ii) **[except as provided in Section 3.03 of the Agreement,]** the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in the Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense.

3. Lessee agrees that, as of the date of this Notice and Acknowledgment of Assignment (this “*Acknowledgement*”), the following information about the Agreement is true, accurate and complete:

Number of Rental Payments Remaining	_____
Amount of Each Rental Payment	\$_____
Total Amount of Rental Payments Remaining	\$_____
Frequency of Rental Payments	_____
Next Rental Payment Due	_____
Funds Remaining in Escrow Account	\$_____

4. The Agreement remains in full force and effect, has not been amended, no Event of Default (or event which with the passage of time or the giving of notice or both would constitute an Event of Default) has occurred thereunder and no Event of Non-appropriation has occurred or is threatened with respect thereto.

5. Assignor hereby acknowledges the transfer restrictions imposed by Section 11.01 of the Agreement and confirms that the assignment to Assignee has been made in accordance with the provisions of that Section.

6. Any inquiries of Lessee related to the Agreement and any requests for disbursements from the Escrow Account, if applicable, and all Rental Payments and other amounts coming due pursuant to the Agreement on and after the date of this Acknowledgment should be remitted to Assignee at the following address (or such other address as provided to Lessee in writing from time to time by Assignee):

ACKNOWLEDGED AND AGREED:

LESSEE: CITY OF FORT BRAGG

By: _____
Name: _____
Title: _____

ASSIGNOR: BANK OF AMERICA, NATIONAL ASSOCIATION

By: _____
Name: _____
Title: _____

EXHIBIT I

ESCROW AND ACCOUNT CONTROL AGREEMENT

See Item #4 in Transcript

ESCROW AND ACCOUNT CONTROL AGREEMENT

This Escrow and Account Control Agreement (this “*Agreement*”), dated as of August 7, 2024, by and among Bank of America, National Association, a national banking association (together with its successors and assigns, hereinafter referred to as “*Lessor*”), City of Fort Bragg, a city existing under the laws of the State of California (hereinafter referred to as “*Lessee*”) and Wilmington Trust, National Association, a national banking association organized under the laws of the United States of America (hereinafter referred to as “*Escrow Agent*”).

Reference is made to that certain Equipment Lease/Purchase Agreement dated as of August 7, 2024 between Lessor and Lessee (hereinafter referred to as the “*Lease*”), covering the acquisition and lease of certain Equipment described therein (the “*Equipment*”). It is a requirement of the Lease that the Acquisition Amount (\$7,606,000) be deposited into a segregated escrow account under terms satisfactory to Lessor, for the purpose of fully funding the Lease, and providing a mechanism for the application of such amounts to the purchase of and payment for the Equipment.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Creation of Escrow Account. (a) There is hereby created an escrow fund to be known as the “City of Fort Bragg Escrow Account” (the “*Escrow Account*”) to be held by the Escrow Agent for the purposes stated herein, for the benefit of Lessor and Lessee, to be held, disbursed and returned in accordance with the terms hereof.

(b) Lessee may, from time to time, provide written instructions for Escrow Agent to use any available cash in the Escrow Account to purchase any money market fund or liquid deposit investment vehicle that Escrow Agent from time to time makes available to the parties hereto. Such written instructions shall be provided via delivery to Escrow Agent of a signed and completed Escrow Account Investment Selection Form (such form available from Escrow Agent upon request). All funds invested by Escrow Agent at the direction of Lessee in such short-term investments (as more particularly described in Escrow Agent’s Escrow Account Investment Selection Form) shall be deemed to be part of the Escrow Account and subject to all the terms and conditions of this Agreement. The Escrow Agent is hereby authorized and directed to sell or redeem any such investments as it deems necessary to make any payments or distributions required under this Agreement. The Lessee acknowledges that neither the Escrow Agent nor the Lessor is providing investment supervision, recommendations, or advice. If any cash is received for the Escrow Account after the cut-off time for the designated short-term investment vehicle, the Escrow Agent shall hold such cash uninvested until the next Business Day. “*Business Day*” means a day other than a Saturday, Sunday or legal holiday, on which banking institutions are not closed in Chicago, Illinois, Fort Bragg, California or New York, New York. In the absence of written instructions from Lessee (on Escrow Agent’s Escrow Account Investment Selection Form) designating a short-term investment of cash in the Escrow Account, cash in the Escrow Account shall remain uninvested and it shall not be collateralized. Escrow Agent shall have no obligation to pay interest on cash in respect of any period during which it remains uninvested. Lessee shall

be solely responsible for ascertaining that all proposed investments and reinvestments are Qualified Investments and that they comply with federal, state and local laws, regulations and ordinances governing investment of such funds and for providing appropriate notice to the Escrow Agent for the reinvestment of any maturing investment. Accordingly, neither the Escrow Agent nor Lessor shall be responsible for any liability, cost, expense, loss or claim of any kind, directly or indirectly arising out of or related to the investment or reinvestment of all or any portion of the moneys on deposit in the Escrow Account, and Lessee agrees to and does hereby release the Escrow Agent and Lessor from any such liability, cost, expenses, loss or claim. Interest on the Escrow Account shall become part of the Escrow Account, and gains and losses on the investment of the moneys on deposit in the Escrow Account shall be borne by the Lessee. The Escrow Agent shall have no discretion whatsoever with respect to the management, disposition or investment of the Escrow Account. The Escrow Agent shall not be responsible for any market decline in the value of the Escrow Account and has no obligation to notify Lessor and Lessee of any such decline or take any action with respect to the Escrow Account, except upon specific written instructions stated herein. For purposes of this Agreement, "Qualified Investments" means any investments which meet the requirements of California Government Code Sections 53600 *et seq.*

(c) Unless the Escrow Account is earlier terminated in accordance with the provisions of paragraph (d) below, amounts in the Escrow Account shall be disbursed by the Escrow Agent in payment of amounts described in Section 2 hereof upon receipt of written instruction(s) from Lessor, as is more fully described in Section 2 hereof. If the amounts in the Escrow Account are insufficient to pay such amounts, Lessee shall provide any balance of the funds needed to complete the acquisition of the Equipment. Any moneys remaining in the Escrow Account on or after the earlier of (i) the expiration of the Acquisition Period or (ii) the date on which Lessee executes a Final Acceptance Certificate shall be applied as provided in Section 4 hereof.

(d) The Escrow Account shall be terminated at the earliest of (i) the final distribution of amounts in the Escrow Account, (ii) the date on which Lessee executes a Final Acceptance Certificate or (iii) written notice given by Lessor of the occurrence of an Event of Default under the Lease or termination of the Lease due to an Event of Non-appropriation. Notwithstanding the foregoing, this Agreement shall not terminate nor shall the Escrow Account be closed until all funds deposited hereunder have been disbursed.

(e) The Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument nor as to the identity, authority, or right of any person executing the same; and its duties hereunder shall be limited to the receipt of such moneys, instruments or other documents received by it as the Escrow Agent, and for the disposition of the same in accordance herewith. Notwithstanding and without limiting the generality of the foregoing, concurrent with the execution of this Agreement, Lessee and Lessor, respectively, shall deliver to the Escrow Agent an authorized signers form in the form of Exhibit A-1 (Lessee) and Exhibit A-2 (Lessor) attached hereto. Notwithstanding the foregoing sentence, the Escrow Agent is authorized to comply with and rely upon any notices, instructions or other communications believed by it to have been sent or given by the parties or by a person or persons authorized by the parties. The Escrow Agent

specifically allows for receiving direction by written or electronic transmission from an authorized representative with the following caveat, to the extent permitted by law, Lessee and Lessor agree to indemnify and hold harmless the Escrow Agent against any and all claims, losses, damages, liabilities, judgments, costs and expenses (including reasonable attorneys' fees) (collectively, "Losses") incurred or sustained by the Escrow Agent as a result of or in connection with the Escrow Agent's reliance upon and compliance with instructions or directions given by written or electronic transmission given by each, respectively, *provided, however*, that such Losses have not arisen from the gross negligence or willful misconduct of the Escrow Agent, with regards to the execution of the instructions or directions in question, it being understood that forbearance on the part of the Escrow Agent to verify or confirm that the person giving the instructions or directions, is, in fact, an authorized person shall not be deemed to constitute gross negligence or willful misconduct.

In the event conflicting instructions as to the disposition of all or any portion of the Escrow Account are at any time given by Lessor and Lessee, the Escrow Agent shall abide by the instructions or entitlement orders given by Lessor without consent of the Lessee.

(f) Unless the Escrow Agent is guilty of gross negligence or willful misconduct with regard to its duties hereunder, Lessee agrees to and does hereby release and indemnify the Escrow Agent and its directors, officers, employees and agents and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Escrow Agent under this Agreement; and in connection therewith, does to the extent permitted by law indemnify the Escrow Agent against any and all expenses; including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim.

(g) If Lessee and Lessor shall be in disagreement about the interpretation of the Lease, or about the rights and obligations, or the propriety of any action contemplated by the Escrow Agent hereunder, the Escrow Agent may, but shall not be required to, file an appropriate civil action including an interpleader action to resolve the disagreement. The Escrow Agent shall be reimbursed by Lessee for all costs, including reasonable attorneys' fees, in connection with such civil action, and shall be fully protected in suspending all or part of its activities under this Agreement until a final judgment in such action is received.

(h) The Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection with the opinion of such counsel. The Escrow Agent shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind unless caused by its willful misconduct. The Escrow Agent may act through attorneys or agents and shall not be responsible for the acts or omissions of any such attorney or agent appointed with due care.

(i) The compensation fee for Escrow Agent's services under this Agreement is \$0.00. Lessee shall reimburse the Escrow Agent for all reasonable costs and expenses, including those of the Escrow Agent's attorneys, agents and employees incurred for non-routine administration of the Escrow Account, execution of the directions provided by the Lessee and Lessor and the

performance of the Escrow Agent's powers and duties hereunder in connection with any Event of Default under the Lease, any termination of the Lease due to an Event of Non-appropriation or in connection with any dispute between Lessor and Lessee concerning the Escrow Account. The terms of this paragraph shall survive termination of this Agreement and/or the earlier resignation or removal of the Escrow Agent.

(j) The Escrow Agent or any successor may at any time resign by giving mailed notice to Lessee and Lessor of its intention to resign and of the proposed date of resignation (the "*Effective Date*"), which shall be a date not less than 60 days after such notice is delivered to an express carrier, charges prepaid, unless an earlier resignation date and the appointment of a successor shall have been approved by the Lessee and Lessor. After the Effective Date, the Escrow Agent shall be under no further obligation except to hold the Escrow Account in accordance with the terms of this Agreement, pending receipt of written instructions from Lessor regarding further disposition of the Escrow Account.

(k) The Escrow Agent shall have no responsibilities, obligations or duties other than those expressly set forth in this Agreement and no implied duties responsibilities or obligations shall be read into this Agreement. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or document other than this Agreement, whether or not an original or a copy of such agreement has been provided to the Escrow Agent.

(l) The permissive rights of the Escrow Agent to do things enumerated in this Agreement shall not be construed as a duty and, with respect to such permissive rights, the Escrow Agent shall not be answerable for other than its gross negligence or willful misconduct.

(m) Nothing in this Agreement shall require the Escrow Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder.

(n) In no event shall the Escrow Agent be responsible or liable for special, indirect, punitive, incidental or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

(o) In the event that any of the funds in the Escrow Account shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the funds in the Escrow Account, the Escrow Agent is hereby expressly authorized to respond as it deems appropriate or to comply with all writs, orders or decrees so entered or issued, or which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction. To the extent permitted by law, the Escrow Agent shall inform the Lessor and Lessee in writing about any such attachment, garnishment, levy, court order, judgment or decree within ten (10) business days of its receipt of any such attachment, garnishment, levy, court order, judgment or decree. In the event that the Escrow Agent obeys or complies with any such writ, order or decree, it shall not be liable to any of the other parties to this Agreement or to any other

person, firm or corporation, should, by reason of such compliance notwithstanding, such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

Section 2. Acquisition and Installation of Equipment.

(a) *Acquisition Contracts.* Lessee will arrange for, supervise and provide for, or cause to be supervised and provided for, the acquisition of the Equipment, with moneys available in the Escrow Account. Lessee represents the estimated costs of the Equipment are within the funds estimated to be available therefor, and Lessor makes no warranty or representation with respect thereto. Lessor shall have no liability under any of the acquisition or construction contracts. Lessee shall obtain all necessary permits and approvals, if any, for the acquisition, equipping and installation of the Equipment, and the operation and maintenance thereof. Escrow Agent shall have no duty to inquire as to the performance or nonperformance of any provision of any other agreement, instrument, or document other than this Agreement or monitor or enforce Lessee's compliance with the foregoing covenant.

(b) *Authorized Escrow Account Disbursements.* It is agreed as between Lessee and Lessor that disbursements from the Escrow Account shall be made for the purpose of paying (including the reimbursement to Lessee for advances from its own funds to accomplish the purposes hereinafter described) the cost of acquiring the Equipment.

(c) *Requisition Procedure.* No disbursement from the Escrow Account shall be made unless and until Lessor has approved in writing such requisition. Prior to disbursement from the Escrow Account there shall be filed with the Escrow Agent a requisition for such payment in the form of Disbursement Request attached hereto as Schedule 1, stating each amount to be paid and the name of the person, firm or corporation to whom payment thereof is due. All disbursements shall be made by wire transfer. The Escrow Agent is authorized to obtain and rely on confirmation of such Disbursement Request and payment instructions by telephone call-back to the person or persons designated for verifying such requests on Exhibit A-2 (such person verifying the request shall be different than the person initiating the request). The Lessor and Lessee hereby confirm that any call-back performed by Escrow Agent to verify a disbursement instruction pursuant to a Disbursement Request submitted pursuant to this Section 2(c) before release, shall be made to Lessor only and Escrow Agent shall have no obligation to call-back Lessee.

Each such Disbursement Request shall be signed by an authorized representative of Lessee (an "*Authorized Representative*") and by Lessor, and shall be subject to the following conditions, which Escrow Agent shall conclusively presume have been satisfied at such time as a requisition executed by Lessee and Lessor is delivered to it:

1. Delivery to Lessor of an executed Disbursement Request in the form attached hereto as Schedule 1;
2. Delivery to Lessor of copies of invoices (and proofs of payment of such invoices, if Lessee seeks reimbursement) and bills of sale therefor or other evidence of title transfer, and release by Vendor of any security interest, therefor as required by Section 3.04 of the Lease and any additional documentation reasonably requested by Lessor; and

3. The disbursement shall occur during the Acquisition Period.

Lessee and Lessor agree that their execution of the form attached hereto as Schedule 1 and delivery of the executed form to Escrow Agent confirms that all of the requirements and conditions with respect to disbursements set forth in this Section 2 have been satisfied.

Section 3. Deposit to Escrow Account. Upon satisfaction of the conditions specified in Section 3.04 of the Lease, Lessor will cause the Acquisition Amount to be deposited in the Escrow Account. Lessee agrees to pay any costs with respect to the Equipment in excess of amounts available therefor in the Escrow Account. The Escrow Agent shall not be liable for any amount in excess of the Acquisition Amount.

Section 4. Excess Proceeds in Escrow Account. Upon receipt of written instructions from Lessor including a representation that one of the following conditions has been satisfied (upon which representation Escrow Agent shall conclusively rely), any funds remaining in the Escrow Account on or after the earliest of (a) the expiration of the Acquisition Period, (b) the date on which Lessee executes a Final Acceptance Certificate, or (c) upon a termination of the Escrow Account as provided in this Agreement, shall be distributed by the Escrow Agent to the Lessor in order for the Lessor to apply such funds to amounts owed by Lessee under the Lease in accordance with Section 4.07 of the Lease.

Section 5. Security Interest. The Escrow Agent and Lessee acknowledge and agree that the Escrow Account and all proceeds thereof are being held by Escrow Agent for disbursement or return as set forth herein. Lessee hereby grants to Lessor a first priority perfected security interest in the Escrow Account, and all proceeds thereof, and all investments made with any amounts in the Escrow Account. If the Escrow Account, or any part thereof, is converted to investments as set forth in this Agreement, such investments shall be made in the name of Escrow Agent and the Escrow Agent hereby agrees to hold such investments as bailee for Lessor so that Lessor is deemed to have possession of such investments for the purpose of perfecting its security interest.

Section 6. Control of Escrow Account. In order to perfect Lessor's security interest by means of control in (i) the Escrow Account established hereunder, (ii) all securities entitlements, investment property and other financial assets now or hereafter credited to the Escrow Account, (iii) all of Lessee's rights in respect of the Escrow Account, such securities entitlements, investment property and other financial assets, and (iv) all products, proceeds and revenues of and from any of the foregoing personal property (collectively, the "*Collateral*"), Lessor, Lessee and Escrow Agent further agree as follows:

(a) All terms used in this Section 6 which are defined in the California Commercial Code (the "*Commercial Code*") but are not otherwise defined herein shall have the meanings assigned to such terms in the Commercial Code, as in effect on the date of this Agreement.

(b) Escrow Agent will comply with all entitlement orders originated by Lessor with respect to the Collateral, or any portion of the Collateral, without further consent by Lessee.

(c) *Provided* that account investments shall be held in the name of the Escrow Agent, Escrow Agent hereby represents and warrants (i) that the records of Escrow Agent show that Lessee is the sole owner of the Collateral, (ii) that Escrow Agent has not been served with any notice of levy or received any notice of any security interest in or other claim to the Collateral, or any portion of the Collateral, other than Lessor's claim pursuant to this Agreement, and (iii) that Escrow Agent is not presently obligated to accept any entitlement order from any person with respect to the Collateral, except for entitlement orders that Escrow Agent is obligated to accept from Lessor under this Agreement and entitlement orders that Escrow Agent, subject to the provisions of paragraph (e) below, is obligated to accept from Lessee.

(d) Without the prior written consent of Lessor, Escrow Agent will not enter into any agreement by which Escrow Agent agrees to comply with any entitlement order of any person other than Lessor or, subject to the provisions of paragraph (e) below, Lessee, with respect to any portion or all of the Collateral. Escrow Agent shall promptly notify Lessor if any person requests Escrow Agent to enter into any such agreement or otherwise asserts or seeks to assert a Lien, encumbrance or adverse claim against any portion or all of the Collateral.

(e) Except as otherwise provided in this paragraph (e) and subject to Section 1(b) hereof, Lessee may effect sales, trades, transfers and exchanges of Collateral within the Escrow Account, but will not, without the prior written consent of Lessor, withdraw any Collateral from the Escrow Account. Escrow Agent acknowledges that Lessor reserves the right, by delivery of written notice to Escrow Agent, to prohibit Lessee from effecting any withdrawals (including withdrawals of ordinary cash dividends and interest income), sales, trades, transfers or exchanges of any Collateral held in the Escrow Account. Further, Escrow Agent hereby agrees to comply with any and all written instructions delivered by Lessor to Escrow Agent (once it has had a reasonable opportunity to comply therewith) and has no obligation to, and will not, investigate the reason for any action taken by Lessor, the amount of any obligations of Lessee to Lessor, the validity of any of Lessor's claims against or agreements with Lessee, the existence of any defaults under such agreements, or any other matter.

