

AGREEMENT FOR TRANSFER OF REAL PROPERTY

Noyo Center for Marine Science and City of Fort Bragg

THIS AGREEMENT FOR TRANSFER OF REAL PROPERTY (the "Agreement") is made by and between the Noyo Center for Marine Science, a non-profit corporation (the "Noyo Center") and the City of Fort Bragg, a public body, corporate and politic ("City"). Noyo Center and City are sometimes hereinafter each singularly referred to as a "Party" and collectively referred to as the "Parties."

R E C I T A L S:

This Agreement for City of Real Property (hereinafter "Agreement") is entered into on the basis of the following facts, understandings and intentions of the Parties:

- A. The City and Noyo Center entered into a Memorandum of Understanding on December 14, 2015 (the "MOU") which was included the following information and facts:
- In 2003, the City of Fort Bragg initiated a community-based planning process that identified the establishment of a marine science and education facility on the former Georgia-Pacific mill site as a key community goal for reuse of the site. The marine science and education center was a key economic development strategy and envisioned to serve as a business incubator, educate the public about coastal and marine resources, and attract visitors to Fort Bragg.
 - Through these planning processes and numerous workshops and meetings regarding the preliminary Mill Site Specific Plan, an area to the south of the Wastewater Treatment Facility (WWTF) and adjacent to the City's Noyo Headlands Park was identified as the appropriate location for the Noyo Center facility. It was seen as an ideal location due to its proximity to the coastal trail and the Noyo Headlands Preserve, an undisturbed and protected coastal promontory where access is restricted for research and Native American uses.
 - In 2011, the City completed the purchase of approximately 11.6 acres from Georgia-Pacific LLC for the Noyo Center with a "repayable grant" from the State Coastal Conservancy that has since been repaid with revenues from the former Fort Bragg Redevelopment Agency.
 - In 2014, the Noyo Center non-profit was formed as a public benefit corporation and in early 2015, the Internal Revenue Service recognized its non-profit status under section 501(c)(3) of the Internal Revenue Code.
 - The Noyo Center is currently focused on (1) fundraising and planning for the Blue Whale project, organizational development, and the Noyo Center facilities; (2) delivering innovative marine science education curriculum to local students; (3) continuing to develop research partnerships including collaborations with the California Academy of Science and The Marine Mammal Center.

- B. The Noyo Center has informed the City that the substantial amount of fund raising necessary to support the Noyo Center facilities will be greatly enhanced by the Noyo Center showing proof that they have acquired the real property contemplated by the MOU and intended for the development of the Noyo Center facilities.
- C. Consistent with section 6 of the MOU, the City and the Noyo Center now desire to complete the transfer of the City Property to the Noyo Center at this time.

NOW THEREFORE, in consideration of the promises, terms, conditions, and covenants set forth below, the Parties hereby mutually agree as follows:

ARTICLE 1. GENERAL.

- 1.01 Definitions. Capitalized terms used in this Agreement which are not defined in this Agreement shall have the meaning subscribed to them in the MOU. This Agreement includes all exhibits, schedules and other attachments in the exhibits.
- 1.02 City Property. All that real property described as an approximately 11.6-acre site of the former Georgia Pacific Mill site, described and depicted more specifically in the attached Exhibit A and Exhibit B to this Agreement.
- 1.03 Purpose. The purpose of this Agreement is to provide for the transfer of the City Property as conveyed through a Grant Deed from City to Noyo Center.
- 1.04 Effective Date. The Effective Date of this Agreement (the "Effective Date") shall be the date upon which the last Party signs the Agreement. The Effective Date shall be immediately communicated, via facsimile or digitally scanned document attached to email as provided for herein, and a fully executed copy of this Agreement shall be delivered to the other Party within five (5) working days following the Effective Date.
- 1.05 Execution and Delivery. The execution and delivery by Noyo Center and City and the performance under this Agreement, are within Noyo Center's and City's powers and have been duly authorized by all requisite actions. This Agreement constitutes the legal, valid, binding and enforceable obligation of Noyo Center and City.

ARTICLE 2. PURCHASE AND SALE.

