

RESOLUTION NO. ID ____-2015

RESOLUTION OF THE FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT BOARD APPROVING RESEARCH USE AGREEMENT WITH THE REGENTS OF THE UNIVERSITY OF CALIFORNIA FOR OPERATION OF OCEAN CURRENT MONITORING ANTENNAS AND ELECTRONIC EQUIPMENT AT THE WASTE WATER TREATMENT FACILITY AND AUTHORIZING DISTRICT MANAGER TO EXECUTE THE SAME

WHEREAS, the Regents of the University of California on behalf of the UC Davis campus seek to enter into a Research Use Agreement with the Municipal Improvement District; and

WHEREAS, the Research Use Agreement will allow staff of UC Davis the right to enter upon the Waste Water Treatment Facility property located at 90 West Redwood to operate, maintain and clean a high frequency radar instrument that measures sea surface currents using equipment that consists of two antennas, cables, enclosure with electronics, and communications antenna; and

WHEREAS, the Research Use Agreement establishes insurance, use and decommissioning requirements; and

WHEREAS, the antennas allow staff and students of UC Davis and others interested in ocean currents to track and research ocean currents in real time using a web-based interface; and

WHEREAS, tracking ocean currents is in the public interest for research and emergency response activities; and

WHEREAS, the proposed project was permitted through a Coastal Development Permit; and

WHEREAS, the project is exempt pursuant to the California Environmental Quality Act ("CEQA") and Title 14, the California Code of Regulations ("CEQA Guidelines"), Section 15303e ; and

WHEREAS, based on all the evidence presented, the District Board finds as follows:

1. The Research Use Agreement protects the interests of the Municipal Improvement District; and
2. The Research Use Agreement allows for a public benefit activity that will benefit ocean research and rescue operations,

NOW, THEREFORE, BE IT RESOLVED that the District Board of the Fort Bragg Municipal Improvement District No. 1 does hereby approve the Research Use Agreement (Exhibit A) with the Regents of the University of California for Operation of Ocean Current Monitoring Antennas and Electronic Equipment at the Waste Water Treatment Facility and Authorize the District Manager to Execute the Same.

The above and foregoing Resolution was introduced by Board Member _____, seconded by Board Member _____, and passed and adopted at a

regular meeting of the District Board of the Fort Bragg Municipal Improvement District No. 1 held on the 28th day of September, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

DAVE TURNER,
Chair

ATTEST:

June Lemos
District Clerk

EXHIBIT A: RESEARCH USE AGREEMENT
City of Fort Bragg Wastewater Treatment Facility

THIS RESEARCH USE AGREEMENT (“Agreement”) is made and entered into by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA on behalf of its Davis campus (“University”) and City of Fort Bragg (“City”), hereinafter individually and collectively referred to respectively as a “Party” or the “Parties”.

WHEREAS, University seeks to acquire the right to enter upon City’s Waste Water Treatment facility located at 90 West Redwood. (“Premises”), as shown on the attached Exhibit “A”, which is incorporated by reference, to conduct a research project (“Project”) as specified in Paragraph 1, below.

NOW, THEREFORE, the parties agree as follows:

1. Use. City hereby grants to University and its authorized agents and contractors a non-exclusive Research Use Agreement (Agreement) to enter upon and use the Premises, including access through the City’s Cypress Street Gate to operate, maintain and/or clean, a high frequency radar instrument that measures sea surface currents using equipment that consists of two antennas, cables, enclosure with electronics, and communications antenna.
2. Term. This Agreement shall commence upon execution and shall continue until December 31, 2019 with termination and extension of the Lease Term as are hereinafter set forth.
 - 2a. Extended Term. University shall have the option to extend the Lease Term for two (2) five (5) year options (Extended Term(s)). Such option shall be exercised prior to the last day of the Lease Term (or Extended Term). All other terms and conditions of this Agreement shall remain in full force and effect during the Extended Term(s).
3. Decommissioning. At the end of the Term, the University will remove any monitoring equipment used for the Project including the installed antenna, cables enclosure with electronics and communications antenna, (collectively, the “Equipment”).
4. Consideration.
 - 4a. Utilities Reimbursement. In exchange for the access described above, University shall reimburse City for utilities at the rate of \$195.00 per quarter for the length of this Agreement.
5. Conditions Applicable to Agreement. This Agreement is subject to all existing covenants, conditions, reservations, contracts, leases, Agreements, easements, encumbrances, restrictions and rights of way of record and to such other matters concerning use of the Premises as are within the actual knowledge of University.