(f) Lessee hereby irrevocably authorizes Escrow Agent to comply with all instructions and entitlement orders delivered by Lessor to Escrow Agent.

(g) Escrow Agent will not attempt to assert control, and does not claim and will not accept any security or other interest in, any part of the Collateral, and Escrow Agent will not exercise, enforce or attempt to enforce any right of setoff against the Collateral, or otherwise charge or deduct from the Collateral any amount whatsoever.

(h) Escrow Agent and Lessee hereby agree that any property held in the Escrow Account shall be treated as a financial asset under such section of the Commercial Code as corresponds with Section 8-102 of the Uniform Commercial Code, notwithstanding any contrary provision of any other agreement to which Escrow Agent may be a party.

(i) Escrow Agent is hereby authorized and instructed, and hereby agrees, to send to Lessor at its address set forth in Section 8 below, concurrently with the sending thereof to Lessee, duplicate copies of any and all monthly Escrow Account statements or reports issued or sent to Lessee with respect to the Escrow Account.

Section 7. Information Required Under USA Patriot Act. The parties acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003 (Section 326 of the USA Patriot Act) all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The parties to this Agreement agree that they will provide to the Escrow Agent such information as it may request, from time to time, in order for the Escrow Agent to satisfy the requirements of the USA Patriot Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

Section 8. Miscellaneous. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease. This Agreement may not be amended except in writing signed by all parties hereto. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original instrument and each shall have the force and effect of an original and all of which together constitute, and shall be deemed to constitute, one and the same instrument. Notices hereunder shall be made in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class postage prepaid, or delivered to an express carrier, charges prepaid, or sent by facsimile with electronic confirmation, addressed to each party at its address below.

Notices and other communications hereunder may be delivered or furnished by electronic mail *provided* that any formal notice shall be attached to an email message in PDF format and *provided further* that any notice or other communication sent to an e-mail address shall be deemed received upon and only upon the sender's receipt of affirmative acknowledgement or receipt from the intended recipient. For purposes hereof no acknowledgement of receipt generated on an automated basis shall be deemed sufficient for any purpose hereunder or admissible as evidence of receipt.

If a court of competent jurisdiction declares any provision hereof invalid, it will be ineffective only to the extent of such invalidity, so that the remainder of the provision and Agreement will continue in full force and effect.

This Agreement and the exhibits hereto set forth the entire agreement and understanding of the parties related to this transaction and supersede all prior agreements and understandings, oral or written.

If to Lessor: Bank of America, National Association
11333 McCormick Road
Mail Code: MD5-031-06-05
Hunt Valley, MD 21031
Attn: Contract Administration
Fax: (443) 541-3057

If to Lessee: City of Fort Bragg
416 North Franklin Street
Fort Bragg, CA 95437
Attention: City Manager / Finance Director
Telephone: (707) 961-2825 x123
Fax No.: (707) 961-2802
Email: iwhippy@fortbragg.com

If to Escrow Agent: Wilmington Trust, National Association
650 Town Center Drive, Suite 800
Costa Mesa, CA 92626
Attention: Chris Johnson
Telephone: (714) 384-4152
Fax: (714) 384-4151
Email: cshjohnson@wilmingtontrust.com

Section 9. Lessee and Lessor understand and agree that they are required to provide the Escrow Agent with a properly completed and signed Tax Certification (as defined below) and that the Escrow Agent may not perform its duties hereunder without having been provided with such Tax Certification. As used herein "Tax Certification" shall mean an IRS form W-9 or W-8 as described above. The Escrow Agent will comply with any U.S. tax withholding or backup withholding and reporting requirements that are required by law. With respect to earnings allocable to a foreign person, the Escrow Agent will withhold U.S. tax as required by law and report such earnings and taxes withheld, if any, for the benefit of such foreign person on IRS Form 1042-S (or any other required form), unless such earnings and withheld taxes are exempt from reporting under Treasury Regulation Section 1.1461-1(c)(2)(ii) or under other applicable law. With respect to earnings allocable to a United States person, the Escrow Agent will report such income, if required, on IRS Form 1099 or any other form required by law. The IRS Forms 1099 and/or 1042-S shall show the Escrow Agent as payor and Lessee as payee. Escrow Agent shall recognize Lessee as the designated party for regulatory reporting purposes.

Lessee and Lessor agree that they are not relieved of their respective obligations, if any, to prepare and file information reports under Code Section 6041, and the Treasury regulations thereunder, with respect to amounts of imputed interest income, as determined pursuant to Code

Sections 483 or 1272. The Escrow Agent shall not be responsible for determining or reporting such imputed interest.

Section 10. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the parties hereto consent to jurisdiction in the State of California and venue in any state or Federal court located in the State of California, and each party expressly waives any objections that it may have to the venue of such courts. **THE PARTIES HERETO EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION BROUGHT ON OR WITH RESPECT TO THIS AGREEMENT.** If the waiver of jury trial contained herein is unenforceable for any reason, then the parties hereto agree that the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision.

Section 11. Any bank or corporation into which the Escrow Agent may be merged or with which it may be consolidated, or any bank or corporation to whom the Escrow Agent may transfer a substantial amount of its escrow business, shall be the successor to the Escrow Agent without the execution or filing of any paper or any further act on the part of any of the parties, anything herein to the contrary notwithstanding. Any bank or corporation into which the Lessor may be merged or with which it may be consolidated, or any bank or corporation to whom the Lessor may transfer a substantial amount of its business, shall be the successor to the Lessor without the execution or filing of any paper or any further act on the part of any of the parties, anything herein to the contrary notwithstanding.

Section 12. This Agreement may be amended, modified, and/or supplemented only by an instrument in writing executed by all parties hereto.

Section 13. No party hereto shall assign its rights hereunder until its assignee has submitted to the Escrow Agent (i) Patriot Act disclosure materials and the Escrow Agent has determined that on the basis of such materials it may accept such assignee as a customer and (ii) assignee has delivered an IRS Form W-8 or W-9, as appropriate, to the Escrow Agent which the Escrow Agent has determined to have been properly signed and completed.

Section 14. Escrow Agent will treat information related to this Agreement as confidential but, unless prohibited by law, Lessee and Lessor authorize the transfer or disclosure of any information relating to the Agreement to and between the subsidiaries, officers, affiliates and other representatives and advisors of Escrow Agent and third parties selected by any of them, wherever situated, for confidential use in the ordinary course of business, and further acknowledge that Escrow Agent and any such subsidiary, officer, affiliate or third party may transfer or disclose any such information as required by any law, court, regulator or legal process.

Lessor will treat information related to this Agreement as confidential but, unless prohibited by law, Escrow Agent and Lessee authorize the transfer or disclosure of any information relating to the Agreement to and between the subsidiaries, officers, affiliates, other representatives and advisors of Lessor and debt and equity sources and third parties selected by any of them, and to their prospective assignees wherever situated, for confidential use in the ordinary course of

business, and further acknowledge that Lessor and any such subsidiary, officer, affiliate, debt and equity source or third party or prospective assignee may transfer or disclose any such information as required by any law, court, regulator or legal process. For the avoidance of doubt, nothing herein prohibits any individual from communicating or disclosing information regarding suspected violations of laws, rules, or regulations to a governmental, regulatory, or self-regulatory authority without any notification to any person.

Lessee will treat the terms of this Agreement as confidential except on a “need to know” basis to persons within or outside Lessee’s organization (including affiliates of such party), such as attorneys, accountants, bankers, financial advisors, auditors and other consultants of such party and its affiliates, except as required by any law, court, regulator or legal process and except pursuant to the express prior written consent of the other parties, which consent shall not be unreasonably withheld.

Section 15. This Agreement may be executed and delivered by facsimile signature or other electronic or digital means (including, without limitation, Adobe’s Portable Document Format (“*PDF*”). Any such signature shall be of the same force and effect as an original signature, it being the express intent of the parties to create a valid and legally enforceable contract between them. The exchange and delivery of this Agreement and the related signature pages via facsimile or as an attachment to electronic mail (including in *PDF*) shall constitute effective execution and delivery by the parties and may be used by the parties for all purposes. Notwithstanding the foregoing, at the request of either party, the parties hereto agree to exchange inked original replacement signature pages as soon thereafter as reasonably practicable.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Escrow and Account Control Agreement as of the date first above written.

BANK OF AMERICA, NATIONAL ASSOCIATION,
as Lessor

CITY OF FORT BRAGG, as Lessee

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Escrow Agent

By: _____
Name: _____
Title: _____

**SCHEDULE 1
TO THE ESCROW AND ACCOUNT CONTROL AGREEMENT**

FORM OF DISBURSEMENT REQUEST

Re: Equipment Lease/Purchase Agreement dated as of August 7, 2024 by and between Bank of America, National Association, as Lessor, and the City of Fort Bragg, as Lessee (the “Lease”) (Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease.)

In accordance with the terms of the Escrow and Account Control Agreement, dated as of August 7, 2024 (the “Escrow and Account Control Agreement”) by and among Bank of America, National Association (“Lessor”), the City of Fort Bragg (“Lessee”) and Wilmington Trust, National Association (the “Escrow Agent”), the undersigned hereby requests the Escrow Agent pay the following persons the following amounts from the Escrow Account created under the Escrow and Account Control Agreement for the following purposes:

DISBURSEMENT AMOUNTS:

PAYEE’S NAME AND ADDRESS (IF
DISBURSEMENT VIA WIRE, MUST
INCLUDE WIRE TRANSFER
INSTRUCTIONS)

INVOICE NUMBER

DOLLAR AMOUNT

PURPOSE

<Payee’s Name>
<Payee Address 1>
<Payee Address 2>
<Payee Address 3>

<invoice list OR “see
attached” with a
spreadsheet>

< invoice amount>

<general description of
equipment; ex “police
cruiser”>

<Payee Bank Name*>
<Payee Bank ABA/Routing*>
<Payee Bank Account No*>
<Payee Account Name*>

<*Payee Address and Payee
Bank information is required.>

<Payee’s Name>
<Payee Address 1>
<Payee Address 2>
<Payee Address 3>

<invoice list OR “see
attached” with a
spreadsheet>

<invoice amount>

[<mobilization fee that is
payable to the Vendor
under the Vendor
Agreement>]

<Payee Bank Name*>
<Payee Bank ABA/Routing*>
<Payee Bank Account No*>
<Payee Account Name*>

<*Payee Address information is
required. Payee Bank
information only to be included
for wire/EFT.>

Lessee hereby represents, covenants and warrants for the benefit of Lessor on the date hereof as follows:

(i) Each obligation specified in the table herein titled as “Disbursement Amounts” (a) has been incurred by Lessee in the stated amount, (b) the same is a proper charge against the Escrow Account for Equipment Costs relating to the Equipment identified above and has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof), and (c) has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof), and the Equipment relating to such obligation has been delivered, installed and accepted by Lessee. **[For COI Disbursement only: Each obligation specified in the table herein titled as “Disbursement Amounts” (a) has been incurred by Lessee in the stated amount, and (b) the same is a proper charge for costs of delivery of the Lease identified above and has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof, in which event Lessee further certifies that the requested reimbursement is not with respect to any amount previously paid).]**

(ii) For each item of Equipment relating to an obligation specified in the table herein titled as “Disbursement Amounts” (a) Lessee has conducted such inspection and testing of the Equipment as it deems appropriate in order to unconditionally accept such Equipment, and (b) such Equipment has been delivered, installed, and unconditionally accepted for all purposes by Lessee and title thereto has transferred to Lessee and any security interest of Vendor therein has been released and (c) the date on which Equipment acceptance occurred is _____, 20___. Attached hereto is a copy of the original invoice, and certification from Vendor as to title transfer and release by Vendor of any security interest with respect to such obligation and the related AIA forms.

(iii) The undersigned, as Authorized Representative, has no notice of any vendor’s, mechanic’s or other Liens or rights to Liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made.

(iv) This requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date hereof, entitled to retain (except to the extent such amounts represent a reimbursement to Lessee).

(v) The Equipment is insured in accordance with the Lease.

(vi) No Event of Default, and no event which with notice or lapse of time, or both, would become an Event of Default, under the Lease has occurred and is continuing at the date hereof. No Event of Non-appropriation has occurred or is threatened with respect to the Lease.

(vii) The disbursement shall occur during the Acquisition Period.

(viii) The representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date hereof.

(ix) No Material Adverse Change has occurred since the date of the execution and delivery of the Lease.

(x) The information in this Disbursement Request regarding each Payee, including their respective name, address and wiring instructions (collectively, the "*Payee Information*"), is true and correct, such Payee Information has been verified and confirmed by Lessee and the Lessor can rely on Lessee's verification and confirmation of the accuracy of such Payee Information. Lessee hereby acknowledges and agrees that any call-back performed by Lessor to verify the disbursement instructions pursuant to this Disbursement Request shall be made to Lessee only and Lessor shall have no obligation to call-back any Payee listed above.

Dated: _____

CITY OF FORT BRAGG

By: _____
Name: _____
Title: _____

Disbursement of funds from the Escrow
Account in accordance with the foregoing
Disbursement Request hereby is authorized

BANK OF AMERICA, NATIONAL ASSOCIATION
as Lessor under the Lease

By: _____
Name: _____
Title: _____

[AN "EXHIBIT A-1" MUST BE COMPLETED AND EXECUTED AT TIME OF EXECUTION OF THE AGREEMENT]

EXHIBIT A-1

FORM OF INCUMBENCY AND AUTHORIZATION CERTIFICATE

The undersigned, a duly elected or appointed and acting City Clerk of the City of Fort Bragg ("*Lessee*") certifies as follows:

A. The following listed persons are duly elected or appointed and acting officials of Lessee (the "*Officials*") in the capacity set forth opposite their respective names below and the facsimile signatures below are true and correct as of the date hereof;

B. The Officials are duly authorized, on behalf of Lessee, to negotiate, execute, in writing or electronically, and deliver the Equipment Lease/Purchase Agreement dated as of August 7, 2024 by and between Lessee and Bank of America, National Association ("*Lessor*"), the Escrow and Account Control Agreement dated as of August 7, 2024 by and among Lessor, Lessee and Wilmington Trust, National Association, as Escrow Agent, all documents related thereto and delivered in connection therewith, and any future modification(s) or amendments thereof (collectively, the "*Operative Agreements*"), and the Operative Agreements each are the binding and authorized agreements of Lessee, enforceable in all respects in accordance with their respective terms.

NAME OF OFFICIAL	TITLE	SIGNATURE
_____	_____	_____
_____	_____	_____
_____	_____	_____

Dated: August 7, 2024

By: _____
Name: _____
Title: _____

(The signer of this Certificate cannot be listed above as authorized to execute the Operative Agreements.)

[AN "EXHIBIT A-2" MUST BE COMPLETED AND EXECUTED AT TIME OF EXECUTION OF THE AGREEMENT]

EXHIBIT A-2

ESCROW AND ACCOUNT CONTROL AGREEMENT DATED AS OF AUGUST 7, 2024 BY AND AMONG BANK OF AMERICA, NATIONAL ASSOCIATION, AS LESSOR, THE CITY OF FORT BRAGG, AS LESSEE AND WILMINGTON TRUST, NATIONAL ASSOCIATION, AS ESCROW AGENT

CERTIFICATE OF AUTHORIZED REPRESENTATIVES – [LESSOR]

Name: <u>Candy Tam</u>	Name: <u>Nancy Nusenko</u>
Title: <u>Senior Vice President</u>	Title: <u>Vice President</u>
Phone: <u>415-765-7492</u>	Phone: <u>443-541-3646</u>
Facsimile: <u>415-633-0183</u>	Facsimile: <u>443-541-3057</u>
E-mail: <u>Candy.tam@bofa.com</u>	E-mail: <u>Nancy.a.nusenko@bofa.com</u>
Signature: _____	Signature: _____

Fund Transfer / Disbursement Authority Level:

- Initiate
- Verify transactions initiated by others

Fund Transfer / Disbursement Authority Level:

- Initiate
- Verify transactions initiated by others

Name: <u>Nancy K. Hepner</u>	Name: <u>Arlene Sobieck</u>
Title: <u>Senior Operations Consultant</u>	Title: <u>Vice President</u>
Phone: <u>443-541-3645</u>	Phone: <u>443-541-3643</u>
Facsimile: <u>443-541-3057</u>	Facsimile: <u>443-541-3057</u>
E-mail: <u>Nancy.k.hepner@bofa.com</u>	E-mail: <u>Arlene.sobieck@bofa.com</u>
Signature: _____	Signature: _____

Fund Transfer / Disbursement Authority Level:

- Initiate
- Verify transactions initiated by others

Fund Transfer / Disbursement Authority Level:

- Initiate
- Verify transactions initiated by others

The Escrow Agent is authorized to comply with and rely upon any notices, instructions or other communications believed by it to have been sent or given by the person or persons identified above including without limitation, to initiate and verify funds transfers as indicated.

BANK OF AMERICA, NATIONAL ASSOCIATION

By: _____
Name: _____
Title: _____

Date: August 7, 2024

RESOLUTION NO. _____-2024

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN EQUIPMENT LEASE/PURCHASE AGREEMENT AND ESCROW AGREEMENT WITH BANK OF AMERICA, NATIONAL ASSOCIATION RELATING TO THE FINANCING OF ENERGY EFFICIENCY PROJECTS TO BE UNDERTAKEN PURSUANT TO AN AGREEMENT WITH SYSERCO ENERGY SOLUTIONS, INC., AND APPROVING RELATED DOCUMENTS AND ACTIONS

RESOLVED, by the City Council (the “Council”) of the City of Fort Bragg (the “City”), that:

WHEREAS, the City is authorized by the laws of the State of California to acquire, finance and lease real and personal property for the benefit of the City and its inhabitants and to enter into contracts with respect thereto, including pursuant to California Government Code Section 37350; and

WHEREAS, on June 10, 2024, the City Council approved entering into an Energy Services Agreement with Syserco Energy Solutions, Inc. for the installation of solar photovoltaic improvements at various sites, and in connection with the installation of the solar improvements, the roof of the police station will be replaced before the solar panels are installed; and

WHEREAS, the City desires to acquire, finance and lease certain property described in said Energy Services Agreement having a project cost of approximately \$7.5 million (collectively, the “*Equipment*”) pursuant to an Equipment Lease/Purchase Agreement (the “*Agreement*”) with Bank of America, National Association (or one of its affiliates), as lessor (the “*Lessor*”), the form of which has been presented to the City Council of the City at this meeting; and

WHEREAS, the City Council of the City deems it for the benefit of the City and for the efficient and effective administration thereof to enter into the Agreement and the other documentation relating to the acquisition, financing and leasing of the Equipment to be therein described on the terms and conditions therein and herein provided;

WHEREAS, the information required to be obtained and disclosed by the City Council pursuant to Section 5852.1 of the California Government Code with respect to the financing of the Equipment is set forth in the staff report accompanying this Resolution; and

NOW, THEREFORE, IT IS HEREBY ORDERED AND DETERMINED as follows:

Section 1. Findings and Determinations. It is hereby found and determined that the terms of the Agreement, in the form presented to the governing body of City at this meeting, are in the best interests of the City for the acquisition, financing and leasing of the Equipment.