- 2.01 City. City shall convey its rights to the City Property to the Noyo Center and Noyo Center shall accept the City Property from City on the terms and conditions specified in this Agreement.
- 2.02 Consideration. The Parties agree that consideration for the Noyo Center rights in the City Property shall be the Noyo Center's promise to accept the City Property and the City's promise to convey the City Property subject to the Noyo Center ongoing use of the City Property for the purposes set forth in the MOU, and the obligation and promise to reconvey the City Property back to the City if Noyo Center fails to secure adequate funding, and all necessary land use entitlements and permits to construct and operate a project of sufficient size and scope to conduct the planned activities of Noyo Center on the site.

ARTICLE 3. CLOSING OF THE TRANSFER.

- 3.01 TAXES/ASSESSMENTS. All real estate taxes, assessments and any similar charges imposed upon the City Property by the County of Mendocino, or any other governmental or special district, organization or body shall be prorated as of the

date of final approval of this Agreement by the City Council, on the basis of a 30-day month.

3.02 DELIVERY OF DOCUMENTS AND FUNDS.

- A. By City. Prior to and as a condition to Noyo Center's performance of its obligations set forth in this Agreement, City shall:
 - (1) Provide to the City Clerk a Grant Deed with Power of Termination, attached hereto as Exhibit C, conveying the City Property to Noyo Center, fully executed and notarized. City shall additionally deliver to City Clerk the following documents:
 - (2) Execute and deliver to City Clerk such other instructions and documents as may be required by City Clerk to close escrow in accordance with this Agreement.
- B. By Noyo Center. Prior to and as a condition to City's performance of its obligations set forth in this Agreement, Noyo Center shall:
 - (1) Execute and deliver to City Clerk such other instructions, documents and funds as may be required by the City Clerk to close or have closed the escrow in accordance with this Agreement.
- C. By City Clerk. When all conditions for the Close of Escrow have been met, City Clerk shall promptly:
 - (1) Cause the Grant Deed to Noyo Center to be recorded in the Official Records of Mendocino County;
 - (3) Deliver to Noyo Center the policy of title insurance as selected and paid for by the Noyo Center insuring title in City subject only to exceptions consistent with the terms of this Agreement.

ARTICLE 4. CONDITIONS TO CLOSE ESCROW.

- 4.01 General. The provisions of this Article 4 are conditions to the Close of Escrow and, unless otherwise provided expressly or by context, are covenants of the Party responsible for causing the condition to be satisfied. If any of such conditions are not fulfilled by either the date stated, or, where no specific date is stated, on or before the Close of Escrow, then, except as otherwise provided in this Agreement, the Party benefited by the condition shall have the right to cancel and terminate this Agreement and the Escrow, in which event all rights and obligations of the Noyo Center and City hereunder shall be terminated and be of no further force and effect and all funds and instruments deposited into escrow shall be returned to the Party who deposited the same.
- 4.02 Title; Title Policy. At the Close of Escrow, City shall convey title to the City Property to the Noyo Center by Grant Deed, subject only to the "Permitted Exceptions" approved or waived by Noyo Center, set forth in the Preliminary Title Report.
- 4.03 Preliminary Report; Title Insurance. If Noyo Center desires title insurance, they may select a title company of their choosing and order a copy of a Preliminary Report covering the City Property ("the Preliminary Report") and legible copies of all documents referred to in the Preliminary Report (collectively, the "Title Documents"). City shall convey to Noyo Center the City Property free and clear of all monetary liens or encumbrances, except: a) the lien for non-delinquent real property taxes; b) the

standard printed exceptions or exclusions on the form of title insurance policy issued for the City Property; and c) any other matters approved in writing by Noyo Center.

ARTICLE 5. Noyo Center LIMITED RIGHT OF ENTRY.

