

MEMORANDUM OF UNDERSTANDING REGARDING DOWNTOWN WIFI SERVICE

This Memorandum of Understanding ("MOU" or "Agreement") is made and entered into this 23rd day of November, 2015 by and between the City of Fort Bragg, a California Municipal Corporation, 416 N. Franklin Street, Fort Bragg, California, 95437 ("City"), and Mendocino Community Network ("MCN") a subsidiary of the Mendocino Unified School District ("MUSD" or "Consultant"), each a "party" and collectively, the "parties."

RECITALS

A. The City and MCN wish to provide free wireless internet access in its downtown area, which is defined as the blocks from Main Street on the West, Franklin Street on the East, Pine Street on the North, and Redwood Avenue on the South.

B. The parties each recognize the value and benefits that the other party may have to offer in terms of skills and expertise in installation and maintenance of a WiFi network.

C. The parties wish to work together to install and maintain a wireless network in the downtown area, as well as provide customer support services to users of the network.

D. The parties enter into this MOU in order to define their understandings of their respective services to be provided regarding this project.

E. On July 14, 2015, by Resolution No. 3824-2015, the Fort Bragg City Council approved a budget amendment to appropriate \$10,000 from the Waste Management Community Benefit Fund for this project and authorized the City Manager to negotiate this Agreement on behalf of the City in accordance with Chapter 3.20 of the City Municipal Code and/or other applicable law.

AGREEMENT

1. DEFINITIONS

A. "Downtown" shall mean the blocks from Main Street on the West, Franklin Street on the East, Pine Street on the North, and Redwood Avenue on the South.

B. "Network" shall mean all equipment and services part of providing free WiFi in the Downtown area.

C. "End user" shall mean the individual who ultimately uses or is intended to ultimately use the product, in this case, the free downtown WiFi network.

2. SERVICES

A. City will provide the initial start-up costs, including purchase of necessary equipment, including antennas, routing equipment, servers, battery backup, and cabling. The costs shall not exceed \$10,000. City will purchase all equipment necessary for the initial installation by December 1, 2015. The City will own all equipment that it purchases.

B. City will install and MCN will configure the equipment and cabling. MCN will complete configuration by December 31, 2015.

C. After the network is installed and configured, MCN will administer the network. Administration of the network includes maintaining day to day operation of the network ensuring reliable, secure internet services in the Downtown area.

D. MCN shall maintain the security of the network. These services shall include the protection and security of web browsers in order to protect networked data and computer systems from breaches of privacy or malware.

E. When the network is operational, MCN will provide support to users of the network. This support shall consist of staffing and operating a support telephone line between the hours of 9am and 6pm, Monday through Friday, with the exception of July 4th, Labor Day, Thanksgiving Day, Christmas Day, New Year's Day, and Memorial Day. Such support shall be limited to assistance to users in connecting the wireless network, and basic troubleshooting of end user equipment. MCN may provide information regarding its services to end users during any tech support phone calls.

F. MCN will circulate and publicize the availability of the support phone number and available hours immediately upon commencement of free downtown WiFi services.

G. The City shall be responsible for all necessary repairs to the network.

H. The City will replace, at its own expense, any equipment that is faulty or no longer operational, or is lost or damaged due to fire, theft, or any other reason.

3. TERM

The Agreement term will commence on November 23, 2015 and continue unless and until either party terminates it. A party wishing to terminate the contract must provide the other party at least thirty (30) days' notice, unless the party not initiating the termination waives this requirement.

4. STANDARD OF PERFORMANCE

A. MCN will perform the Services in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which MCN practices its profession and will

prepare all work products required by this Agreement in accordance with such standards. MCN will comply with federal, state and local laws and regulations applicable to performance of the Services, including but not limited to, the California Building Standards Code as in effect in the City, the Americans with Disabilities Act, any air pollution control laws and regulations applicable to MCN, and any laws and regulations related to any copyright, patent, trademark or other intellectual property right involved in performance of the services. MCN's Failure to comply with any law(s) or regulation(s) applicable to the performance of the services hereunder shall constitute a material breach of this agreement.

B. MCN shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, MCN shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

5. OTHER GOVERNMENTAL REGULATIONS

To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, MCN and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

6. DEFAULTS AND REMEDIES

A. Default. Failure by either party to comply with the terms and provisions of this MOU shall constitute an event of default hereunder. The non-defaulting party shall give written notice of a default to the defaulting party, specifying the nature of the default and the required action to cure the default. If a default remains uncured ten days after receipt by the defaulting party of such notice, the non-defaulting party may exercise the remedies set forth below.

B. Exclusive Remedies for Default. In the event of an uncured default by a party, the other party's sole and exclusive remedy shall be to terminate this MOU and neither party shall have any further right, remedy or obligation under this MOU; provided, however, any obligation under a specific provision of this MOU for a party to indemnify the other party shall survive such termination.

C. No Damages. Neither party shall have any liability to the other for damages or otherwise for any default, nor shall either party have any other claims with respect to performance or non-performance by the other party under this MOU. Each party specifically waives and releases any such rights or claims they may otherwise have at law or in equity in the event of a default by the other party, including the right to recover actual, consequential, special or punitive damages from the defaulting party.