Section 2. Approval of Documents. The Agreement and the related Escrow and Account Control Agreement by and among Bank of America, National Association, the City and Wilmington Trust, National Association are hereby approved in substantially the forms presented at this meeting, with such insertions, omissions and changes as shall be approved by the City Attorney, working with special legal counsel Jones Hall, to put the Agreement and the Escrow Agreement in final form, the execution and delivery of such documents by the City being conclusive evidence of such approval; provided, that the par amount of the Agreement shall not exceed \$7,975,000 and the initial, tax-exempt interest rate shall not exceed 4.71% (exclusive of adjustments to the rate upon an event of default or event of taxability). Subject to the foregoing, the City Manager of the City, or his or her designee, is hereby authorized and directed to execute (in writing or electronically), and the City Clerk of the City is hereby authorized and directed to attest (if necessary), the Agreement, the Escrow Agreement and any other related exhibits attached thereto and to deliver the Agreement, the Escrow Agreement (including such other exhibits) to the respective parties thereto, and the City Clerk of the City is hereby authorized to affix the seal of the City to such documents, to the extent deemed necessary.

Section 3. Other Actions Authorized. The City Manager and the other officers and employees of the City shall take all action necessary or reasonably required by the parties to the Agreement to carry out, give effect to and consummate the transactions contemplated thereby (including the execution (in writing or electronically) and delivery of a final acceptance certificate, the Escrow Agreement, disbursement requests and any tax certificates, as contemplated in the Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution (in writing or electronically) and delivery of any closing and other documents required to be delivered in connection with the Agreement or the Escrow Agreement, including without limitation any memorandum of understanding regarding the vendor contract..

Section 4. No General Liability. Nothing contained in this Resolution, the Agreement, the Escrow Agreement nor any other instrument shall be construed with respect to the City as incurring a pecuniary liability or charge upon the general credit of the City or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Agreement, the Escrow Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the City or any charge upon its general credit or against its taxing power, except to the extent that the Rental Payments payable under the Agreement are limited obligations of the City, subject to annual appropriation, as provided in the Agreement.

Section 5. Appointment of Authorized City Representatives. The City Manager, Director of Public Works, and City Clerk are each hereby designated to act as authorized representatives of the City for purposes of the Agreement and the Escrow Agreement until such time as the governing body of the City shall designate any other or different authorized representative for purposes of the Agreement or the Escrow Agreement. Whenever in this Resolution any officer of the City is authorized to execute or attest to any document or take any other action, such execution, attestation, or other action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer is absent or unavailable.

Section 6. Appointment of Financing Team. In connection with the transactions described in this Resolution, the City Council hereby authorizes, ratifies and confirms the appointment of NHA Advisors, LLC to serve as municipal advisor, Jones Hall,

A Professional Law Corporation, to serve as special legal counsel, and Oppenheimer & Co. Inc., to serve as placement agent, with the fees and expenses of each such firm payable from the proceeds of the financing. The City Manager, or his or her designee, is authorized to execute professional services agreements or a placement agent agreement, as applicable, with each such firm, as and to the extent deemed necessary.

Section 7. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 8. Repealer. All bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency with respect to this Resolution. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

Section 9. Effective Date. This Resolution shall be effective immediately upon its approval and adoption.

* * * * *

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 July, 2024, by the following vote:

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

BERNIE NORVELL
Mayor

ATTEST:

Diana Sanchez
City Clerk

CITY OF FORT BRAGG

2024 ENERGY EQUIPMENT LEASE WITH
BANK OF AMERICA, NATIONAL ASSOCIATION



NHA | ADVISORS
Financial & Policy Strategies.
Delivered.

July 22, 2024

Financing Team Overview

City of Fort Bragg – Lessee

- Obligated party for the Lease

NHA Advisors – Municipal Financial Advisor

- Manages the financing process and assists in structuring the Lease

Jones Hall – Special Counsel

- Reviews base legal documents, drafts tax documents, opinion letters

Oppenheimer & Co. – Placement Agent

- Prepares lender RFP, negotiates with potential lenders, and assists in structuring the Lease

Bank of America, National Association (“BANA”) – Lessor

- Originates the Lease
- Lessor’s counsel drafts the majority of legal documents

Wilmington Trust, National Association – Escrow Agent

- Manages escrow account and distributes loan proceeds to the City/SES as needed to pay for project and lease issuance costs

Background on Energy Project

- ▶ On 6/10/24, City Council approved Agreement with Syserco Energy Solutions, Inc. ("SES") to install solar photovoltaic ("PV") improvements at (1) City Hall, (2) Corp Yard / Water Treatment Plant, (3) CV Starr Center, (4) Fire Department, (5) Police Station (roof will be replaced as well), and (6) Wastewater Treatment Plant;
- ▶ Total cost: \$7.5M; however, \$2.41M of grants anticipated
- ▶ Anticipated savings of \$10.6M+ in net energy costs (nets O&M costs) over the next 20 years
 - ▶ Financing costs: \$8.8M, assuming grants
 - ▶ Net Benefit: \$1.8M
 - ▶ 100% of savings accrue to City after year 20

Inflation Reduction Act Incentives

- ▶ Two project incentives under the 2022 Inflation Reduction Act (“IRA”)
 - ▶ IRA “Direct-Pay” Project Incentive:
 - ▶ Valued at 25.5% of solar project costs – approximately \$1,811,389
 - ▶ Cash tax credit paid at the conclusion of the project
 - ▶ All eligible projects nationwide can receive this incentive, without regard to volume cap limitations
 - ▶ Low-Income Communities Bonus Credit Incentive:
 - ▶ Valued at 8.5% of solar project costs – approximately \$603,796
 - ▶ Subject to nationwide competition – requires an application and has a volume cap limitation. City applied before June 27th deadline; SES advises that multiple application “windows” will be available
- ▶ 2024 Lease amount will be reduced as IRA incentives are received

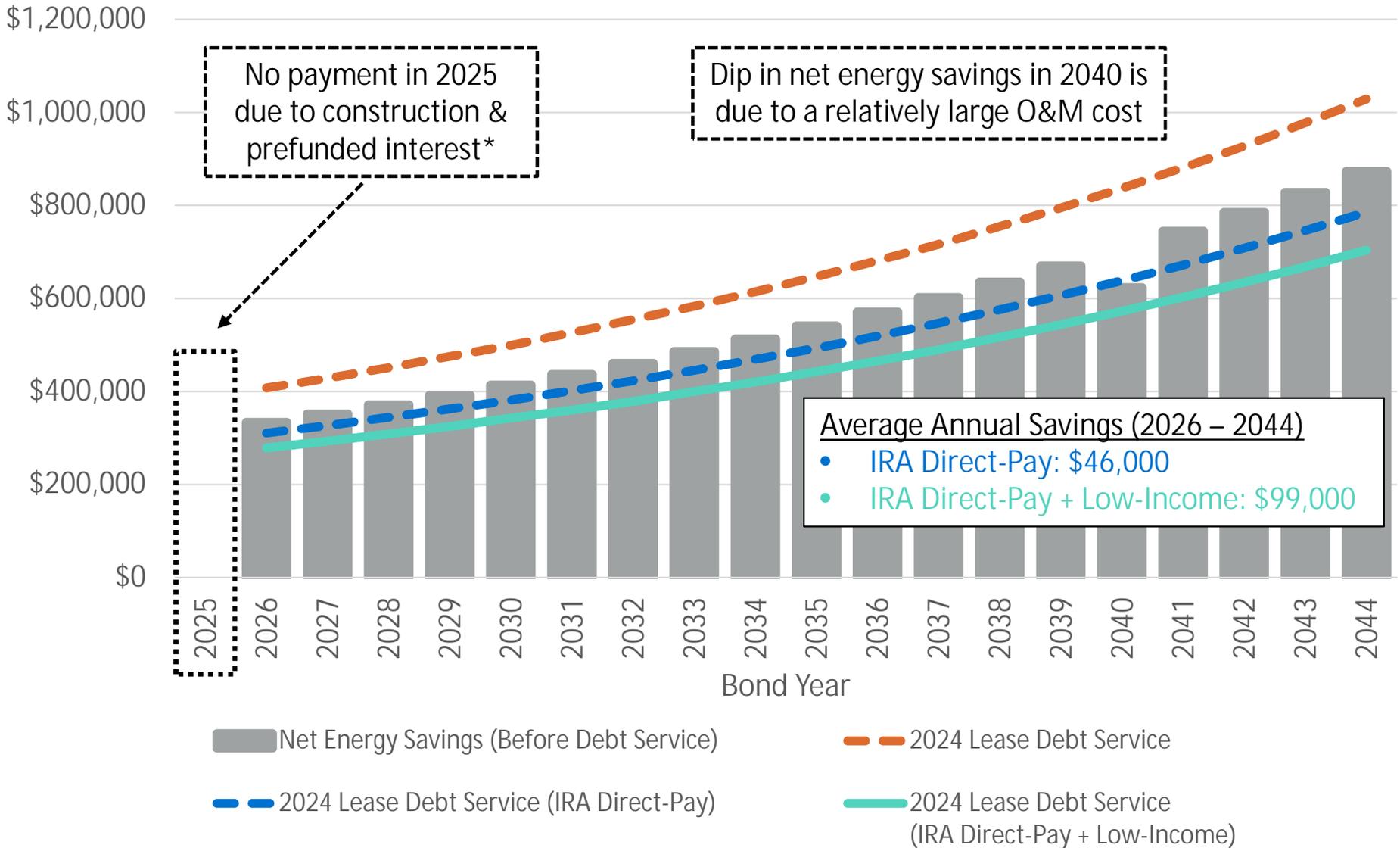
Energy Equipment Lease

- ▶ Placement Agent requested proposals from 12 banks for a 20-year tax-exempt equipment lease
 - ▶ Received 5 proposals – BANA’s rate/terms were the most advantageous
 - ▶ BANA Proposal: fixed, 20-year interest rate, “locked” until closing

2024 Energy Equipment Lease – Key Terms	
Principal Amount	\$7,955,000
Final Maturity	8/1/2044
Interest Rate	4.46%
Annual Debt Service Escalation*	5.3%

*Debt service escalates in line with the projected energy savings provided by SES

Projected Net Energy Savings & Lease Net Debt Service



* Assumes interest due in 2025 (on 2/1/2025 and 8/1/2025) is covered by capitalized interest

Overview of Legal Documents

▶ Resolution

- ▶ Authorizes City staff to execute documents and perform other actions as needed to finalize the 2024 Lease
 - ▶ Not-to-exceed amount of \$7,975,000 and not-to-exceed interest rate of 4.71%
 - ▶ Both are slightly higher than the amounts expected, to be conservative

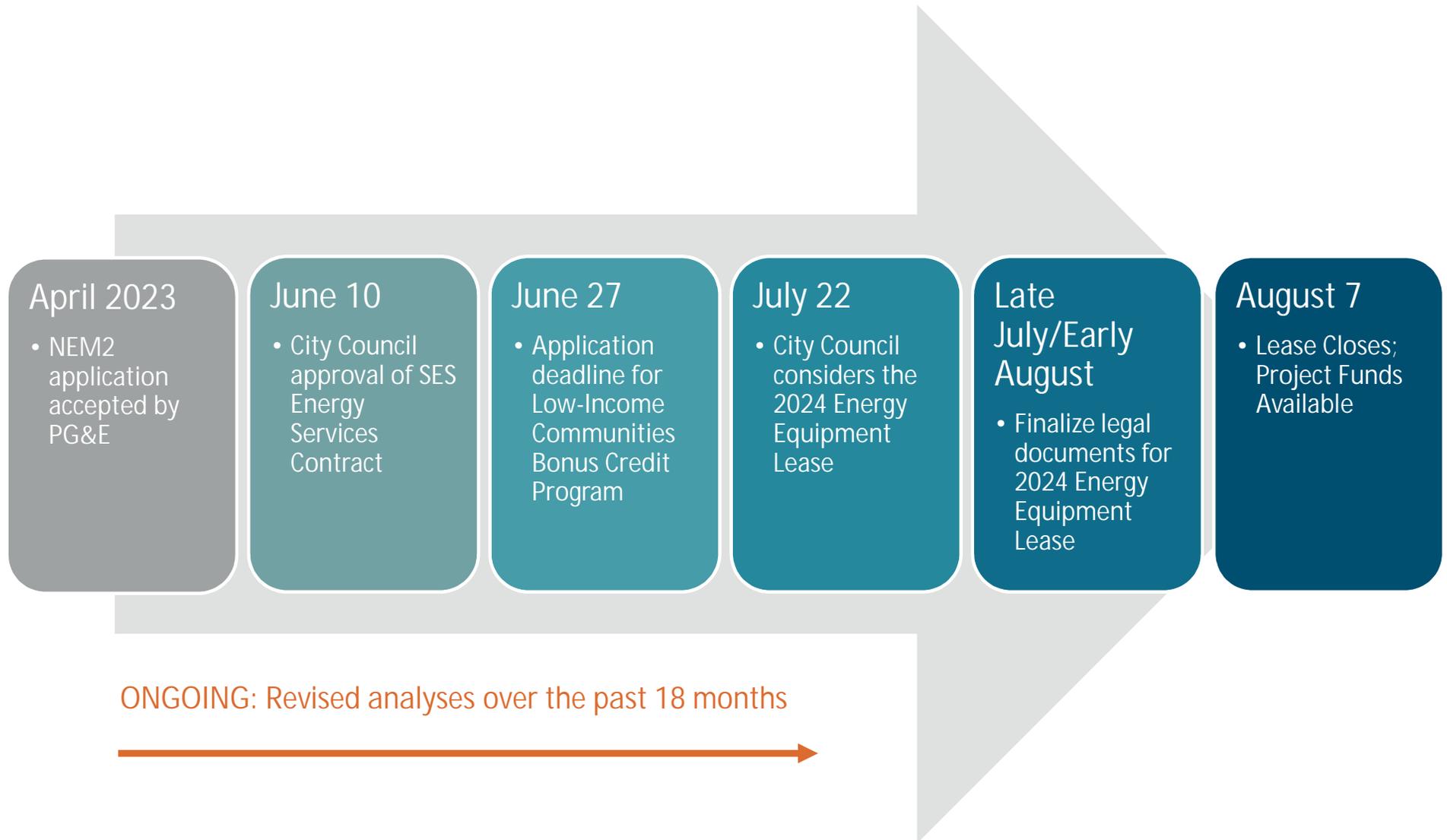
▶ Equipment Lease/Purchase Agreement

- ▶ Describes the terms of the 2024 Lease
- ▶ Identifies location of the improvements and that the security for the 2024 Lease is a lien on the equipment – NO REAL PROPERTY ASSETS are pledged as security
- ▶ Contains payment details (Exhibit B), prepayment provisions, and other covenants

▶ Escrow and Account Control Agreement

- ▶ Outlines Wilmington Trust's role as escrow agent
- ▶ Identifies process for City/SES drawing down the 2024 Lease funds for project costs

Process and Anticipated Timing





APPENDIX: SAVINGS DETAIL

Net Energy Savings vs. Net Debt Service

Year	Net Energy Savings (Before Debt Service)	2024 Lease Debt Service	2024 Lease Debt Service (IRA Direct-Pay)	2024 Lease Debt Service (IRA Direct-Pay + Low-Income)	2024 Lease Debt Service (IRA Direct-Pay) Savings	2024 Lease Debt Service (IRA Direct-Pay + Low-Income) Savings
2025*	\$0	\$0	\$0	\$0	\$0	\$0
2026	\$333,447	\$407,793	\$310,722	\$278,758	\$22,725	\$54,689
2027	\$351,985	\$428,429	\$326,938	\$293,152	\$25,047	\$58,833
2028	\$371,524	\$451,040	\$344,351	\$308,833	\$27,173	\$62,691
2029	\$392,117	\$475,490	\$362,872	\$324,711	\$29,244	\$67,406
2030	\$413,820	\$499,648	\$381,412	\$342,742	\$32,407	\$71,078
2031	\$436,691	\$526,467	\$401,927	\$359,791	\$34,765	\$76,900
2032	\$460,794	\$554,770	\$423,281	\$378,859	\$37,513	\$81,935
2033	\$486,193	\$583,423	\$445,387	\$399,812	\$40,806	\$86,380
2034	\$512,956	\$614,336	\$469,155	\$420,517	\$43,801	\$92,439
2035	\$541,157	\$647,332	\$493,451	\$442,928	\$47,706	\$98,229
2036	\$570,871	\$681,231	\$519,186	\$465,912	\$51,685	\$104,959
2037	\$602,178	\$716,901	\$547,226	\$490,379	\$54,952	\$111,799
2038	\$635,164	\$755,162	\$576,393	\$517,196	\$58,771	\$117,967
2039	\$669,915	\$794,791	\$606,553	\$544,185	\$63,362	\$125,730
2040	\$623,176	\$837,611	\$638,572	\$573,256	-\$15,396	\$49,920
2041	\$745,095	\$881,354	\$672,272	\$603,230	\$72,823	\$141,865
2042	\$785,725	\$927,840	\$708,475	\$634,975	\$77,250	\$150,750
2043	\$828,525	\$977,803	\$745,956	\$668,311	\$82,569	\$160,214
2044	\$873,610	\$1,028,931	\$785,539	\$704,060	\$88,070	\$169,549

* Assumes interest due in 2025 (on 2/1/2025 and 8/1/2025) is covered by capitalized interest

SES Projected Net Energy Savings

Year	Projected Energy Savings	Estimated O&M Cost	Net Energy Savings (Before Debt Service)
2025	\$0	\$0	\$0
2026	\$356,856	\$23,409	\$333,447
2027	\$375,628	\$23,643	\$351,985
2028	\$395,404	\$23,880	\$371,524
2029	\$416,235	\$24,119	\$392,117
2030	\$438,179	\$24,360	\$413,820
2031	\$461,295	\$24,603	\$436,691
2032	\$485,643	\$24,849	\$460,794
2033	\$511,291	\$25,098	\$486,193
2034	\$538,305	\$25,349	\$512,956
2035	\$566,759	\$25,602	\$541,157
2036	\$596,729	\$25,858	\$570,871
2037	\$628,295	\$26,117	\$602,178
2038	\$661,542	\$26,378	\$635,164
2039	\$696,557	\$26,642	\$669,915
2040	\$733,434	\$110,258	\$623,176
2041	\$772,272	\$27,177	\$745,095
2042	\$813,174	\$27,449	\$785,725
2043	\$856,249	\$27,724	\$828,525
2044	\$901,611	\$28,001	\$873,610

Source: Syserco



City of Fort Bragg

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

Text File

File Number: 24-866

Agenda Date: 7/22/2024

Version: 1

Status: Business

In Control: City Council

File Type: Staff Report

Agenda Number: 8B.