- 5.01 General. Terminating at Close of Escrow, Noyo Center shall have the right, upon forty-eight (48) hours notice as provided herein, to enter onto the City Property in order to conduct inspections, tests, surveys and other studies as Noyo Center may deem necessary (the "Work").
- 5.02 Permits. Noyo Center shall be responsible for obtaining any required permits for all Work performed on the City Property. All Work shall be performed in compliance with all applicable laws and regulations. Noyo Center shall be responsible for performing all Work on the City Property in a safe, professional manner, and shall take all reasonable precautions to avoid damage to the City Property. Noyo Center shall be solely responsible for any damage that occurs to the City Property or to adjacent properties caused by the Work. Upon the completion of the Work, all debris generated by Noyo Center's Work, shall be removed from the City Property by Noyo Center, and disposed of in an appropriate and legal manner.
- 5.03 No Interference. Neither Noyo Center nor its contractors shall interfere with any ongoing, or future, operations of the City, its tenants, its agents, or its contractors.
- 5.04 Noyo Center's Sole Cost. All Work shall be performed under the direction of Noyo Center, at the sole cost of Noyo Center, and Noyo Center is responsible for payment of contractors, subcontractors and costs of lawful disposal of all materials.
- 5.05 Tools and Equipment. All tools, equipment and vehicles used to perform the Work shall be the property of, or hired by, Noyo Center and shall be removed promptly upon completion of the Work.
- 5.06 Indemnification. Noyo Center agrees to indemnify and defend City and hold it and the City Property harmless from any costs or liability relating to personal injury, physical property damage and/or mechanics' liens, and attorney's fees related thereto, incurred by reason of such investigations, and to repair any damages caused to the City Property by reason of any entry or investigation thereof. Notwithstanding the foregoing, Noyo Center's indemnity obligations set forth in the preceding sentence shall not extend to the negligent acts, omissions or willful misconduct of City, or to the discovery of any pre-existing Hazardous Materials (defined in Section 9.01 below) present in, on, or under the City Property.
- 5.07 Sole Negligence. None of the foregoing paragraphs shall be applicable if the injury, death or damage is caused by the City's sole negligence or willful misconduct.

ARTICLE 6. REPRESENTATIONS AND WARRANTIES.

- 6.01 Representations and Warranties in General. City acknowledges that the execution of this Agreement by the Noyo Center is made in material reliance by Noyo Center on each and every one of the representations and warranties made by City in this Article 6. Noyo Center acknowledges that the execution of this Agreement by City is

made in material reliance by the City of each and every one of the representations and warranties made by Noyo Center in this Article 6.

6.02 City Representations And Warranties. City represents and warrants to Noyo Center that each and every one of the matters set forth in this Section 6 are true and correct as of the Effective Date.

6.03

- (A) Breach of Other Agreements. Neither the execution of this Agreement nor the consummation of the transaction contemplated herein will constitute a breach under any contract or agreement to which City is a party or by which City is bound or affected which affects the City Property or any part thereof.
- (B) Rights of Others. There are no parties in possession of any portion of the City Property as lessees, tenants, tenants at sufferance, or trespassers, and no party has been granted any license, lease or other right relating to use or possession of the City Property.
- (C) No Grant of Other Rights. City has not granted to any party, other than the Noyo Center, any option, contract, or other agreement with respect to a purchase or sale of the City Property or any portion thereof or any interest therein.
- (D) Authority; Binding Obligation. The execution and delivery by City of and City's performance under this Agreement are within City's powers and have been duly authorized by all requisite action.
- (E) No Retained Rights. To the best knowledge of City, no previous owner of any portion of the City Property other than the City has any right to create any easements, rights-of-way or other interest in any portion of the City Property, except as otherwise may be disclosed in the Preliminary Report.
- (F) Disclosure. City has disclosed to Noyo Center any and all matters known to City that may have a material adverse impact on the City Property and the Noyo Center's ability to use and/or develop the City Property. All of the documents and materials supplied by City are in all material respects true, accurate and complete; and, City has no knowledge of any facts which would render any information in such documents and materials untrue in any significant respect.
- (G) Notice of Changed Circumstances. If City becomes aware prior to close of escrow of any fact or circumstance which would render false or misleading a representation or warranty made by City, then City shall immediately give written notice of such fact or circumstance to the Noyo Center, but such notice shall not relieve City of any liabilities or obligations with respect to any representation or warranty.

6.03 Noyo Center's Representations and Warranties. Noyo Center represents and warrants to the City that each and every one of the matters set forth in this Section 6 is true and correct as of the Effective Date.

- (A) Authority; Binding Obligation. The execution and delivery by Noyo Center of, and Noyo Center's performance under, this Agreement are within Noyo Center's powers and have been duly authorized by all requisite action.

- (B) Development of Noyo Center Facilities. Noyo Center will use the property only for such purposes contemplated by the MOU and will use all commercially reasonable efforts to develop a Marine Science Center on the site.