6. No Transfer or Assignment. This Agreement is personal to University, and cannot be transferred or assigned. Any attempt to transfer or assign this Agreement shall terminate it.
7. Permits. University shall be responsible for securing any required approvals, permits and authorizations from any federal, state or local agencies.
8. No Interference. University shall not unreasonably interfere with the normal operation and activities of City or any of City's tenants, and University shall use ordinary care in its activities on the Premises to minimize damage to the Premises and inconvenience to City or its tenants, agents, employees and invitees.
9. Repair and Restoration. If University, its agents or contractors cause any damage to the Premises in connection with the exercise of this Agreement, University shall repair and restore the Premises to its original condition (as it was prior to University's use under this Agreement.) University shall perform the repair and restoration required hereunder prior to the expiration of this Agreement, or within ten (10) days of its earlier termination. In the event that repair and restoration is performed following the termination of this Agreement, University's Indemnity and Insurance obligations in paragraphs 11 and 12 shall continue until repair and restoration is completed as provided herein.
10. Breach and Cure. In the event that University breaches any of its obligations under this Agreement, City shall send University a written notice specifying the nature of such breach. University shall have ten (10) days from the receipt of such notice to cure such breach. If more time is reasonably required for University's performance, then University shall commence performance within such ten (10) day period and, thereafter, diligently proceed to completion. If University fails to cure or to commence cure within such ten (10) day period, then City shall have the right to terminate this Agreement immediately by serving University with written notice of termination. City shall have all rights and remedies available under California law including, but not limited to, actions for damages and specific performance, for any breach of University's obligations hereunder.
11. Indemnification. The Parties agree to defend, indemnify and hold one another harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising from the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the indemnifying Party, its officers, agents, or employees.
12. Insurance.
 - 12.1 Insurance. The University, at its sole cost and expense, shall insure its activities in connection with this Agreement and obtain, keep in force, and maintain insurance as follows:
 - A. Commercial Form General Liability Insurance (contractual liability included) with minimum limits as follows:
Each Occurrence \$ 1,000,000

General Aggregate \$ 2,000,000

If the above insurance is written on a claims-made form, it shall continue for three (3) years following termination of this Agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the commencement of the Term of this Agreement.

- B. Property Insurance, Fire and Extended Coverage Form in an amount equal to one hundred percent (100%) of the full replacement value of the building in which the Premises are located to conform with then current codes and the costs of demolition and debris removal, excluding land and the footings, foundations and installations below the basement level.

The coverages required herein shall not limit the liability of University.

The coverages referred to under A. and B. of this Section 12.1 shall include City of Fort Bragg as an additional insured. Such a provision shall apply only in proportion to and to the extent of the negligent acts or omissions of University, its officers, agents, partners and employees. University, upon the execution of this Agreement, shall furnish City of Fort Bragg with certificates of insurance evidencing compliance with all requirements. Certificates shall provide for thirty (30) days advance written notice to City of Fort Bragg of any material modification, change or cancellation of the above insurance coverages.

12.2 Waiver of Subrogation. University and City hereby waive any right of recovery against the other as a result of loss or damage to the property of either University or City when such loss or damage arises out of an Act of God or any of the property perils insurable under extended coverage, whether or not such peril has been insured, self-insured, or non-insured.

13. Lien Free Condition. University shall not cause or permit any liens to be placed against the Premises or against City's other property as a result of University's exercise of rights under this Agreement. In the event of the filing of any such liens, University shall promptly cause such liens to be removed.
14. Notices. Any notice required hereunder ("Notice") shall be in writing and shall be addressed as follows:

CITY OF FORT BRAGG
City Manager
416 North Franklin Street
Fort Bragg, CA 95437

UNIVERSITY
Real Estate Services
255 Cousteau Place
Davis, CA 95618
Attention: Associate Director, Leasing

With a copy to:

UC Davis Bodega Marine Laboratory
PO Box 247, 2099 Westside Road
Bodega Bay, CA 94923
Attention: Contracts & Grants Administrator

15. Entire Agreement. This Agreement supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to the subject matter of this RUA. No alteration or variation of this Agreement shall be valid unless made in writing and signed by City and University.
16. Independent Contractor Status. The Parties are independent contractors. In the performance of this agreement the Parties will not be agents or employees of the other Party.
17. Warranty of Authority. The parties each warrant and represent that they have the power and authority to execute this Agreement and any other documents contemplated hereby and to carry out all of the transactions contemplated by this Agreement.
18. Governing Law. This agreement shall be governed and construed in accordance with California law.

AGREED:

CITY OF FORT BRAGG

THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA

By: _____

By: _____

Printed Name: _____

Its: _____

Date: _____

Date: _____