Receive Report and Provide Direction to Staff on Mobile Vehicle Vending Location Standards



AGENCY: City Council
MEETING DATE: July 22, 2024
DEPARTMENT: Community Development
PRESENTED BY: Sarah Peters
EMAIL ADDRESS: speters@fortbragg.com

AGENDA ITEM SUMMARY

TITLE:

Receive Report and Provide Direction to Staff on Mobile Vehicle Vending Location Standards

ISSUE:

Mobile Vehicle Vending (MVV) permits allow the use of on-street curb parking for food trucks during daytime and evening hours. The City considers mobile vending to be a positive commercial activity that can provide opportunities for budding chefs and restaurant owners and add vibrancy and increased foot traffic in commercial areas as well as convenient, quick and tasty food options for consumers. The City of Fort Bragg has experienced an uptick in the number of people interested in operating a food truck within City Limits. There are currently five food trucks with active mobile vending permits, and several others have expressed interest in vending in recent weeks. At the same time, there have been complaints from existing business owners about food trucks vending in close proximity to their brick and mortar businesses. As approval of mobile vending vehicle permits is under the purview of the Community Development Director, staff is seeking clarification and direction on optimal mobile vehicle vending location standards and dedicated congregate vending.

LOCATION STANDARDS:

Background:

The City of Fort Bragg currently allows mobile vehicle vending in commercial and industrial zoning districts except that they are not permitted in the public right-of-way on Main Street, in the public right-of-way in Light or Heavy Industrial zones, or within Parks and Open Space zoning districts unless as part of a Limited Term Permit. Over the past several months staff have received multiple complaints from brick and mortar business owners about the following items which they feel detract from their own businesses:

- Increased noise from the generators parked nearby.
- Generator fumes wafting into shops creating odor issues and the inability to comfortably have doors open and inviting to potential customers during nice weather.
- Food trucks that take up two to three spaces, including the food truck itself, the tow vehicle, and often a separate operator vehicle.
- Blocked visibility from food trucks parked directly in front of a shop, creating situations where shop owner and staff are forced to look out on the side of a truck all day.
- The ability of a nearby food truck to sell similar food items as a business that has all the expenses of a brick and mortar business downtown.

At the December 13, 2023 Planning Commission meeting, staff requested input from Commissioners on MVV location preferences. The following areas were generally considered acceptable options, as they would be likely to offer enough visibility to provide adequate business, while not interfering with existing businesses or with the “quiet enjoyment” of residences:

- Adjacent to vacant parcels, such as at Franklin and Redwood and Spruce and Main
- 400 block of S. Franklin near Rite Aid
- 600 block of S. Franklin near Safeway
- 200 block of E. Alder fronting Purity Market parking lot

The following location suggestions would require either code amendments or parking and traffic flow modifications:

- Laurel Street east of Tall Guy Brewing, within the diagonal parking spaces to the north side of Laurel and possible removal of vehicular access to this block
- Fronting Bainbridge Park – a currently prohibited location

Commissioners also expressed support for an area where multiple MVV’s could vend, such as in a parking lot or other vacant lot dedicated to mobile vending. They suggested fewer allowable MVV locations to reduce likelihood of conflict. In particular, they were not in favor of allowing food trucks in these locations:

- The 500 block of N. Franklin Street, due to all the residences on this block
- The area further down North Franklin across from Thompson Gas
- The mid 200 block of E. Pine Street
- Core Central Business District areas such as the 300 block of Franklin Street and the 100 block of Laurel Street

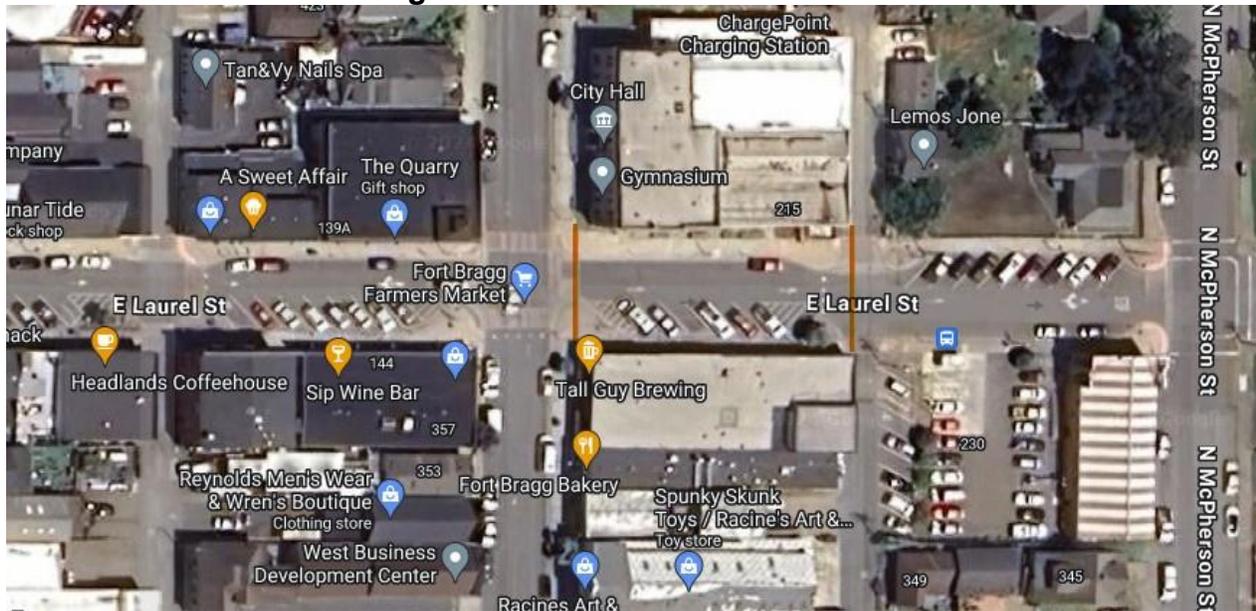
At the March 26, 2024 Community Development Committee (CDC) meeting, staff presented a discussion item on the MVV location issue. CDC members directed staff to bring Planning Commission’s suggestions forward to the full council for discussion. They highlighted the idea of a centralized location for food trucks modeled after other jurisdictions where the street is closed to through vehicle traffic and only open to pedestrian traffic and food trucks. They specifically recommended Council consideration be given to closing East Laurel Street at Franklin Street to the alley behind Tall Guy, and using this short half block as a centralized location for mobile vending.

The next section of this report summarizes this suggestion as well as two others for consideration.

Closure of East Laurel Street:

This plan would include street closure of Laurel from Franklin to the alley behind City Hall and Tall Guy Brewing (See Figure 1 below). Food trucks would be allowed to operate on either side of the street based on their design and the direction their doors open, with picnic tables set up in the middle of the street. The loss of public parking could be mitigated by purchasing a vacant lot, such as the one across from City Hall, for additional parking.

Figure 1 – 200 block of E. Laurel St.



Mobile Vendor Operator Feedback:

Staff reached out to current, active mobile vendors to find out if they would want to utilize a congregate mobile vending location and received input from three operators that they would definitely be interested and would want to be included – especially for the East Laurel Street location.

Staff/Agency Feedback:

A request for comments was sent to Engineering, Police, and Fire department staff representatives as well as to Consultant Marie Jones (MJC). Staff did not receive any concerns from PD, and Fire Marshall Steve Wells' only stated issue was that consideration should be given to the possibility of emergency responders needing access. Others expressed concerns about full closure of that block for the following reasons:

- Since acquisition and development of a parking lot would likely take more than a year from start to finish, loss of parking could impact ease of access to City Hall and downtown shops in the interim.
- If East Laurel closed on Wednesdays during Farmers' Market, the already poor circulation during that time would be exacerbated by east bound vehicles on Laurel having only one outlet (north onto Franklin). Additionally, Franklin Street between Laurel and Redwood would need to be closed since there would be no egress for northbound vehicles.
- Closing this block entirely would increase traffic in the alley where pavement and sewer lines are already in poor condition which would increase deterioration there.
- An MTA bus stop is located at the north edge of the public parking lot on Laurel Street. The bus route includes a west to east approach on Laurel from Main. With Laurel closed at Franklin, the bus stop would likely have to be moved and the route altered.

A counter suggestion was offered to dedicate just one side of this block to mobile vending, on either the north side or the south side of the street, such as depicted in Figure 2 below. This would prevent having to close the street to through traffic, but still provide space for food trucks parked parallel to the sidewalk as well as a picnic table or two.

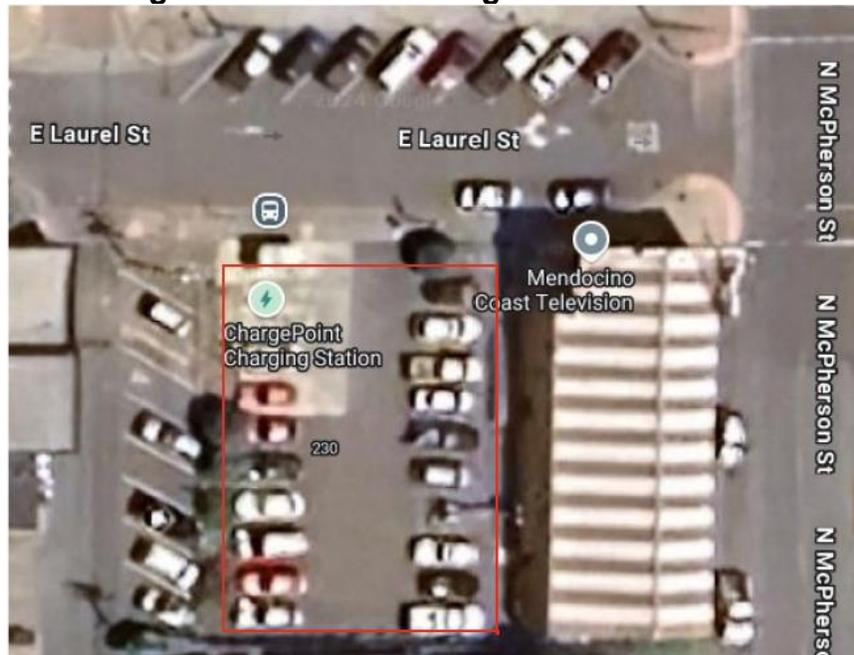
Figure 2 – E. Laurel South Side of Street



East Laurel Public Parking Lot:

Another option for congregate mobile vending in this general vicinity is to turn the public parking lot on East Laurel Street into a dedicated mobile vending site. See Figure 3 below. This would maintain existing on-street parking and lessen impacts on the alley. It could serve as a gathering space with the addition of picnic tables and umbrellas.

Figure 3 – Public Parking Lot E. Laurel St.



Bainbridge Park:

The mobile vending option next to Bainbridge park (See Figure 4) suggested at the Planning Commission meeting has since been echoed by others during informal discussions. This seems like a good and natural fit, with existing picnic tables in the park, pleasant grassy areas to enjoy lunch, a library and playground in the immediate vicinity and no other food establishments closeby. But there are challenges related to the zoning and proximity to residences. The Municipal Code currently does not allow food trucks in locations zoned for Parks and Open Space or in residential zones, and this park is surrounded on four sides by residentially zoned neighborhoods. Additionally, per Municipal Code 10.20.155(H)(1)(a)(4), *“The location(s) will not interfere in the quiet enjoyment of residential units located within 300 feet of the proposed location(s).”* Even if food trucks were only allowed on the north side of the park, it would be difficult to meet the 300 ft distance requirement in this area.

Figure 4 – Bainbridge Park



SUMMARY:

The following section briefly recaps three of the many alternatives along with their strengths and weaknesses:

- 1. Congregate mobile vending site on E. Laurel from the Franklin and Laurel intersection to the west side of alley behind the gym and Tall Guy. Some of the “cons” could be mitigated by limiting mobile vending to the south side of E. Laurel Street.**

PRO'S	CONS
Provides centralized location for mobile vending.	Greater congestion and circulation issues in this busy intersection, especially on Wednesdays.
Removes issues of trucks parking in front of (most) brick and mortar businesses and some of the problems associated with that.	*Several MVV's rely on generators housed in tow vehicles. This increases the needed space and would reduce the number of trucks that could fit in this one location (see note below).

Provides food trucks with proximity to core of downtown.	Removal of several parking spaces in the Central Business District. Limits access to public parking lot on Laurel Street to entry via alley.
With addition of picnic tables and string lights, this area could serve as a pilot "Streatery" and community gathering place.	Staff on the South end of City Hall would be subjected to generator noise and fumes on a daily basis.
	MTA bus route uses Laurel for bus stop at Laurel and McPherson.

*NOTE: A suggestion was made that to solve the generator issue, food trucks be allowed to plug into existing streetlight outlets. The prospects of this are poor for a variety of reasons, but could be explored further with Public Works/Engineering staff.

2. Conversion of public parking lot on E. Laurel St. to mobile vending hub.

PRO'S	CONS
Provides centralized location for mobile vending.	Removes existing parking lot in CBD.
Removes issues of trucks parking in front of (most) brick and mortar businesses and some of the problems associated with that.	Possible impacts to future business at old Footlighters building, i.e. generator noise, etc.
Still provides food trucks with proximity to core of downtown.	City has two EV charging stations in this lot that would need to remain accessible.
With addition of picnic tables and string lights, this area could serve as a community gathering place.	

3. Code amendment to allow mobile vending at Bainbridge Park.

PRO'S	CONS
Provides centralized location for mobile vending.	Further from the core of downtown.
Removes issues of trucks parking in front of (most) brick and mortar businesses and some of the problems associated with that.	Requires code amendment to allow mobile vending in this location.
There is already significant community activity here, existing picnic tables and a nice space to eat.	The park is surrounded on four sides by residential zones; where mobile vending is currently prohibited.
There is often plenty of available parking here.	

CONCLUSION:

There may be no perfect existing options for dedicated mobile vending in which all stakeholders are satisfied, yet the City recognizes mobile vending as an important part of a vibrant and flourishing community. Staff seeks greater clarity regarding the wishes of our legislative body in determining the best path forward for mobile vending within the City of Fort Bragg. This will enable us to offer business friendly support to both mobile vending vehicle operators and 'brick and mortar' businesses as well as to potentially create pleasant spaces in which both visitors and members of the community can come together and enjoy great food.

RECOMMENDED ACTIONS:

Discuss and provide direction on whether or not staff should do one or more of the following:

1. Craft an MVV ordinance amendment limiting standalone MVV's in certain areas within the core of downtown, congruent with Planning Commission feedback or other considerations.
2. Pursue creation of a dedicated mobile vending location on East Laurel Street that is closed to vehicular traffic, consistent with Planning Commission and Community Development Committee feedback.
3. Pursue acquisition of one or more vacant lots that could be dedicated to mobile vending and/or to a replacement parking lot.
4. Pursue dedicated mobile vehicle vending sites on the 200 block of East Alder Street at the south end of Purity Market, and/or on both sides of the 400 block of North Franklin Street.

ALTERNATIVE ACTIONS:

1. Discuss and provide staff with direction to seek additional information and schedule another meeting and/or public hearing for review.
2. Provide other direction to staff.

OUTLOOK:

Should Council recommend an ordinance amendment, staff will draft a revised ordinance incorporating Council discussion and direction. This ordinance will be taken to Planning Commission for a recommendation, and back to City Council for adoption.

ATTACHMENTS:

1. Ordinance No. 945-2019

NOTIFICATION:

1. "Notify Me" Subscriber Lists: Fort Bragg Downtown Businesses, Economic Development Planning

BEFORE THE CITY COUNCIL OF THE CITY OF FORT BRAGG

AN ORDINANCE REPEALING AND REPLACING SECTION 10.20.150 (MOBILE VENDING – PERMIT - REQUIRED) AND SECTION 10.20.155 (PARKING OF MOBILE VENDING VEHICLES – PERMIT – LIABILITY INSURANCE REQUIREMENTS) OF CHAPTER 10.20 (STOPPING, STANDING AND PARKING) OF TITLE 10 (VEHICLES AND TRAFFIC) OF THE FORT BRAGG MUNICIPAL CODE

ORDINANCE NO. 945-2019

WHEREAS, food trucks and other forms of mobile vending have grown in popularity in recent years; and

WHEREAS, mobile vending in Fort Bragg is currently regulated by Fort Bragg Municipal Code, Chapter 10.20, Sections 10.20.150 and 10.20.155; and

WHEREAS, the City's 2014 Economic Development Strategy includes a strategy to review existing regulations and, if necessary, make them more business friendly; and

WHEREAS, the City Council has reviewed the mobile vending regulations and determined that they should be updated to facilitate mobile vending while ensuring that mobile vending will not be detrimental to the public interest, health, safety, convenience, or welfare; and

WHEREAS, a new set of regulations has been prepared for mobile vending that will allow Mobile Vending Units to operate safely within the public right of way; and

WHEREAS, the proposed regulations establish limits on the location and zoning districts for Mobile Vending Units; and

WHEREAS, the proposed regulations further regulate the operation, unit design, use of accessory equipment, compliance with Mendocino County Health Department's required use of a Commercial Kitchen for all food prep and vehicle cleanup and the use of a Certified Disposal Facility, and garbage and recyclable collection associated with Mobile Vending Units; and

WHEREAS, the State of California adopted *SB-946 Sidewalk vendors* and this ordinance revision will bring the City's sidewalk vending regulations into compliance with State Law; and

WHEREAS, the proposed regulations address mobile vending on public and private property and on sidewalks; and

WHEREAS, the City Council has determined that the following changes should be made to Chapter 10.20 of the Fort Bragg Municipal Code to establish new mobile vending regulations and to provide for consistency, accuracy and ease of use by the City's staff and citizens.

NOW, THEREFORE, the City Council ordains as follows:

Section 1. Legislative Findings. The City Council hereby finds as follows:

1. City of Fort Bragg Municipal Code sections 10.20.150 and 10.20.155 have been reviewed to identify necessary changes to ensure that Mobile Vending Operators (MVO) go through a permitting process to ensure that MVOs are effectively regulated so that they will not be detrimental to the public interest, health, safety, convenience, or welfare of the City.
2. Certain current provisions of sections 10.20.150 and 10.20.155 are not accurate reflections of the City Council's current legislative intent, nor do they comply with current State Law.
3. Amending sections 10.20.150 and 10.20.155 in the manner described in this ordinance is in the public interest for it will ensure that MVOs are effectively regulated so that they will not be detrimental to the public interest, health, safety, convenience, or welfare of the City.
4. There is no possibility that the adoption of this ordinance will have a significant impact on the environment, and therefore, the adoption of this ordinance is exempt from the California Environmental Quality Act ("CEQA"), pursuant to Section 15301(e) (minor alteration to existing facilities) and 15311(c) (mobile food units) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations).

Section 2.

TITLE 10 VEHICLES AND TRAFFIC

Section 10.02 entitled **Definitions** is hereby amended with the addition of the following terms:

10.02.10 DEFINITIONS

CERTIFIED DISPOSAL FACILITY. A facility that accepts liquid waste from Mobile Vending Units that includes an oils/fats/grease separator and is connected to the City's Waste Water Treatment Facility.

COMMERCIAL KITCHEN. A kitchen that complies with the California Retail Food Code and any subsequent update to that code.

MOBILE VENDING. The sale of food, fruits, drinks for immediate consumption from a mobile vending unit or the sale of flowers from a mobile vending unit.

MOBILE VENDING OPERATOR (MVO). A business owner who engages in the sale of food, fruits, drinks or other items for immediate consumption from a mobile vending vehicle or display equipment on the sidewalk.

MOBILE VENDING PERMIT. A Permit of the City of Fort Bragg authorizing the operation of a Mobile Vending Vehicle subject to the findings identified in this ordinance.

MOBILE VENDING VEHICLE (MVV). Any vehicle from which food, drinks and/or flowers

are sold or offered for sale.