6.04 Survival of Warranties. Noyo Center and City agree that each representation and warranty in this Article 6, shall survive the Closing Date.

ARTICLE 7. TERMINATION.

7.01 Agreement Termination Provisions. Either Party to this Agreement may elect to terminate this Agreement in the event of the following conditions not being met, with no further obligations of any Party.

7.02 Noyo Center's Termination. In addition to the Conditions to Close pursuant to Section 4.10, the Noyo Center's obligation to accept the City Property is subject to the satisfaction of the following conditions which are for the Noyo Center's benefit only:

- (A) Noyo Center's approval of inspections, tests, surveys and other studies as the City may deem necessary.
- (B) Noyo Center's approval of Noyo Center's documents, as provided in Section 4.07.

ARTICLE 8. MISCELLANEOUS.

8.01 Notices.

- (A) "Notice" means any notice, demand, request or other communication or document to be provided under this Agreement to a Party to this Agreement.
- (B) The Notice shall be in writing and shall be given to the Party at its address or facsimile number, or email address set forth below, or such other address or facsimile number, or email address as the Party may later specify for that purpose by Notice to the other Party. Each Notice shall, for all purposes, be deemed given and received:
 - (1) If given by facsimile or email, when the facsimile or email is transmitted to the Party's facsimile number or email address specified below and confirmation of complete receipt is received by the transmitting Party during normal business hours or on the next business day if not confirmed during normal business hours;
 - (2) If hand-delivered to a Party against receipted copy, when the copy of Notice is receipted;
 - (3) If given by a nationally-recognized and reputable overnight delivery service, the day on which the Notice is actually received by the Party; or
 - (4) If given by any other means, or if given by certified mail, return receipt requested, postage prepaid, two business days after it is posted with the United States Postal Service, at the address of the Party specified below:

If to City: City of Fort Bragg
 Attn: City Manager
 416 N. Franklin Street
 Fort Bragg, CA 95437

Telephone No. (707) 961-2823

If to Noyo Center: Noyo Center for Marine Science
PO Box 1321
Fort Bragg, CA 95437

- (C) If any Notice is sent by facsimile or other electronic means, the transmitting Party as a courtesy may send a duplicate copy of the Notice to the other Party by regular mail. In all events, however, any Notice sent by electronic transmission shall govern all matters dealing with delivery of the Notice, including the date on which the Notice is deemed to have been received by the other Party.
 - (D) The provisions above governing the date on which a Notice is deemed to have been received by a Party to this Agreement shall mean and refer to the date on which a Party to this Agreement, and not its counsel or other recipient, to which a copy of the Notice may be sent, is deemed to have received the Notice.
 - (E) If Notice is tendered under the provisions of this Agreement and is refused by the intended recipient of the Notice, the Notice shall nonetheless be considered to have been given and shall be effective as of the date provided in this Agreement. The contrary notwithstanding, any Notice given to either Party in a manner other than that provided in this Agreement that is actually received by the noticed Party, shall be effective with respect to such Party on receipt of the Notice.
- 8.02 No Brokers. Each of the Parties hereto represents that it has dealt with no broker or finder in connection with this Agreement, and insofar as they know, no broker or other person is entitled to any commission or finder's fee in connection with this sale. The Noyo Center and City each agree to indemnify and hold harmless one another against any loss, liability, damage, cost, claim or expense incurred by reason of any brokerage commission or finder's fee alleged to be payable because of any act, omission or statement of the indemnifying Party.
- 8.03 Interpretation. Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the Parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine, and vice versa. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared the same. Unless otherwise indicated, all references to paragraphs, sections, subparagraphs and subsections are to this Agreement.
- 8.04 Time of Essence. Noyo Center and City hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either Party shall constitute a material breach of and a non-curable (but waivable) default under this Agreement by the Party so failing to perform.