7. JOINT DEFENSE

To the maximum extent permitted by law, the parties shall jointly defend with

counsel acceptable to the other party, (whose acceptance will not be unreasonably withheld), all claims arising out of or in connection with the Services delineated in this Agreement including, without limitation, any settlement negotiations related to any such claims. The parties shall evenly split all fees and costs, including attorneys' fees and settlement payments, related to such claims.

This clause shall be inapplicable to any claims arising out of the negligence, malfeasance, or failure to perform of either party.

8. INSURANCE

Each party shall carry liability insurance or self-insurance that covers the services set forth in this MOU. The City and MCN shall carry property damage insurance covering their respective facilities and equipment, except that any property damage not payable by insurance shall be the responsibility of the party sponsoring the event or program when such damage arises out of the negligent acts of the respective employees, guests or invitees of such party.

9. NOTICES

All notices under this Agreement shall be delivered to:

Mendocino Unified School District
Attention: MCN
P.O. Box 2445
Mendocino, CA 95460

City of Fort Bragg
Attention: Scott Schneider
416 N. Franklin Street
Fort Bragg, CA 95437

10. APPLICABLE LAW; ATTORNEYS' FEES

This Agreement shall be governed and construed in accordance with the laws of the State of California. The prevailing party in any action or proceeding arising out of or to enforce any provision of this Agreement, will be awarded reasonable attorneys' fees and costs incurred in that action or proceeding, or in the enforcement of any judgment or award rendered.

11. INTEGRATION AND AMENDMENT

This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral. If a discrepancy, disagreement, ambiguity, inconsistency or difference in interpretation of terms arises as to terms or provisions of this Agreement and any Exhibit(s) attached to this Agreement, this Agreement shall control and shall be deemed to reflect the intent of the parties with respect to the subject matter hereof. This

Agreement may only be amended by a writing signed by a representative authorized to bind the Consultant and a representative authorized to bind the City.

12. CONFLICT OF INTEREST PROHIBITION

The parties will comply with the requirements of the City's Conflict of Interest Code adopted pursuant to California Government Code §87300 et seq., the Political Reform Act (California Government Code §81000 et seq.), the regulations promulgated by the Fair Political Practices Commission (Title 2, §18110 et seq. of the California Code of Regulations), California Government Code §1090 et seq., and any other ethics laws applicable to the performance of the Services and/or this Agreement. Consultant may be required to file with the City Clerk a completed Form 700 before commencing performance of the Services unless the City Clerk determines that completion of a Form 700 is not required, pursuant to City's Conflict of Interest Code. Form 700 forms are available from the City Clerk.

Consultant may not perform Services for any other person or entity that, pursuant to any applicable law or regulation, would result in a conflict of interest or would otherwise be prohibited with respect to Consultant's obligations pursuant to this Agreement. Consultant agrees to cooperate fully with City and to provide any necessary and appropriate information requested by City or any authorized representative concerning potential conflicts of interest or prohibitions concerning Consultant's obligations pursuant to this Agreement.

Consultant may not employ any City official, officer or employee in the performance of the Services, nor may any official, officer or employee of City have any financial interest in this Agreement that would violate California Government Code §1090 et seq. Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of City. If Consultant was an employee, agent, appointee, or official of City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 et seq., the entire Agreement is void and Consultant will not be entitled to any compensation for Consultant's performance of the Services, including reimbursement of expenses, and Consultant will be required to reimburse City for any sums paid to Consultant under this Agreement. Consultant understands that, in addition to the foregoing, penalties for violating Government Code §1090 may include criminal prosecution and disqualification from holding public office in the State of California.

Any violation by Consultant of the requirements of this provision will constitute a material breach of this Agreement, and the City reserves all its rights and remedies at law and equity concerning any such violations.

13. APPLICABLE LAW AND VENUE

The laws of the State of California shall govern the rights, obligations, duties and

liabilities of the parties to this Agreement and the interpretation of this Agreement. Any action or proceeding that is initiated or undertaken to enforce or interpret any provision, performance, obligation or covenant set forth in this Agreement shall be brought in a state court in Mendocino County.

14. RECOVERY OF ATTORNEYS' FEES

If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret any term of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

15. SEVERABILITY

If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged will remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed the day and year first written above.

CITY OF FORT BRAGG

MENDOCINO UNIFIED SCHOOL DISTRICT

By: _____
Linda Ruffing
City Manager

By: _____

Jason Morse
MUSD Superintendent

ATTEST:

APPROVED AS TO FORM:

By: _____
June Lemos
City Clerk

By: _____
Samantha W. Zutler
City Attorney

liabilities of the parties to this Agreement and the interpretation of this Agreement. Any action or proceeding that is initiated or undertaken to enforce or interpret any provision, performance, obligation or covenant set forth in this Agreement shall be brought in a state court in Mendocino County.

14. RECOVERY OF ATTORNEYS' FEES

If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret any term of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

15. SEVERABILITY

If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged will remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed the day and year first written above.

CITY OF FORT BRAGG

By: _____
Linda Ruffing
City Manager


ATTEST:

By: _____
June Lemos
City Clerk

MENDOCINO UNIFIED SCHOOL DISTRICT

By: _____
Jason Morse
MUSD Superintendent

APPROVED AS TO FORM:

By:  _____
Samantha W. Zutler
City Attorney