SIDEWALK VENDING (SV). Sidewalk vending means a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path.

DESIGNATED MOBILE VENDING LOCATION. Designated Mobile Vending Locations for MVVs will be established through business license or Mobile Vending Permit approval.

Section **10.20.150 Mobile Vending – Permit – Required** is hereby replaced in its entirety with the following:

10.20.150 MOBILE VENDING — PERMIT — REQUIRED.

- A. **Purpose.** A Mobile Vending Permit provides a process for reviewing mobile vending activities, location(s), design, operation and hours that may be appropriate in an applicable zoning district, but whose effect on the site, surroundings, pedestrian and vehicular traffic and parking cannot be determined before being proposed for specific site(s), rights of way and/or sidewalk(s).
- B. **Applicability.** Except as otherwise provided in this section, no person shall stand or park any Mobile Vending Vehicle (MVV) or engage in Sidewalk Vending (SV) from which food or drinks for immediate consumption and/or flowers or merchandise are sold, displayed, solicited, or offered for sale or bartered or exchanged on any portion of any street or sidewalk within the City without first obtaining a Mobile Vending Permit from the Community Development Department. Vending of merchandise other than food, drinks and flowers is prohibited in MVV in Fort Bragg, although (per State law) other merchandise sales are permitted through Sidewalk Vending. The provisions of this subsection shall not apply to persons delivering the articles upon order of, or by agreement with, a customer from a store or other fixed place of business or distribution.
- C. **Review Authority.** Mobile Vending Permits applications shall be approved or disapproved by the Community Development Director. Appeal of the Director's determination may be made to the Planning Commission, where the Director's determinations of the meaning or applicability of this regulation are believed to be in error.
- D. **Application Requirements.** The Mobile Vending Permit application shall include:
 - 1. For Mobile Vending Vehicles (MVV):
 - a. The proposed specific location(s) and or route(s) on which the MVV will be located;
 - b. Detailed scale drawings of the vehicle/cart to be used, material specifications, and an isometric drawing in color of at least two views showing all four sides of the vehicle/cart and any logos, printing or signs which will be incorporated and utilized in the color scheme; and
 - c. Proposed site furniture associated with the MVV (if located on private property).

2. For Sidewalk Vending (SV)
 - a. The proposed specific location(s) and or route(s) on which the sidewalk vending will be located; and
 - b. Scale drawings (dimensions) of any display, signage or site furniture to be used.

- E. **Application Fee.** The Mobile Vending Permit fee will be established by resolution of the City Council or paid through either a Development Deposit Account (DDA) or a fee set through the City's fee resolution and updated from time to time.

- F. **Annual Fee.** An Annual Mobile Vending Fee shall be charged as part of the business license fee to cover the City costs, encroachment permit costs and parking permit fees associated with Mobile Vending Vehicles and Sidewalk Vending. The Annual Mobile Vending Fee will be established by resolution of the City Council.

- G. **Permit Term.** Mobile Vending Permits for Sidewalk Vending shall be limited to a two-year term. Mobile Vending Permits for MVVs located on private property and/or City Streets shall be limited to a three-year term.

- H. **Permit Findings, Decision and Revocation.** MVOs shall adhere to all regulations of Section 10.20.150 and 10.20.155 of the Municipal Code. The Review Authority shall require that the project, as proposed or with changes resulting from the review process and/or conditions of approval, complies with all applicable regulations identified in Section 10.20.150 and 10.20.155.
 1. **Permit Findings.**
 - a. MVV may be approved, conditionally approved, or disapproved according to the following findings:
 - i. The location(s) will not result in traffic visibility issues;
 - ii. The location(s) will not remove parking spaces on Main Street;
 - iii. The location(s) will not interfere in the business operations of businesses located within 300 feet of the proposed location; and
 - iv. The location(s) will not interfere in the quiet enjoyment of residential units located within 300 feet of the proposed location(s).
 - b. SV may be approved, conditionally approved, or disapproved according to the following findings:
 - i. The location(s) will not hamper ADA access;
 - ii. The location(s) will not interfere with the public's use and enjoyment of natural resources and recreational opportunities; and
 - iii. The location(s) will not negatively impact objective health, safety, or welfare concerns.

 2. **Permit Notification.**
 - a. MVV: All property owners and business owners within 300 feet of a proposed MVV location shall be notified, in accordance with the City's Minor Use Permit process, of the application for a Mobile Vending Permit. These property and business owners can appeal the Mobile Vending Permit to the Planning Commission for the Planning Commission's consideration if they object to the proposed location.

Absent an appeal, the Community Development Director's review authority shall be final.

- b. **SV: No Minor Use Permit process is required for sidewalk vendors.**
 3. **Effective Date.** A Mobile Vending Permit decision shall become effective on the tenth day after the decision, unless an appeal is made to the Planning Commission.
 4. **Special Conditions.** The Review Authority may require any reasonable and necessary conditions of approval to ensure that the Mobile Vending Operator will comply with the requirements of Section 10.20.150 and 10.20.155 of the Municipal Code.
 5. **Revocation.** The Review Authority may revoke or suspend the Mobile Vending Permit or may deny the renewal of said permit if: 1) the permittee has violated or failed to meet any of the provisions of Section 10.20.150 or 10.20.155; 2) any required permit has been suspended, revoked or canceled; and/or 3) the permittee does not have insurance that meets permit requirements.
 6. **Transferability.** The Mobile Vending Permit may be transferred with the business license for the operation of an MVV, however the new owner must satisfy all City insurance requirements and other permitting requirements.
- I. **General Mobile Vending Permit Standards.** All MVVs shall adhere to the following standards.
1. **Location.** Mobile vending shall be permitted only within commercial and industrial (CBD, CG, CH CO, IH and IL) zoning districts, with the following further restrictions.
 - a. Mobile Vending is not permitted in: 1) the public right of way in the IH or IL zone; 2) on the Main Street public right of way in any zoning district; and 3) within Parks and Open Space zoning districts (unless approved with a Limited Term Permit as part of a larger event).
 - b. Mobile vending is not permitted in any Residential or Public Facilities zoning district or in the Neighborhood Commercial (CN) zoning district unless it is part of an approved school district event or part of an event that has been approved under a Limited Term Permit.
 - c. MVUs are not permitted within two hundred (200) feet of a special event that has received a Limited Term Permit, unless approved as part of that Limited Term Permit.
 2. **Time.** Mobile vending is prohibited between the hours of 2:30 a.m. and 6:00 a.m.
 3. **Operations.** All items to be sold must involve a short transaction period to complete the sale, and be easily carried by pedestrians. MVVs must not cause congestion or block vehicular or pedestrian traffic, nor cause undue noise, litter, or offensive odors.
 4. **Accessory Equipment.** MVVs shall be entirely self-contained. No external storage, power (generator), piping or plumbing is allowed. An external generator is permitted in a tow vehicle, provided the operation does not conflict with the quiet enjoyment of property within 300 feet of the MVV.

5. **Garbage and Recyclable Collection.** MVV operators shall provide for collection and recycling of compostable material, recycling and trash on site. MVV operators shall clean up all trash associated with their operation and sales every two hours.
 6. **Unit Design.** The design, materials and colors of the MVV shall be considerate of the immediate surroundings of the proposed location. Graphics and signage shall be appropriate for the immediate surroundings and to the product being sold.
 7. **Signage.** Vehicle signage shall not exceed twenty-five (25) square feet.
 8. **Formula Business.** The location, scale, and appearance of formula business MVUs shall not detract from the economic vitality of established commercial businesses and the MVVs must be consistent with the small town, rural character of Fort Bragg.
 9. **Health Department Requirements.** All MVVs shall obtain required permits from Mendocino County Health Department and comply with all requirements therein, including the use of a Commercial Kitchen for all food preparation and vehicle cleanup and the use of a Certified Disposal Facility to dispose of all kitchen waste into the sanitary sewer. The Certified Disposal Unit must comply with the City's Fats, Oils, and Grease program.
- J. **Sidewalk Vending Permit Standards.** All Sidewalk Vending shall adhere to the following standards.
1. **Location.**
 - a. **Zoning Districts:** Sidewalk Vending is permissible in all commercial zoning districts per State Law. Stationary sidewalk vending shall be prohibited in areas that are zoned exclusively residential, however roaming sidewalk vendors are allowed in residential zoning districts per State Law.
 - b. **Events:** Both stationary and roaming sidewalk vending are not permitted within two hundred (200) feet of a special event that has received a Limited Term Permit, unless approved as part of that Limited Term Permit.
 - c. **Parks:** Sidewalk vending is not permitted in Noyo Headlands Park, Pomo Bluffs Park, Otis Johnson Park and Wiggly Giggly Park, as it interferes with the public's use and enjoyment of the natural resources and recreational opportunities of these facilities. Sidewalk Vending is permitted within Bainbridge Park with a Mobile Vending Permit per State Law.
 2. **Operations.** All items to be sold must involve a short transaction period to complete the sale and be easily carried by pedestrians. MVUs must not cause congestion or block vehicular or pedestrian traffic, nor cause undue noise, litter, unsanitary conditions or offensive odors.
 3. **Accessory Equipment.** Sidewalk vending equipment shall be entirely self-contained. No external storage, power (generator), piping or plumbing is allowed.
 4. **Garbage and Recyclable Collection.** Sidewalk vendors shall provide for collection and recycling of compostable material, recycling and trash on site. Sidewalk vendors

shall clean up all trash associated with their operation and sales every two hours.

5. **Signage.** Signage shall not exceed four (4) square feet.
 6. **Health Department Requirements.** All sidewalk vendors shall obtain required permits from Mendocino County Health Department and comply with all requirements therein, including the use of a Commercial Kitchen for all food preparation and vehicle cleanup and the use of a Certified Disposal Facility to dispose of all kitchen waste into the sanitary sewer. The Certified Disposal Unit must comply with the City's Fats, Oils, and Grease program.
 7. **ADA Compliance.** The use of the public sidewalk for pushcart vending must be compliant with the Americans with Disabilities Act (ADA accessibility). In making this determination, the Community Development Director and/or the City Engineer shall consider the width of sidewalk, the proximity and location of existing street furniture, including, but not limited to, signposts, lamp posts, benches, street trees, and trash cans to determine whether the proposed use would result in a loss of ADA accessibility.
- K. **Additional Standards for Mobile Vending on Public Property.** In addition to the standards above, all mobile vending on public property shall adhere to the following additional requirements and standards.
1. MVV operators must obey all parking limits on City streets, unless otherwise permitted to park in a Designated Mobile Vending Location as part of the Mobile Vending Permit.
 2. All mobile vendors located on public property are required to obtain an encroachment permit.
- L. **Additional Standards for Mobile Vending on Private Property.** In addition to the General Mobile Vending Standards above, Mobile vendors on private property shall adhere to the following additional requirements and standards.
1. The setback requirements of the underlying zoning district shall apply to MVVs located on private property for longer than two (2) hours per day.
 2. Tables, benches, trash cans, canopies and other site furniture shall be reviewed for setback conformance and design compatibility as part of the Mobile Vending Permit process.

Section **10.20.155 Parking of Mobile Vending Vehicles – Permit – Liability Insurance Requirements** is hereby replaced in its entirety with the following:

10.20.155 PARKING OF MOBILE VENDING VEHICLES - PERMIT - LIABILITY INSURANCE REQUIREMENTS.

Before any Mobile Vending Permit is issued pursuant to Section 10.20.150 on public property (in the right of way or at any park as part of a Limited Term Permit event), the

applicant for such a permit shall be required to file with the City for an encroachment permit, and thereafter keep in full force and effect, policies of insurance as set forth in the City's Administrative Regulations as from time to time may be amended.

Section 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council of the City of Fort Bragg hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

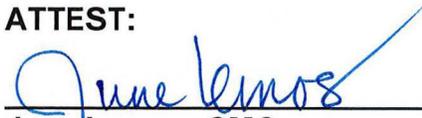
Section 4. Effective Date and Publication. This ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage. Within fifteen (15) days after the passage of this Ordinance, the City Clerk shall cause a summary of said Ordinance to be published as provided in Government Code §36933, in a newspaper of general circulation published and circulated in the City of Fort Bragg, along with the names of the City Council voting for and against its passage.

The foregoing Ordinance was introduced by Councilmember Norvell at a regular meeting of the City Council of the City of Fort Bragg held on March 25, 2019 and adopted at a regular meeting of the City of Fort Bragg held on April 8, 2019 by the following vote:

- AYES:** Councilmembers Albin-Smith, Norvell, Peters and Mayor Lee.
- NOES:** None.
- ABSENT:** None.
- ABSTAIN:** None.
- RECUSED:** Councilmember Morsell-Haye.



 William V. Lee
 Mayor

ATTEST:


 June Lemos, CMC
 City Clerk

PUBLISH: March 28, 2019 and April 18, 2019 (by summary).
EFFECTIVE DATE: May 8, 2019.



Mobile Vehicle Vending Discussion Item

CITY COUNCIL, JULY 22, 2024

Background Overview

Mobile Vehicle Vending (food trucks) can be a positive commercial activity that have offer benefits to a community -

- ▶ Provides opportunities for budding entrepreneurs with a smaller financial commitment
- ▶ Can add vibrancy and be a draw to commercial areas that want to increase foot traffic
- ▶ Provides convenient food options to the public and nearby employees

Background, Cont.

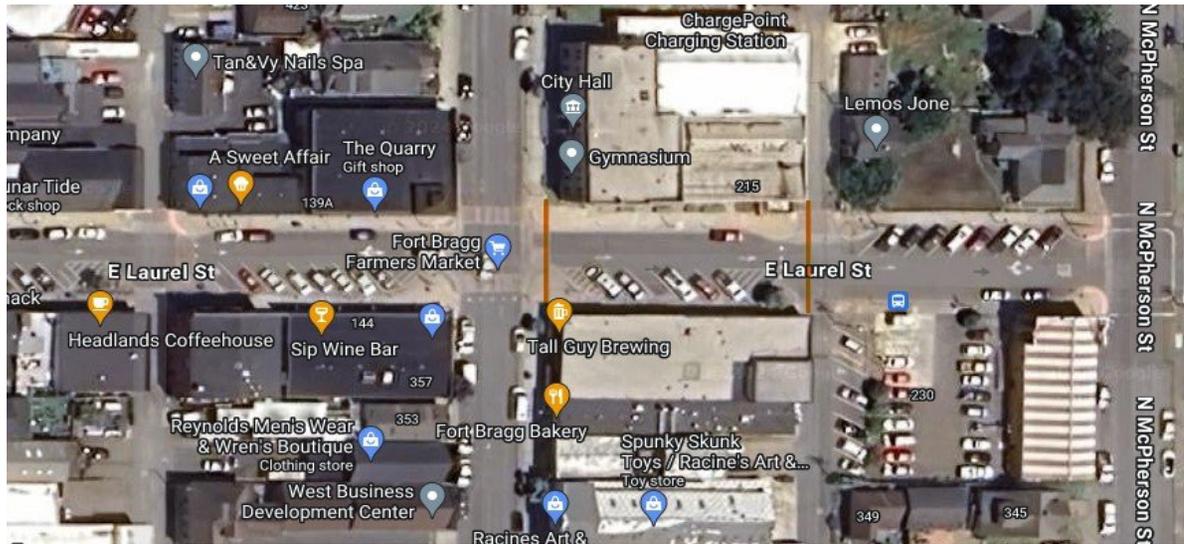
The presence of food trucks can also pose challenges associated with due to loss of parking spaces, increased noise from generators, and other perceived issues.

- ▶ December 13, 2023, staff brought the issue of allowable locations to Planning Commission for feedback.
- ▶ March 26, 2024, the issue came to CDC along with PC's suggestions.
- ▶ CDC directed staff to bring the issue to full Council, with recommendation to look at dedicated food truck locations, including East Laurel Street.

LOCATION 1 – East Laurel Street



Close Laurel St. from Franklin to Alley



Location 1 Pro's and Con's

PROs	CONs
Provides dedicated food truck spot	Busy intersection, esp. during Farmers Market
Less potential for conflicts with brick and mortar businesses	Generator tow trucks decrease space per vendor
Food trucks still in the core of CBD	Removal of parking in CBD; lot on Laurel accessible from alley only
Community gathering space	City staff subjected to noise and odors
Food truck operators I spoke with in favor of location	MTA bus stop relies on through traffic on E. Laurel



East Laurel – South Side of Street

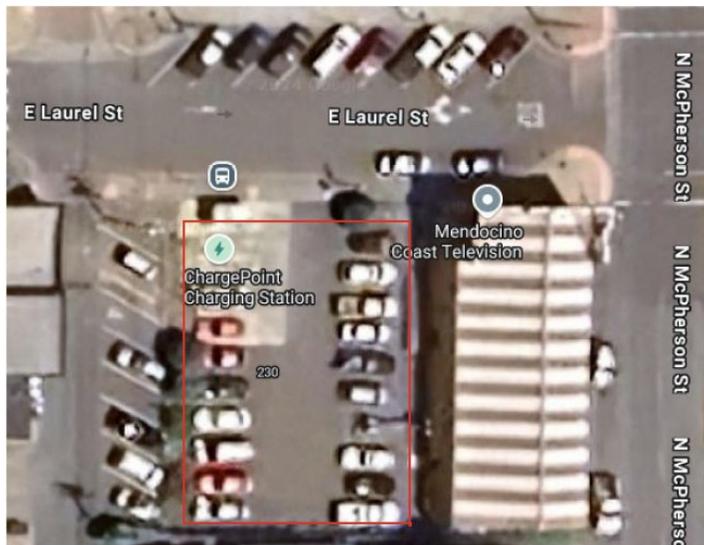
Locating food truck area to one side of the street could solve many of the problems of a full street closure while still providing dedicated mobile vending.



LOCATION 2: East Laurel Parking Lot

Convert public parking lot on East Laurel into mobile vending site

- ▶ Maintains existing on-street parking
- ▶ Lessens impact on alley



Location 2 Pro's and Con's

PROs	CONs
Provides dedicated food truck spot	Removes existing parking lot in CBD
Less potential for conflicts with brick and mortar businesses	Possible impacts to future business at old Footlighters building, i.e. generator noise, etc.
Food trucks still in the core of CBD	City has two EV charging stations in this lot that would need to remain accessible.
Community gathering space	

LOCATION 3: Bainbridge Park

Use south side of street at north end of park for mobile vending vehicles



Location 3 Pro's and Con's

PROs	CONs
Provides food truck hub	Further from core of downtown
Less potential for conflicts with brick and mortar businesses	Residential zoning on four sides – currently prohibited
Already gathering spot with existing picnic tables and benches	May not be able to keep food trucks 300' from residences
Often plenty of available parking	Would require code amendment or zoning change
MVV's serve library & park users	

ADDITIONAL POSSIBILITIES

400 Block of N. Franklin Street



ADDITIONAL POSSIBILITIES, CONT.

200 Block of Alder Street



VACANT LOTS

251 Franklin Street



VACANT LOTS

435 North Franklin Street



From: [Anne Maureen McKeating](#)
To: [City Clerk](#)
Subject: Food trucks on Redwood
Date: Monday, July 22, 2024 9:09:05 AM

That Redwood Avenue is not an appropriate street for food trucks .
It is a busy street with limited parking.
Food truck customers are now taking up the few parking we have left.