- 8.05 Integration; Amendments to Agreement. This Agreement contains the entire agreement of the Parties hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are no representations, agreements, arrangements or understandings, oral or written, relating to the subject matter which are not fully expressed herein. This Agreement may be amended, modified or supplemented only by a written instrument signed by all Parties.
- 8.06 Additional Documents. From time to time prior to and after the Close of Escrow, each Party shall execute and deliver such instruments of transfer and other documents as may be reasonably requested by the other Party to carry out the purpose and intent of this Agreement.
- 8.07 Dependency and Survival of Provisions. The respective warranties, representations, covenants, agreements, obligations and undertakings of each Party hereunder shall be construed as dependent upon and given in consideration of those of the other Party, and shall survive the Close of Escrow and delivery of the Grant Deed.
- 8.08 California Law. The Parties hereto acknowledge that this Agreement has been negotiated and entered into in the State of California. The Parties hereto expressly agree that this Agreement shall be governed by, interpreted under and construed and enforced in accordance with laws of the State of California.
- 8.09 Possession. City shall deliver possession of the City Property to the Noyo Center at Close of Escrow.
- 8.10 Calculation of Time Periods. If any date for performance under this Agreement falls on a Saturday, Sunday or bank holiday, then the date for performance shall be the next day which is not a Saturday, Sunday or bank holiday, and the next time period shall be calculated from and after the date of such actual performance. Unless specifically described herein as calendar days, all time periods shall be calculated as working days.
- 8.11 Exhibits. All exhibits to which reference is made in this Agreement are incorporated in this Agreement by the respective references to them, whether or not they are actually attached, provided they have been signed or initialed by the Parties. Reference to "this Agreement" includes matters incorporated by reference.
- 8.12 Force Majeure. If either Party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations or other cause without fault and beyond the control of the Party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, nothing contained in this Section shall excuse City from the prompt payment of any charge required of City hereunder, except as may be expressly provided elsewhere in this Agreement.
- 8.13 Mutual Contribution. This Agreement has been drafted on the basis of mutual contribution of language and is not to be construed against any Party hereto as being the drafter or causing the same to be drafted.

- 8.14 Representation. Each Party acknowledges that it has had the opportunity to review this Agreement with an attorney, and has either done so, or knowingly declined the opportunity to do so.
- 8.15 Counterparts. This Agreement may be executed in counterparts.
- 8.16 Successors and Assigns. This Agreement and the rights and obligations contained herein shall be binding on the successors, heirs and assigns of the parties.

ARTICLE 9. HAZARDOUS MATERIALS.

- 9.01 The term "Hazardous Material(s)" as used in this Agreement means any substance which is: (1) defined as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law; (2) a petroleum hydrocarbon, including crude oil or any fraction thereof; (3) hazardous, toxic, corrosive, flammable, explosive, infectious, radioactive, carcinogenic, or reproductive toxicant; (4) regulated pursuant to any "Environmental Law(s)" (5) any pesticide regulated under state or federal law; or (6) any tank or container which contains or previously contained any Hazardous Material(s). The term "Environmental Law(s)" means each and every federal, state, and local law, statute, ordinance, regulation, rule, judicial or administrative order or decree, permit, license, approval, authorization or similar requirement of each and every federal, state and local governmental City or other governmental authority, pertaining to the protection of human health and safety or the environment, now and forever.
- 9.02 Hazardous Materials Indemnification. To the fullest extent permitted by law, the City and the Noyo Center shall each indemnify and hold harmless the other, and the other's officers, directors, partners, employees, consultants and agents, from and against all claims, costs, losses, and damages (including but not limited to all fines, fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of, or relating in any way to the presence, discharge, release, or escape of Hazardous Materials at, on, under, or from the Site; provided that, such indemnity and agreement to hold harmless shall not apply in the event such presence, discharge, release or escape of Hazardous Materials at the site arose from activities of the other party at the site.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement, together with the herein-referred-to Exhibits, which are attached hereto, on the day and year of the last signature below.

City: CITY OF FORT BRAGG

By: _____
Tabatha Miller
City Manager

Date of City Approval

Approved As to Form

By: _____ Date: _____
Russell Hildebrand, City Attorney

Noyo Center: Noyo Center for Marine Science

By: _____
Date of Approval

Approved As to Form

By: _____ Date: _____
Noyo Center Counsel

Attachments:

Exhibit A: City Property Legal Description
Exhibit B: City Property Map

EXHIBIT A

TRANSFER PROPERTY
LEGAL DESCRIPTION

EXHIBIT B

TRANSFER PROPERTY MAP