They are blocking the visibility of the businesses on Redwood Street, which are already struggling .

They shouldn't not be placed in front of brick and mortar restaurants with extremely high overhead that are struggling to stay open themselves.

We love food trucks, and want them to do well, but a more appropriate part of downtown would be better for everyone.
Placement on Laurel Street or Franklin near City Hall would be less contentious.

Sent from my iPhone

From: [suzann.lina](#)
To: [City Clerk](#)
Subject: Item 8B mobile vending vehicle locations.
Date: Sunday, July 21, 2024 9:00:55 PM

City Council members-

I am writing to you regarding food truck placement in downtown Fort Bragg.

Most restaurants downtown are struggling with high overhead and making our rent every month.

When food trucks are permitted within feet of other brick and mortar restaurants it really doesn't seem fair.

We're not entirely against having them in the downtown but they really should be placed away from other dining establishments.

In other towns, they are permitted in one area.

That way, they are not interfering with other brick and mortar restaurants.

Redwood Avenue is just not a good location for food trailers and there is no public restroom for them to use on Redwood Ave. Which has become an issue. They frequently visit our restrooms in the restaurants and businesses. They should be placed down by City Hall where there is more parking, less competition and bathroom facilities.

Thank you for your time,
Suzann Lina

Sent from my iPhone

From: [sneaker wave](#)
To: [City Clerk](#)
Subject: item 8B
Date: Sunday, July 21, 2024 8:35:02 PM

dear city Council,

Thank you for discussing this important issue.

As a business owner on Redwood, i've noticed that the front of my shop is a the designated spot for food trucks to park. I'm hoping that we can spread these around the city and not just have them all in front of the shops on north side of Redwood.

I think it's great to have food trucks however they are quite large, block the view, and are very noisy. I asked that these trucks are put in an area that is not always in front of my shop. I'm happy to host a food truck every once in a while, but every day is getting to be too much!

thank you for your consideration,

West, owner of sneakerwave 221 east redwood

[SNEAKER WAVE](#) in DOWNTOWN FORT BRAGG

Website: sneakerwavedtfb.com/

Instagram: [@sneaker_wave_dtfb](https://www.instagram.com/sneaker_wave_dtfb)





City of Fort Bragg

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

Text File

File Number: 24-864

Agenda Date: 7/22/2024

Version: 1

Status: Business

In Control: City Council

File Type: Staff Report

Agenda Number: 8C.

Consideration of a Resolution of the Fort Bragg City Council Approving the Mendocino County Master Tax Sharing Agreement Among Mendocino County and the Cities of Ukiah, Willits, Fort Bragg, and Point Arena.



AGENCY: City Council
MEETING DATE: July 22, 2024
DEPARTMENT: Administration
PRESENTED BY: Isaac Whippy
EMAIL ADDRESS: iwhippy@fortbragg.com

AGENDA ITEM SUMMARY

TITLE:

Consideration of a Resolution of the Fort Bragg City Council Approving the Mendocino County Master Tax Sharing Agreement Among Mendocino County and the Cities of Ukiah, Willits, Fort Bragg, and Point Arena.

BACKGROUND:

The Cortese-Knox-Hertzberg Local Government Reorganization Act (Govt. Code section 56000 *et seq.*) outlines the procedures that the Mendocino County Local Agency Formation Commission (LAFCo) must follow to process an application for an annexation. When a city annexes land from a county, the responsibility for providing municipal-type services transfers from the county to the city while the county continues to provide county-wide services such as public health and social services. This agreement is not an annexation agreement, nor does it guarantee certain annexations must occur.

Government revenue, derived primarily from property tax, local sales tax, and transient occupancy tax, funds essential services, with responsibilities shared between the Cities and the County. The allocation of tax revenue between the County and City jurisdictions requires modernization to more effectively direct resources to the jurisdiction best equipped to deliver specific services. Annexation facilitates the strategic extension of city-provided municipal services to higher populated areas, while ensuring the County can continue to provide vital county-wide services; the Master Tax Sharing Agreement is designed to facilitate this transfer without creating sudden financial stress and allows for the orderly transition of resources and changes in service delivery.

One of the requirements to process an application for an annexation through LAFCo is a tax sharing agreement as provided for in Revenue and Taxation Code section 99. A tax sharing agreement sets forth how tax revenues generated by the property being annexed are shared between the County and the annexing City. Revenue and Taxation Code section 99(d) provides for a master tax sharing agreement -- one that encompasses all the primary taxes and all jurisdictions. Such a master tax sharing agreement is beneficial in this case in that it provides consistency and efficiency in the annexation process as opposed to having to negotiate a separate agreement for each annexation.

A primary objective of a master tax sharing agreement is to enhance cooperation between the County and its Cities, thereby reducing competition for tax revenue. This allows land use and development decisions to be guided by sound planning principles, such as the development of necessary infrastructure and impact mitigation, efficient and rational service delivery, ensure orderly growth patterns, and the preservation of quality of life.

ANALYSIS:

City and County Staff, along with an ad-hoc committee from the Board of Supervisors comprising Supervisors Mulheren and Gjerde, have collaborated for months on the details of a Master Tax Sharing Agreement. Their goal has been to devise a solution equitable for all jurisdictions and to mitigate budget impacts. This Master Tax Sharing Agreement facilitates economic development in ways that will increase tax revenue while relieving the County of municipal service obligations, thus benefiting every jurisdiction, and ultimately improving service delivery. As annexation occurs, the proposed Master Tax Sharing Agreement ensures both urban and rural areas receive the necessary support tailored to their unique needs. This Master Tax Sharing Agreement also enables the municipalities to program the expansion of services without sacrificing existing responsibilities.

A detailed term sheet for the proposed Master Tax Sharing Agreement is included in Attachment #1 and the Resolution along with the Master Tax Sharing Agreement is included in Attachment #2.

The proposed Master Tax Sharing Agreement is fair for all jurisdictions, will create a uniform approach that can be followed for decades to come, and will allow for appropriate growth. These benefits include:

- **Pathway for economic growth:** Better municipal services will allow for orderly, successful, and sustainable growth. Housing development will proceed, and business activity will expand, which will increase property and sales tax revenue to the region. Without a Tax Sharing Agreement, government services would likely remain sub-par in areas that could accommodate such development, and growth would stagnate.
- **Time for solution:** There have been no significant land annexations in Mendocino County since the 1980s, which has left some developed areas without the appropriate extension of adequate municipal services. The Tax Sharing Agreement fosters City and County collaboration to serve higher populated areas with the array of governmental services that are necessary for urban communities to thrive.
- **Better provision of services:** With annexation, the Tax Sharing Agreement allows each jurisdiction to more efficiently focus their efforts and resources on the responsibilities that are in their “lane.” Furthermore, it will “right-size” the tax revenue provided for each jurisdiction to meet its service obligations and match how these services are divided and delivered.
- **Addresses unsustainable pressure on City and County budgets:** The County of Mendocino is being stretched to provide different services to unincorporated areas that are beyond the County’s core capacities. A Tax Sharing Agreement that supports future annexations which would assign service responsibility for these areas to cities would reduce the strain on the County, which is providing services that it is not set up for, and

would improve the sustainability of the County budget and operations. Furthermore, reasonable growth for cities will help create a better economy of scale to address the demand for costly municipal services.

- **Equity for disadvantaged communities:** The unincorporated areas of the County that are currently underserved by government infrastructure are disproportionately lower income and minority populations. These communities deserve more investment in streets, sidewalks, streetlights, parks, emergency response and other infrastructure. To improve equity in our region, there must be a focus on bringing resources and investment and infrastructure improvements to these disadvantaged communities. That can only happen with a Tax Sharing Agreement that better aligns revenue and responsibility to the appropriate jurisdictions.
- **Pathway for housing:** There are aggressive requirements for new housing development to meet shortfalls across the state of California. In Mendocino County, there are good opportunities for housing development located just outside some city jurisdictions. With a Tax Sharing Agreement and appropriate land annexation, the Cities will work collaboratively with the County to facilitate and administer new housing development and would be in the position to provide appropriate municipal services to support that build-out.
- **Fairness for jurisdictions across the region:** All four Cities in Mendocino County would adopt the same tax-sharing provisions with the County. This would ensure fairness and fiscal responsibility for all jurisdictions and prevent the Cities from competing against each other for development opportunities.
- **Fairness for residents:** Currently, city residents must subsidize the delivery of basic services to areas outside city boundaries. Likewise, county residents are supporting the delivery of municipal services that are typically not the County's responsibility, thereby stretching valuable resources. A Tax Sharing Agreement will ensure all residents pay an equal amount for the services they receive, and all residents have access to the proper level of services for their community. In addition, incorporation into city boundaries provides individuals and businesses with expanded representation to help shape city policies.
- **Common solution:** Many cities and counties across California have adopted tax sharing agreements to resolve the discrepancies that can occur with how tax revenue is collected and how services are being delivered in different areas.
- **The math adds up:** City and County representatives have been working together on the specifics of the Agreement for months to identify a fiscal solution that is fair for all jurisdictions and does not create budget shortfalls in any year, as the Agreement is incrementally implemented and revenue sharing is phased over time with each annexation. With this Agreement in place, the expectation is that tax revenue will increase and every jurisdiction will be better off than before.

The Master Tax Sharing Agreement will allow for annexations which are long overdue in many regions throughout Mendocino County. Assurance that our existing communities and future development will receive the appropriate services from our Cities and the County is a key component to retaining and attracting businesses and investment in our region. The Agreement supports collaboration among our Cities and County to support safe and healthy communities, enhance economic growth, deliver high quality government services, and drive investment in well-planned infrastructure. The Agreement will set the stage for responsible growth in the right places, while improving the fiscal health of Fort Bragg, Point Arena, Willits, Ukiah, and the County.

Note: The Cities and County have been developing a spreadsheet, with the assistance of the Acting Auditor/Controller and Treasurer/Tax-Collector, that models how the property tax will be transferred in future annexations pursuant to the Agreement. It is the parties' intent to finalize that collaborative spreadsheet so that City and County officials can use it to implement the Agreement in the future.

RECOMMENDED ACTION(S):

Approve a Resolution of the Fort Bragg City Council approving the Mendocino County Master Tax Sharing Agreement among Mendocino County and the cities of Ukiah, Willits, Fort Bragg, and Point Arena.

ALTERNATIVE ACTION(S):

1. Reschedule approval of the Resolution pending further input or staff information to a date certain for another election.
2. No action.

FISCAL IMPACT:

N/A

GREENHOUSE GAS EMISSIONS IMPACT:

N/A

CONSISTENCY:

ATTACHMENTS:

1. Term Sheet
2. Resolution and Master Tax Sharing Agreement

RESOLUTION NO. ____-2024

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL
APPROVING THE MENDOCINO COUNTY TAX SHARING AGREEMENT
AMONG MENDOCINO COUNTY AND THE CITIES OF FORT BRAGG,
WILLITS, UKIAH, AND POINT ARENA.**

WHEREAS, Mendocino County (“County”) collects Real Property Tax Revenue within its jurisdiction; and

WHEREAS, the California Department of Tax and Fee Administration, formerly part of the State Board of Equalization, administers the Statewide general tax on the retail sale or use of merchandise or goods within the State (the “Bradley-Burns Sales Tax”); and

WHEREAS, the California Department of Tax and Fee Administration collects the 1% Bradley-Burns Sales Tax on behalf of cities and counties in the State and distributes the revenue to those local governments; and

WHEREAS, Each Party levies a transient occupancy tax on those territories within its Jurisdiction; provided, however, that the County does not levy a separate transient occupancy tax in areas within a City’s jurisdiction; and

WHEREAS, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (The “CKH Act”) governs changes in organization which changes in organization may need to be approved by the Mendocino LAFCO, and other local agencies; and

WHEREAS, the City of Fort Bragg together with the cities of Ukiah, Willits, and Point Arena (collectively, “the Cities”) anticipate changes in organization within the County, such as Annexations to the Cities, and desire to plan for the orderly and financially viable transition of Public services; and

WHEREAS, the County and the Cities intend the attached Agreement to provide an equitable approach to distributing certain identified tax revenues in anticipation of changes in organization; and

WHEREAS, recognizing that the residents of the Cities are also residents of the County, the County and the Cities acknowledge their shared responsibility to provide adequate services to their shared residents and recognize the importance of the County’s and the Cities’ services and that those services complement each other for the benefit of their residents; and

WHEREAS, the Parties recognize the importance of maintaining adequate service levels throughout the County and within the Cities to provide for the health, safety, and welfare of the residents of the County and the Cities. The Parties intend, given the mutual economic and other benefits that flow from annexations to the Cities, to cooperate as provided for in the attached Agreement to address the respective City’s and the County’s fiscal considerations in providing such services and their respective present and future economic and planning needs; and

WHEREAS, for certain changes of organizations, such as annexations, Revenue and Taxation (“R&T”) Code Section 99 requires an agreement of the City and the County to a property tax revenue exchange and to provide a resolution of approval of the same by each legislative body to Mendocino LAFCO prior to consideration of the change of organization; and

WHEREAS, the County and the Cities have negotiated a master property tax exchange agreement, pursuant to Revenue and Taxation Code section 99(d), that is intended to satisfy the requirements of Revenue and Taxation Code section 99 for future changes of organization as specified in the Agreement; and

WHEREAS, while not required by Revenue and Taxation Code section 99, the Parties acknowledge that this Agreement also provides for the exchange of Bradley-Burns Sales Tax and transient occupancy tax which the Parties agree to accept in accordance with the Agreement; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg as follows:

Section 1. The Council hereby approves the Mendocino County Master Tax Sharing Agreement (“the Agreement”), a true and correct, but unsigned, copy of which is attached hereto as Attachment 1.

Section 2. The Council authorizes the Mayor to sign the Agreement on behalf of the City of Fort Bragg.

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 July 2024, by the following vote:

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

BERNIE NORVELL
Mayor

ATTEST:

Diana Sanchez
City Clerk

**MENDOCINO COUNTY
MASTER TAX SHARING AGREEMENT**

THIS MASTER TAX SHARING AGREEMENT (this “Agreement”) is entered by and between the **County of Mendocino**, a subdivision of the State of California (the “County”), the **City of Fort Bragg** (“Fort Bragg”), the **City of Point Arena** (“Point Arena”), the **City of Ukiah** (“Ukiah”), and the **City of Willits** (“Willits”) (the Cities shall be collectively referred to herein as the “Cities”), each City being a California municipal corporation, as of the date it is executed on behalf of the last of the Parties to do so (the “Effective Date”). The Cities, each of them, and the County may sometimes be referred to herein individually as a “Party” or collectively as the “Parties” to this Agreement.

RECITALS

WHEREAS, the County collects Real Property Tax Revenue within its jurisdiction; and

WHEREAS, the California Department of Tax and Fee Administration, formerly part of the State Board of Equalization, administers the State-wide general tax on the retail sale or use of merchandise or goods with the State (the “Bradley-Burns Sales Tax”); and

WHEREAS, the California Department of Tax and Fee Administration collects the 1% Bradley-Burns Sales Tax on behalf of cities and counties in the State and distributes the revenue to those local governments; and

WHEREAS, each Party levies a transient occupancy tax on those territories within its jurisdiction; *provided*, however, that the County does not levy a separate transient occupancy tax in areas within a City’s jurisdiction; and

WHEREAS, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (the “CKH Act”) governs changes in organization, including annexations such as those contemplated in this Agreement, and which changes in organization may need to be approved by the Mendocino LAFCo, and other local agencies; and

WHEREAS, the Parties anticipate changes in organization within the County, such as Annexations to the Cities, and desire to plan for the orderly and financially-viable transition of public services; and

WHEREAS, the Parties intend this Agreement to provide an equitable approach to distributing certain identified tax revenues in anticipation of changes in organization; and

WHEREAS, recognizing that the residents of the Cities are also residents of the County, the Parties acknowledge their shared responsibility to provide adequate services to their shared residents and recognize the importance of the County’s and the Cities’ services and that those services complement each other for the benefit of their residents; and

WHEREAS, the Parties recognize the importance of maintaining adequate service levels throughout the County and within the Cities to provide for the health, safety, and welfare of the residents of the County and the Cities. The Parties intend, given the mutual economic and other benefits that flow from annexations to the Cities, to cooperate as provided for in this Agreement to address the respective City’s and the County’s fiscal considerations in providing such services

and their respective present and future economic and planning needs; and

WHEREAS, for certain changes of organizations, such as annexations, Revenue and Taxation Code section 99 requires an agreement of the city and the county to a property tax revenue exchange and to provide a resolution of approval of the same by each legislative body to Mendocino LAFCo prior to consideration of the change of organization; and

WHEREAS, the Parties intend this Agreement to satisfy the requirements of Revenue and Taxation Code section 99; and

WHEREAS, initiatives like the California Business Roundtable's AG#21-0042A1 Initiative threaten local funding measures and may limit or restrict the ability to overlay local transaction and use taxes of an annexing entity to newly annexed territory.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. Incorporation of Recitals.

The above Recitals are true and correct and are hereby incorporated into this Agreement.

2. Definitions.

The following terms as used in this Agreement shall have the following meanings:

“Annexation(s)” shall have the meaning set out in Government Code section 56017 or its successor, and any reorganization that includes an annexation.

“Annexed Area(s): shall mean territory or territories which have been approved for annexation by Mendocino LAFCo.

“Annexation Effective Date” shall mean the date of the particular annexation, as may be specified in Mendocino LAFCo's terms and conditions or by Government Code section 57202; *provided*, however, that such date falls after the Effective Date.

“Annexor City” shall mean a City Party that is planning, pursuing, or has completed an Annexation.

“Annexed Tax Rate Area” (“ATRA” or “ATRA’s”) shall mean any separate Tax Rate Area created for territory annexed after the Effective Date.

“Change of Organization” shall mean the definition provided for in the CKH Act at, as of the Effective Date, Government Code section 56021 and shall also include a “reorganization” as defined in Government Code section 56073.

The “Designated Fort Bragg Area” shall mean that territory described in the attached Exhibit A.

The **“Designated Ukiah Area”** shall mean that territory described in the attached Exhibit B.

“Fiscal Year” shall mean July 1st through June 30th of the following year.

The **“Fort Bragg Balance Area”** shall mean that territory described in the attached Exhibit A.

“Distribution” shall mean the allocation and provision of tax revenue from one Party to another Party as provided for in this Agreement in order to satisfy the requirements of Revenue and Taxation Code section 99.

“Mendocino LAFCo” shall mean the Mendocino County Local Agency Formation Commission.

“Property Tax Revenue” shall mean revenues derived from ad valorem taxes on real property and from other categories of secured and unsecured property taxes including and not necessarily limited to those described in the County’s annual distribution as Current Secured General, Current Unsecured General, Prior Secured General, Prior Unsecured General, SB 813 Supplemental General, Highway Property Rental, and HOPTR General.

“Sales Tax Revenue” shall only mean those taxes collected in accordance with Bradley-Burns.

“State Action” shall mean any legislative, judicial, and/ or voter-approved initiative action that limits a City’s ability to apply a City-approved transaction and use tax to an Annexed Area.

“Tax Rate Area” (“TRA” or “TRAs”) shall mean those base tax revenue and/or incremental tax revenues available from an identified area.

“Transient Occupancy Tax Revenue” (“TOT Revenue”) shall mean any tax lawfully imposed as an incident of short-term transient occupancy and excludes any revenue collected as the result of a City-specific tax measure that is greater than that collected by the County.

The **“Ukiah Balance Area”** shall mean that territory described in the attached Exhibit B.

3. Tax Distributions for Annexations.

a. Scope. As provided for in this Agreement and in no way expanding the provisions in subparagraph 3(b) to apply to any City other than Fort Bragg and Ukiah, the tax collection and distribution provisions in this Agreement shall apply to territory annexed to a Party as of the respective Annexation Effective Date. Prior to adopting a resolution of application to initiate a Change of Organization that includes an Annexation, the respective City shall meet with the County to consult on the proposed Change of Organization. During this consultation, the respective City shall provide to the County a map of the territory, a list of the APNs of the affected territory, and, if the City is subject to Paragraph 3(b), evidence that the proposal is Balanced. The date of this transmittal shall be referred to in this Agreement as the “Change of Organization Proposal Date”.

b. Balanced Annexations. This subparagraph 3(b) shall apply only to the Cities of Fort Bragg and Ukiah. A proposal to annex territory within the respective Designated Area of Fort Bragg or Ukiah must be “Balanced” in accordance with this Paragraph 3. Balanced Annexation(s) of such territory shall be referred to in this Agreement as a “Balanced Annexation(s)”.

i. The Parties shall presume that an Annexation of territory is a Balanced Annexation if Annexation of territory within a Designated Area is attended by annexing at least 98% of the same amount of territory of the respective Annexor City’s Balance Area; *provided*, however, that Annexation of territory within a Balance Area on or after the Effective Date that was not used for balancing purposes in the prior annexation shall be credited toward the presumption of a Balanced Annexation.

ii. The Parties acknowledge that Mendocino LAFCo has the authority, and may, in the course of its review of the Change of Organization alter the boundaries of the proposed Change of Organization in a manner that causes the Annexation to no longer be a Balanced Annexation, in which case the County can request an additional 30 day negotiating period, and, in that event, a new property tax exchange agreement would have to be negotiated pursuant to Revenue and Taxation Code section 99(b)(7) or the Mendocino LAFCo proceeding would terminate.

c. The Parties will, in accordance with law, take good faith and reasonable steps to implement the Agreement as soon as is feasible. Any dispute between the Parties regarding this subparagraph 3(c) shall be resolved in accordance with the dispute resolution process set forth in Paragraphs 5 and 12.

4. Tax Revenue Collection and Distribution.

Only the following taxes and tax collection and distribution provisions shall apply, as appropriate and described in this Paragraph 4, as of the relevant Annexation Effective Date. This Agreement shall not be construed to require an allocation of taxes to a City which are designated for a County service, such as the County library, over which the respective City shall not be assuming responsibility; nor shall this Agreement be construed to expand or reduce the categories of Property Tax Revenue distributed to a City as reflected in the County’s distribution of said revenues as of the Effective Date of this Agreement.

a. Property Tax Revenue Collection and Distribution. As of the relevant Annexation Effective Date, the County shall distribute to the Annexor City the County’s general fund property tax revenue (County Auditor’s Fund Code A0001) generated in the annexation area as follows:

i. Half of the County’s portion of the “annual tax increment” (as defined in Revenue and Taxation Code section 96.5 as of the Effective Date) that does not exceed 2% of the property tax revenue in the prior year from the annexation area.

ii. All of the County’s portion of the “annual tax increment” that exceeds 2% of the property tax revenue in the prior year from the annexation area, until the total property tax revenue received by the Annexor City equals 15% of the total property tax revenue generated in the annexation area.

iii. Once the total property tax revenue received by the Annexor City equals 15% of the total property tax generated in the annexation area, no additional portion of the County's "annual tax increment" shall be distributed to the Annexor City. In other words, the City's "property tax apportionment factor" (as calculated pursuant to Revenue and Taxation Code section 96.2 as of the Effective Date) in the annexation area shall not exceed 15%.

b. Bradley-Burns Sales Tax Revenue Collection and Distribution. As of the relevant Annexation Effective Date, the Annexor City shall collect all Bradley-Burns Sales Tax in the ATRA (the "ATRA Bradley-Burns Revenue") and shall distribute to the County a share of the ATRA Bradley-Burns Revenue in accordance with this subparagraph (b).

i. From the Annexation Effective Date until the start of the first full Fiscal Year immediately following the Annexation Effective Date, the Annexor City shall distribute to the County 100% of the ATRA Bradley-Burns Revenue.

ii. Thereafter, for each subsequent full Fiscal Year, the amount of ATRA Bradley-Burns Revenue the Annexor City distributes to the County in accordance with this Agreement shall be reduced by 1/15 (one-fifteenth) which the Parties agree shall be rounded to 6.667%. Therefore, for the first full Fiscal Year, the Annexor City shall distribute 93.333% of the ATRA Bradley-Burns Revenue to the County; for the second full year, the Annexor City shall distribute 86.666% of the ATRA Bradley-Burns Revenue to the County; for the third full year, the Annexor City shall distribute 79.999% of the ATRA Bradley-Burns Revenue to the County; and so forth, reducing each subsequent year by 6.667%, until, as of the start of the fifteenth (15th) full Fiscal Year following the Annexation Effective Date, the Annexor City shall no longer distribute ATRA Bradley-Burns Revenue to the County.

iii. For any Distribution under this subparagraph (b), the Annexor City shall distribute the ATRA Bradley-Burns Revenue to the County within thirty (30) days of the Annexor City receiving the ATRA Bradley-Burns Revenue from the California Department of Tax and Fee Administration.

c. Transient Occupancy Tax Revenue Collection and Distribution. As of the relevant Annexation Effective Date, the Transient Occupancy Tax in the ATRA shall be the rate of the Annexor City. The Annexor City shall collect the Transient Occupancy Tax in the ATRA (the "ATRA TOT Revenue") and shall distribute to the County a share of the ATRA TOT Revenue in accordance with this subparagraph (c).

i. From the Annexation Effective Date until the start of the first full Fiscal Year immediately following the Annexation Effective Date, the Annexor City shall distribute to the County 100% of the ATRA TOT Revenue.

ii. Thereafter, for each subsequent full Fiscal Year, the amount of ATRA TOT Revenue the Annexor City distributes to the County in accordance with this Agreement shall be reduced by 1/5 (one-fifth) or 20%. Therefore, for the first full Fiscal Year, the Annexor City shall distribute 80% of the ATRA TOT Revenue to the County; for the second full Fiscal Year, the Annexor City shall distribute 60% of the ATRA TOT Revenue to the County; for the third full Fiscal Year, the Annexor City

shall distribute 40% of the ATRA TOT Revenue to the County; and for the fourth full Fiscal Year, the Annexor City shall distribute 20% of the ATRA TOT Revenue to the County. As of the start of the fifth full Fiscal Year following the Annexation Effective Date, the Annexor City shall no longer distribute ATRA TOT Revenue to the County.

iii. For any Distribution under this subparagraph (c), the Annexor City shall distribute ATRA TOT Revenue to the County within thirty (30) days of the Annexor City collecting the ATRA TOT Revenue.

5. Reconciliation of Tax Revenue Collection and Distribution.

Upon the request of a Party to meet with another Party regarding the collection and Distribution of taxes between them in accordance with this Agreement, the respective Parties shall make all reasonable efforts to meet within thirty (30) days of such a request.

6. Modification of Sales Tax Revenue Distribution Due to State Action.

Should State Action be taken that limits a City's ability to automatically apply a City-approved transaction and use tax to an Annexed Area, the affected Parties shall promptly meet and negotiate in good faith to amend this Agreement to address the resulting financial impacts in accordance with Paragraph 12, to include the Core Principles.

7. Regional Housing Needs Plan Allocation.

a. The Parties agree: a) the County's Regional Housing Needs Plan (the "RHNP") allocation was based on its unincorporated lands; b) subsequent Annexation(s) may limit the County's ability to satisfy its obligations under the Housing Element Law; and c) the RHNP allocation should be adjusted to reflect the impact of an Annexation on the County's obligations under the Housing Element Law. Therefore, the Parties agree, in the event that the relevant City or a non-party proposes to annex a specific territory, the relevant Parties will work together in good faith to attempt to reach a mutually acceptable agreement to transfer a portion of the County's allocation to the relevant City.

b. The following general principles shall be used as a framework to reach such an agreement:

i. Where a City Annexation includes undeveloped territory that the relevant City's general plan and rezoning proposes for residential development, a portion of the County's Regional Housing Needs Allocation ("RHNA") shall be transferred to the City in an amount equal to potential residential units, including accessory dwelling units ("ADU's"). This transfer shall be calculated by using the City's rezoning for each legal parcel. Should the territory include an approved subdivision, units will be transferred as identified on the approved tentative map or project description. If such transferred number of units is fewer than the number of units such territory is designated for in the County General Plan or in the Residential Sites Inventory of the County's Housing Element, the relevant City and the County shall negotiate in good faith the amount to be transferred.

- ii. Where a City Annexation includes developed territory that the relevant City designates and prezones for residential purposes, a portion of the County's RHNA would be transferred to the relevant City in an amount equal to the unrealized units on underutilized properties for that area; *provided*, however, that such transfer shall not include ADUs or existing mobile home parks. This transfer shall be calculated by using the relevant City's pre zoning for each legal parcel. If such transferred number of units is fewer than the number of units such territory is designated for in the County General Plan or in the Residential Sites Inventory of the county's Housing Element, the relevant City and the County shall negotiate in good faith the amount to be transferred.
 - iii. Where a City Annexation includes territory that the relevant City's general plan and pre zoning proposes for commercial or industrial purposes, no adjustment of the RHNP shall be required, unless the proposed Annexation includes commercial territories on the Residential Sites Inventory of the County's Housing Element, in which case an amount equal to the identified residential units would be transferred to the relevant City.
- c. The income-level of transferred units shall be negotiated in good faith per the existing MCOG Annexation policy and State law. The Parties acknowledge that meeting the need in the lower income category requires higher residential densities and proximity to services, that an Annexation may result in the loss of lands that would otherwise be available to the County to meet the lower income obligations, and that such losses are an important factor in the good faith negotiations.
- d. Should a City seek to annex unincorporated territory for the purposes of open-space, agriculture or public facilities, no adjustment of the RHNP shall be required, unless any portion of the territory is designated for residential development in the County's Residential Sites Inventory of the county's Housing Element, in which case the parties shall negotiate a transfer in good faith.
- e. If the County has already fulfilled its RHNA obligations for the current Housing Element Cycle, no modification of the RHNP allocation shall be required.

8. Other Agreements Affecting Rights and Obligations of This Agreement.

Notwithstanding anything in this Agreement to the contrary, this Agreement does not preclude one or more of the Parties from entering separate agreements regarding particular Annexations; *provided*, however, that nothing in any separate agreement shall affect the rights and obligations of those Parties not party to that separate agreement. To the extent terms in any such separate agreement are found to be in direct conflict with a term(s) in this Agreement as it relates to a Party which is not a party to the separate agreement, the term(s) in this Agreement shall control over those in the separate agreement.

9. Term of this Agreement.

This Agreement shall remain in effect for an initial term of twenty (20) years as of the Effective Date and shall then and thereafter have a rolling extension that automatically renews this Agreement every year for an additional five (5) years.

10. Withdrawal; Termination.

a. A Party may only withdraw from this Agreement with a July 1st effective date (the “Withdrawal Date”) and on no less than five (5) years’ notice to all other Parties in accordance with Paragraph 13. Such withdrawing Party shall perform all obligations under this Agreement until the Withdrawal Date. A withdrawing Party shall remain obligated to perform the obligations in this Agreement, including financial obligations, arising before the Withdrawal Date, even after the Withdrawal Date.

b. This Agreement may only be terminated either: a) by written notice by the County of termination to the other Parties; or b) by unanimous written agreement of all Parties to this Agreement (either of which shall be referred to herein as “Notice of Termination”); *provided*, however, that, unless otherwise agreed to in writing, any termination may only take effect as of July 1st and no sooner than five (5) years after the Notice of Termination (the “Termination Date”). Upon Notice of Termination, the Parties shall remain obligated to perform the obligations in this Agreement, including financial obligations, arising before the Termination Date, even after the Termination Date.

11. Amendment; Related Tax-Sharing Agreements.

a. Any amendment to this Agreement shall be negotiated in good faith and in accordance with the following Core Principles:

1. Simplicity: any amendment should be understandable, not unreasonably complicated, and readily-implemented and verified.
2. Mutual benefit through economic growth.
3. Maintain normal revenue sources for the respective Party: for example, the majority of property taxes should continue to go to the County and Bradley Burns Sales Tax Revenue should go to the respective City.
4. Protect funding for County-wide services and relieve ongoing service costs.
5. Provide the respective City with appropriate financial resources to meet assumed municipal service costs.

b. Any amendment to this Agreement must be approved in writing by unanimous consent of all Parties; *provided*, however, that any amendment to this Agreement which affects only certain Parties (a “Related Tax Sharing Agreement”) may be agreed to by only those certain Parties so long as such Related Tax Sharing Agreement is in writing and notice is provided to the other Parties to this Agreement.

12. Dispute Resolution.

a. If, at any time during the term of this Agreement, any dispute arises between or among the Parties regarding the interpretation or implementation of this Agreement, including an alleged breach of this Agreement, the Parties will, in the first instance, attempt in good faith to meet to discuss and informally resolve the dispute through designated representatives. The Parties must give written notice of the existence and subject of a dispute (“notice of dispute”), which notice shall commence the dispute resolution process of this Agreement.

b. If, within thirty (30) days of service of a notice of dispute, unless extended by mutual agreement of the respective Parties, the respective Parties have not resolved the dispute through informal mediation, , the matter shall be submitted to the Judicial Arbitration and Mediation Service (JAMS), or an equivalent mediation service, or a mutually agreeable mediator, for formal mediation by a single mediator who should have technical or legal expertise or experience with public financing, taxation, and local government agencies. The mediator will be selected by unanimous consent of the respective Parties, but if unanimous consent cannot be obtained, the mediator will be selected at random from a list of mediators to be provided by the respective Parties.

c. Any Party may commence formal mediation by providing to the mediator and the other Parties a written request for mediation, setting forth the subject of the dispute and the relief requested. If the formal mediation process has not concluded or has not resolved the dispute within sixty (60) days of a written request for mediation, the mediation process will be deemed completed, unless the Parties extend the sixty-day period in writing.

d. If the dispute is not resolved by informal or formal mediation, each Party will be free to pursue whatever legal or equitable remedies may be available. No Party shall be permitted to file a legal action without first complying with the requirements of this Paragraph. This provision shall not waive or otherwise affect the applicable provisions of law governing claims against a public entity or the applicable statutes of limitation.

e. The fees and expenses incurred as a result of any dispute resolution activities, including attorney fees, mediator fees and costs, expert costs, and other expenses, shall be borne solely by the Parties involved in the dispute and participating in the mediation. The Parties involved in the dispute will share the mediator's expenses on an equal basis. Should a dispute go to trial before a court of competent authority and jurisdiction, the prevailing party in such court proceeding shall be entitled to recover their reasonable attorney fees and costs; *provided*, however, that such attorney fees and costs shall not include fees and costs associated with efforts preceding the court proceeding.

13. Notices.

Whenever notice or other communication is permitted or required by this Agreement, it shall be deemed given: (i) when personally delivered; or (ii) when received, if delivered by overnight courier or email (if email receipt is acknowledged in writing); or (iii) forty-eight (48) hours after it is deposited in the United States mail with proper first-class postage affixed thereto and addressed as follows:

To County: County of Mendocino
Attn: Board Chair and Chief Executive Officer
501 Low Gap Road
Ukiah, CA 95482
Email: ceo@mendocinocounty.gov

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

Email: iwhippy@fortbragg.com

To City of Point Arena:

City of Point Arena
Attn: Mayor and City Manager
451 School Street
Point Arena, CA 95468
Email: cm@pointarena.ca.gov

To City of Ukiah

City of Ukiah
Attn: Mayor and City Manager
300 Seminary Avenue
Ukiah, CA 95482
Email: cmoffice@cityofukiah.com

To City of Willits

City of Willits
Attn: Mayor and City Manager
111 E. Commercial Street
Willits, CA 95490
Email: dpederson@cityofwillits.org

14. No Third-Party Beneficiary Rights.

This Agreement is only for the benefit of the Parties and shall not be construed as or deemed to operate as an agreement for the benefit of any third party or parties, and no third party or party shall have any right of action or obtain any right to benefits or position of any kind by reason of this Agreement.

15. Assignment; Delegation.

No Party shall assign, sublet, or transfer any interest in this Agreement or any duty hereunder without written consent of the other Parties, and no assignment shall be of any force or effect whatsoever unless and until the other Parties shall have so consented.

16. Hold Harmless; Indemnity.

To the fullest extent permitted by law, each of the Parties (the "Indemnifying Party") agrees to save, indemnify, defend and hold harmless each other Party and its officers, agents and employees ("Indemnified Parties") from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses, or costs of any kind, whether actual, alleged or threatened, including attorney fees and costs, court costs, interest, defense costs, and expert witness fees, which arise out of, or are in any way attributable in whole or in part to, negligent or intentionally wrongful acts or omissions of an Indemnifying Party or its employees except such losses to the extent caused by the negligence or intentionally wrongful act of an Indemnified Party.

17. Entire Agreement; Counterparts.

This Agreement, including its exhibits and any attachments, is intended both as the final expression of the Agreement among the Parties with respect to the included terms and as a

complete and exclusive statement of the terms of the Agreement. This Agreement may be transmitted electronically and executed in counterparts, each such executed electronic copy shall be admissible for any purpose and in any judicial or administrative proceeding as evidence of the agreement between the Parties. Signatures may be exchanged by emailed pdf or other electronic form with the same force as original signatures.

18. Agreement Controlling; Exhibits.

In the event of a conflict between the text of this Agreement and any attachment to it, the text shall prevail. All exhibits to which reference is made are incorporated into this Agreement as though fully set forth at length, whether or not actually attached.

19. Construction.

This Agreement shall not be construed against any Party in the event of an ambiguity. The transactions contemplated in this Agreement have been negotiated at arms-length, between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. Accordingly, any rule of law or legal decision that requires interpretation of ambiguities against the Party who has drafted it is inapplicable and waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effectuate the intent and purposes of the Parties to this Agreement as if they had been jointly drafted by the Parties. The headings and sub-headings in this Agreement are intended solely to assist the reader and are in no way intended to create binding terms between the Parties.

20. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

21. Severability.

Should any part, term, portion, or provision of this Agreement or the application thereof to any person or circumstances be in conflict with any State or Federal law, or otherwise be rendered unenforceable or ineffectual, including by amendment or repeal of a statute, the validity of the remaining parts, terms, portions or provisions, or the application thereof to other persons or circumstances shall be deemed severable and shall not be affected thereby, unless the remaining portions of the Agreement no longer provide for an equitable approach to distributing certain identified tax revenues or unless the Agreement cannot be construed in substance to continue to constitute the Agreement that the Parties intended to enter into in the first instance.

22. Warranty of Legal Authority.

The Parties' Legislative Bodies have each authorized execution of this Agreement, as evidenced by the signatures below. Those who sign below warrant for the benefit of the Parties for which they do not sign that they have actual authority to execute this Agreement and to bind to it the Party for which they sign.

IN WITNESS THEREOF, the Parties have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized as of the Effective Date.

COUNTY OF MENDOCINO

Date: _____

By: _____
Maureen Mulheren, Chair of the Board of
Supervisors

Approved to Form:

County Counsel

Attest:

_____, County Clerk

CITY OF FORT BRAGG

Date: _____

By: _____
_____, Mayor

Approved to Form:

City Attorney

Attest:

_____, City Clerk

CITY OF POINT ARENA

Date: _____

By: _____
_____, Mayor

Approved to Form:

City Attorney

Attest:

_____, City Clerk

CITY OF UKIAH

Date: _____

By: _____
_____, Mayor

Approved to Form:

City Attorney

Attest:

Kristine Lawler, City Clerk

CITY OF WILLITS

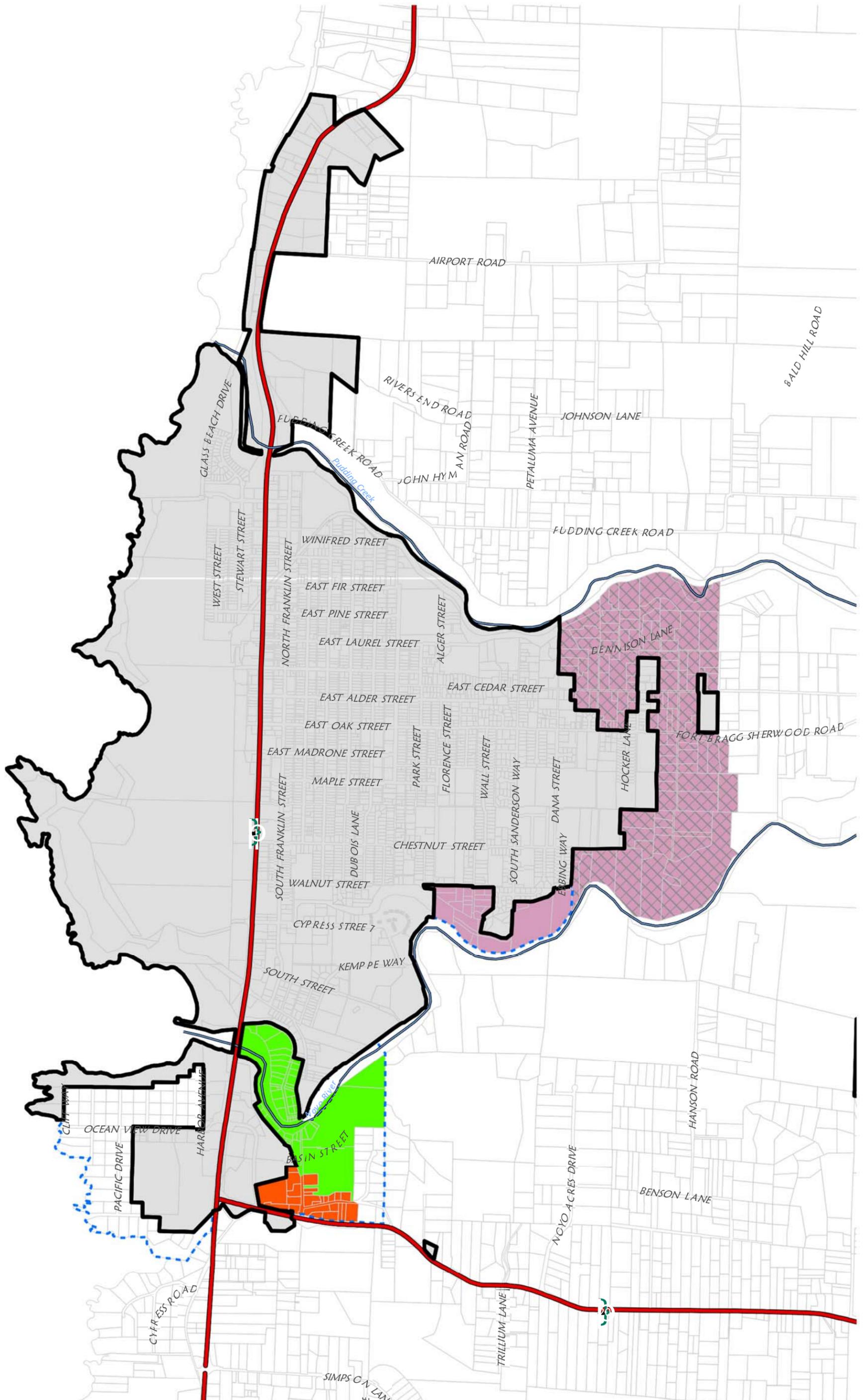
By: _____
_____, Mayor

Approved to Form:

City Attorney

Attest:

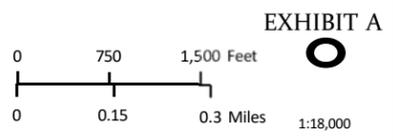
_____, City Clerk

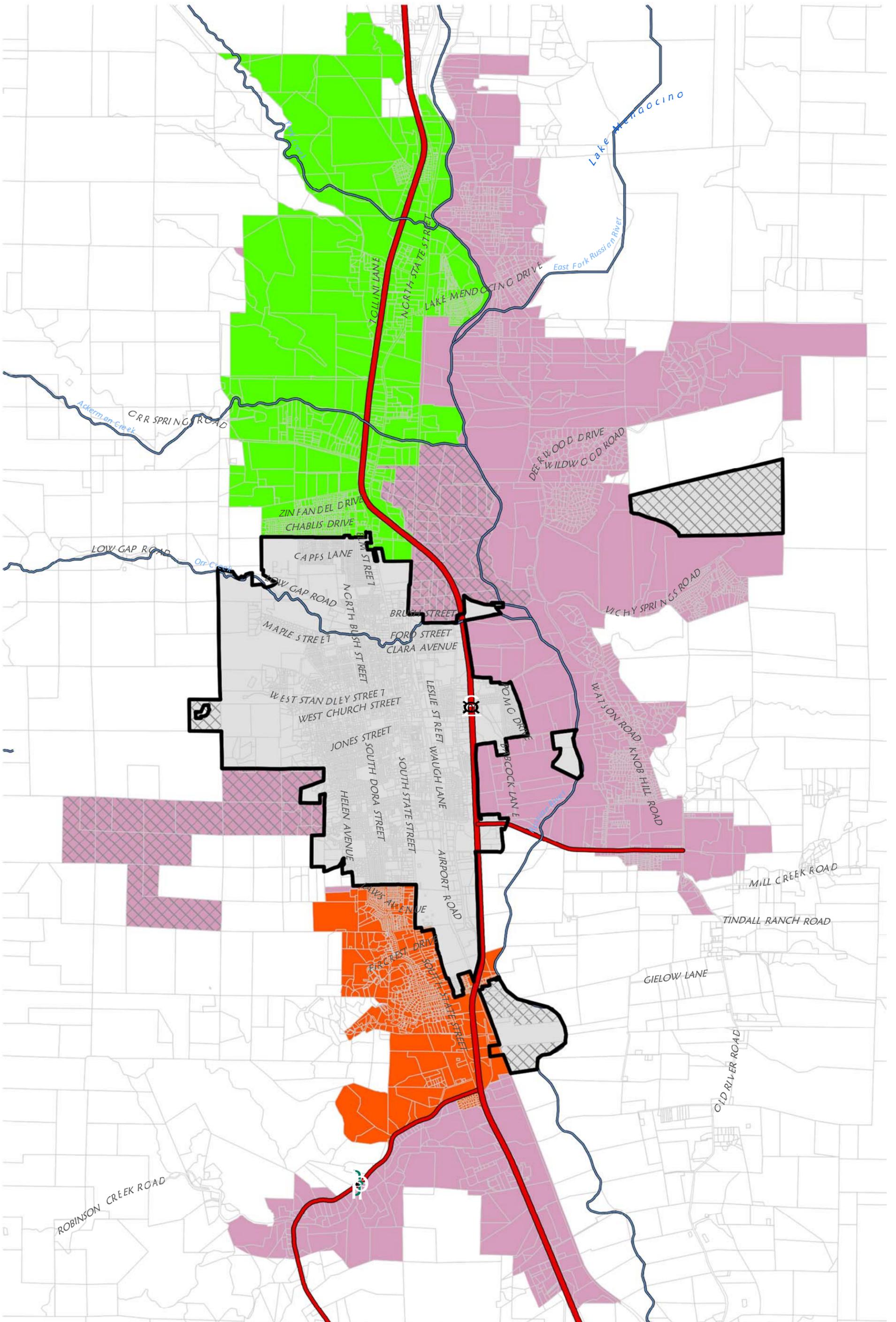


- Major Rivers
- Highways
- Municipal Improvement District
- Municipal Improvement District SOI
- Fort Bragg Designated Area
- Fort Bragg Balance Area
- City of Fort Bragg SOI
- City Limits

CITY OF FORT BRAGG

MASTER TAX SHARE AGREEMENT





- Major Rivers
- Highways
- Ukiah Designated Area
- Ukiah Balance Area
- 2040 General Plan Annexation Areas
- City of Ukiah SOI
- City Limits

CITY OF UKIAH

MASTER TAX SHARE AGREEMENT

EXHIBIT B

0 1,750 3,500 Feet

0 0.375 0.75 Miles

1:42,000

Mendocino County Master Tax Sharing Agreement 2024 Key Term Sheet

Term Sheet Master Tax Sharing Agreement 2024

Parties: Mendocino County, City of Fort Bragg, City of Point Arena, City of Ukiah, and City of Willits

Task and Purpose: Develop a tax sharing agreement to govern the distribution of identified tax revenue between the County and the Cities following annexations by the Cities.

Cost-Benefit Analysis:

	County	Cities
Benefits	<ul style="list-style-type: none"> • Immediate reduction in service area responsibility • Reduction in infrastructure and service costs • Shifts housing production to cities • Minimizes urban sprawl • <i>Enhanced long-term revenue growth</i> 	<ul style="list-style-type: none"> • Broadened municipal service availability • Potential to scale services and costs • Focus on Economic Development and Housing • Centralizes municipal infrastructure • <i>Enhanced long-term revenue growth</i>
Costs	<ul style="list-style-type: none"> • Temporary revenue reduction in sales tax (mitigated by reduced service area & scaled shift of sales tax over 15 years) 	<ul style="list-style-type: none"> • Increased net cost of service (mitigated by scaled shift of sales tax) • Inherit deferred maintenance and lack of needed infrastructure

Core Principles:

1. Simplicity
2. Mutual benefit through economic growth
3. Maintains normal revenue sources (i.e. majority of property taxes to County and Bradley Burns sales tax to cities)
4. Protects funding for countywide services and relieves ongoing service costs
5. Provide City appropriate financial resources to meet assumed municipal service costs.

Key Terms:

1. Tax Sharing Provisions.
 - a. **Property Tax Revenue:** After an annexation of unincorporated territory by a city becomes final, the County must distribute to the city annexing the area a portion of the County's general fund property tax revenue (County Auditor's Fund Code A0001) from tax rate areas ("TRAs") within the annexed area as follows:
 - i. Half of County's portion of the annual tax increment (increased tax revenue resulting from increased assessed valuations) that does not exceed 2% of the property tax revenue in the prior year from the annexation area.
 - ii. All of County's portion of the annual tax increment that exceeds 2% of the property tax revenue in the prior year from the annexation area, until the allocation received by the relevant city equals 15% of the total property tax revenue generated in the annexation area

Mendocino County Master Tax Sharing Agreement 2024
Key Term Sheet

- iii. No additional distribution once the relevant city share reaches 15% of the total property tax revenue in the annexation area.
 - b. Sales Tax Revenue: From the effective date of the annexation until the start of the first full fiscal year following the effective date, the relevant city will distribute to the County 100% of the Bradley-Burns Revenue¹ the City collected from the newly-annexed Tax Rate Area. In each subsequent full fiscal year, the percentage of sales tax revenue the relevant city shall distribute to the County shall be reduced by 1/15.
 - c. Transient Occupancy Tax (TOT) Revenue: From the effective date of the annexation until the start of the first full fiscal year following the effective date, the relevant City will distribute to the County 100% of the TOT Revenue the City collected from the newly-annexed Tax Rate Area. In each subsequent full fiscal year, the percentage of TOT revenue the relevant City shall distribute to the County shall be reduced by 1/5.
2. Regional Housing Needs Plan. The Parties agree that the County’s Regional Housing Needs Plan (the “RHNP”)² allocation was based on its unincorporated lands, that annexation will necessarily limit the County’s ability to satisfy its obligations under the Housing Element Law, and that the RHNP allocation should be adjusted to reflect the impact of the annexation on the County’s obligations. Therefore, the Parties agree that, in the event that the relevant city or a third non-party proposes annexation of specific territory, the Parties will work together in good faith to attempt to reach a “mutually acceptable agreement for transfer of a portion of the County’s allocation to the city” as reflected in Government Code section 65584.07(d).
3. State Action. If legislative, judicial, and/or voter initiative action limits a city’s ability to apply a city approved transaction and use tax to an annexed area, the parties shall promptly meet and confer in good faith to amend this agreement to address the resulting financial impacts in accordance with the Core Principles.
4. Balanced Annexations. For the Tax Sharing Provisions above to apply to annexations of certain designated areas, as defined, those annexations must be “Balanced.” For an annexation by Ukiah or Fort Bragg to be considered “Balanced,” such annexation must generally be attended by the relevant City annexing an equal amount of territory within the Balance Area.
5. Service Transfer Plan. In anticipation of any annexation, a City and the County will develop a service transfer plan to coordinate the transfer of public services to ensure orderly transition for all areas affected.
6. Separate Agreements. A city and the County may develop alternate terms to address unique conditions affecting any specific annexation; *provided*, however, the terms of any separate agreement do not substantially affect the terms in the MTSA absent amendment to the MTSA.

¹ 1% of the sales price of commodities subject to statewide sales tax.

² The number of housing units the County is required to achieve under the Housing Element in its General Plan as approved by the California Department of Housing and community Development.

Mendocino County Master Tax Sharing Agreement 2024
Key Term Sheet

7. Term. Unless extended by unanimous agreement of the Parties, the MTSA shall remain in effect for twenty (20) years as of the Effective Date; thereafter it has a rolling extension that automatically renews this Agreement every year for an additional five (5) years, until Notice of Termination is provided under Section 10 of the Agreement. Tax sharing provisions implemented during the life of the Agreement shall survive termination of the Agreement.

8. Withdrawal and Termination. Withdrawal upon no less than five years' notice with an effective date of July 1st. County may terminate unilaterally, or Parties may terminate unanimously; provided in both cases on no less than five years' notice and termination effective date of July 1st.



2633 Camino Ramon, Suite 500
San Ramon, CA, 94583

Proposed by: Tyler Stanchina
Contact Phone:
Contact Email: tstanchina@accela.com
Quote ID: Q-33802
Valid Through: 7/30/2024
Currency: USD

Order Form

Address Information

Bill To:

City of Fort Bragg, CA
416 N. Franklin Street
Fort Bragg, California 95437
United States

Ship To:

City of Fort Bragg, CA
416 N. Franklin Street
Fort Bragg, California 95437
United States

Billing Name: ISAAC WHIPPY
Billing Phone: 707-961-2825
Billing Email: iwhippy@fortbragg.com

Services	Year	Start Date	End Date	Term (Months)	Price	Qty	Net Total
Multi Solution User	Year 1	7/30/2024	7/29/2025	12	\$2,000.00	10	\$20,000.00
> Accela Building - SaaS	Year 1	7/30/2024	7/29/2025	12	\$0.00	10	\$0.00
> Accela Planning - SaaS	Year 1	7/30/2024	7/29/2025	12	\$0.00	10	\$0.00
> Accela Business Licensing - SaaS	Year 1	7/30/2024	7/29/2025	12	\$0.00	10	\$0.00
TOTAL:							\$20,000.00

Services	Year	Start Date	End Date	Term (Months)	Price	Qty	Net Total
Multi Solution User	Year 2	7/30/2025	7/29/2026	12	\$2,880.00	10	\$28,800.00
> Accela Building - SaaS	Year 2	7/30/2025	7/29/2026	12	\$0.00	10	\$0.00
> Accela Planning - SaaS	Year 2	7/30/2025	7/29/2026	12	\$0.00	10	\$0.00
> Accela Business Licensing - SaaS	Year 2	7/30/2025	7/29/2026	12	\$0.00	10	\$0.00
TOTAL:							\$28,800.00

Services	Year	Start Date	End Date	Term (Months)	Price	Qty	Net Total
Multi Solution User	Year 3	7/30/2026	7/29/2027	12	\$3,067.20	10	\$30,672.00
> Accela Building - SaaS	Year 3	7/30/2026	7/29/2027	12	\$0.00	10	\$0.00
> Accela Planning - SaaS	Year 3	7/30/2026	7/29/2027	12	\$0.00	10	\$0.00

Services	Year	Start Date	End Date	Term (Months)	Price	Qty	Net Total
> Accela Business Licensing - SaaS	Year 3	7/30/2026	7/29/2027	12	\$0.00	10	\$0.00
TOTAL:							\$30,672.00

Pricing Summary

Period	Net Total
Year 1	\$ 20,000.00
Year 2	\$ 28,800.00
Year 3	\$ 30,672.00
Total	\$ 79,472.00

Additional Terms:

1. No additional or conflicting terms or conditions stated in Customer's order documentation, including purchase orders, will be incorporated into or form any part of this Order Form or the governing agreement, and all such terms or conditions will be null.
2. This Order Form, including any OnPrem Licenses, Maintenance and Support, and Subscription Services, Enhanced Reporting Database and Managed Application Services will be governed by the applicable terms and conditions. If those terms and conditions are non-existent, have expired, do not apply or have otherwise been terminated, the following terms at <https://www.accela.com/terms/> will govern as applicable, based on the Customer's purchase.
3. All Software Licenses, Maintenance, and Subscription purchases are non-cancelable and non-refundable.
4. If Customer has a prior agreement with Accela, and this purchase is co-terming with that prior agreement, if the start date on this Order Form is before the actual delivery date of the purchase, Accela may pro-rate this purchase so that it can co-term with the prior agreement.
5. If this Order Form is executed and/or returned to Accela by Customer after the Order Start Date above, Accela may adjust the Order Start Date and Order End Date without increasing the total price based on the date Accela activates the products and provided that the total term length does not change.
6. Pricing is based upon payment by ACH or check. Payment by credit card (including Purchase Cards) for product and services in this Order Form will be subject to a service charge of 3%. There is no service charge for ACH or check payment.

Signatures

Accela, Inc.

Customer

Signature:

Signature:

DocuSigned by:

Michael E Gigliello



73668EE5EB274C8...
Print Name:

Print Name:

Michael E Gigliello

Isaac Whippy

Title:

Title:

controller

City Manager

Date:

Date:

7/8/2024

7/4/24