



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, June 12, 2023

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: Jun 12, 2023 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/83937120980>

*Or Telephone: +1 669 444 9171 or +1 719 359 4580 (*6 mute/unmute; *9 raise hand)*

Webinar ID: 839 3712 0980

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.

AGENDA REVIEW

1. MAYOR'S RECOGNITIONS AND ANNOUNCEMENTS

- 1A. [23-182](#) Presentation of Proclamation Recognizing June 19-25, 2023 as National Pollinator Week

Attachments: [07-National Pollinator Week](#)

- 1B. [23-183](#) Presentation of Proclamation Declaring June 2023 as LGBTQI+ Pride Month

Attachments: [08-LGBTQI+ Pride Month](#)

- 1C. [23-187](#) Receive Presentation from Mendocino Coast Humane Society

Attachments: [MCHS Presentation](#)

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 June Lemos, jlemos@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. [23-186](#) Resolution of the Fort Bragg City Council Approving a Professional Services Agreement with Mendocino Coast Humane Society for Provision Of Animal Care and Shelter Services and Dog Licensing Program and Authorizing City Manager to Execute Same (Amount Not to Exceed \$18,000 in FY 2022-2023 Account No. 110-4110-0319 \$31,500 in FY 2023-24; Account No. 110-4200-0314)

Attachments: [RESO Humane Society](#)
[MCHS PSA](#)

- 5B. [23-122](#) Resolution of the Fort Bragg City Council Approving Contract with Governmentjobs.com DBA NEOGOV for the Implementation of Human Resources Management Suite for the Public Sector and Authorizing City Manager to Execute Contract (Total Amount Not to Exceed \$36,891.30)

Attachments: [Resolution NEOGOV](#)
[NEOGOV Quote](#)

- 5C. [23-172](#) Approve Scope of Work for an RFP for Construction Management Contract for 2022 Streets Rehabilitation Project

Attachments: [Scope of Work for Streets Project Construction Management](#)
[Ex A - Standard PSA](#)

- 5D. [23-180](#) A Resolution of the Fort Bragg City Council Authorizing the City Manager to Act on Behalf of the City for the Purpose of Applying for a Grant with the State Water Resources Control Board to Fund a Planning Study for the Construction of a Recycled Water Facility

Attachments: [RESO Planning Study](#)

- 5E. [23-169](#) Receive and File Minutes of the March 09, 2023 Public Works and Facilities Committee Meeting

Attachments: [PWF Minutes 03092023](#)

- 5F. [23-175](#) Approve Minutes of May 22, 2023

Attachments: [CC 05222023](#)

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. [23-173](#) Receive Report, Conduct Public Hearing, and Consider Adopting Resolution of the Fort Bragg City Council Determining that the Public Interest and Necessity Require the Acquisition of Certain Real Property Interests for a Public Project and Directing the Filing of Eminent Domain Proceedings

Attachments: [06122023 Staff Report RE Resolution of Necessity](#)

[Att 1 - Resolution Redwood Timber RON](#)

[Att 2 - Notice of Public Hearing RON](#)

[Att 3 - Updated Notice of Hearing](#)

[Att 4 - Request to be Heard - Mr. Johnson](#)

8. CONDUCT OF BUSINESS

- 8A. [23-184](#) Receive Report and Consider Adoption of Municipal Improvement District No. 1 Resolution Approving the Contract with Fort Bragg Electric, for the Elm Street Lift Station Project; Authorizing City Manager to Execute Contract (Amount Not to Exceed \$98,417.00, Account No. 716-7007-0731 & 714-4713-0741); and Finding the Project Exempt from CEQA Under 14 CCR 15301b Existing Facilities

Attachments: [06122023 FBE Elm Street Lift Station Contract](#)

[Att 1 - RESO ID Fort Bragg Electric](#)

[Att 2 - FBE Quotes](#)

- 8B. [23-171](#) Receive Report and Provide Direction to Staff Regarding a Ballot Measure Extending Special Purpose Transactions and Use Tax for Street Maintenance and Improvements

Attachments: [06122023 Special Sales Tax Measure](#)

[Att 1 - FBMC Ch 3.10 Special Use Tax](#)

[Att 2 - 06122023 Special Sales Tax Presentation](#)

[Public Comment](#)

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, June 26, 2023**

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 June 8, 2023.

Cristal Munoz
Acting 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

416 N Franklin Street
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Text File

File Number: 23-182

Agenda Date: 6/12/2023

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Proclamation

Agenda Number: 1A.

Presentation of Proclamation Recognizing June 19-25, 2023 as National Pollinator Week

PROCLAMATION
National Pollinator Week
June 19-25, 2023

WHEREAS, pollinator species such as thousands of species of bees are essential partners in producing much of our food supply; and

WHEREAS, pollinator species provide significant environmental benefits that are necessary for maintaining healthy, diverse urban and suburban ecosystems; and

WHEREAS, pollination plays a vital role for the trees and plants of our community, enhancing our quality of life, and creating recreational and economic development opportunities; and

WHEREAS, in the last year, the City of Fort Bragg has managed urban landscapes and public lands that include many municipal parks and greenways, as well as wildlife habitats; and

WHEREAS, the City of Fort Bragg encourages developers and residents to use bee friendly landscaping and promote wise conservation stewardship, including the protection of pollinators and maintenance of their habitats in urban and suburban environments;

NOW, THEREFORE, I, Bernie Norvell, Mayor of the City of Fort Bragg, on behalf of the entire City Council, do hereby proclaim the Week of June 19-25, 2023 as National Pollinator Week in the City of Fort Bragg and urge all citizens to recognize this observance.

SIGNED this 12th day of June, 2023

BERNIE NORVELL, Mayor

ATTEST:

Cristal Munoz, Acting City Clerk



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Text File

File Number: 23-183

Agenda Date: 6/12/2023

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Proclamation

Agenda Number: 1B.

Presentation of Proclamation Declaring June 2023 as LGBTQI+ Pride Month

P R O C L A M A T I O N

LGBTQI+ PRIDE MONTH

JUNE 2023

WHEREAS, the month of June is officially celebrated as Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex (LGBTQI+) Pride month celebrating the many contributions and accomplishments of LGBTQI+ individuals; and

WHEREAS, Fort Bragg is committed to being inclusive and welcoming of all regardless of their sexual orientation and recognizes that we are a diverse community and enriched by this diversity; and

WHEREAS, Fort Bragg supports the rights of every citizen to experience equality and freedom from discrimination; and

WHEREAS, this month we reconfirm our commitment to do more to support LGBTQI+ rights; and

WHEREAS, Pride Month also reminds us that acceptance of LGBTQI+ individuals is different than tolerance of LGBTQI+ individuals; and

WHEREAS, today the rights of LGBTQI+ Americans are under relentless attack. Members of the LGBTQI+ community – especially people of color and trans people – continue to face discrimination and cruel, persistent efforts to undermine their human rights. Dangerous anti-LGBTQI+ legislation has been introduced and passed in States across the country, targeting transgender children and their parents and interfering with their access to health care. These unconscionable attacks have left countless LGBTQI+ families in fear and pain; and

WHEREAS, the Fort Bragg City Council invites everyone to consider how we can live and work together with a commitment to mutual respect for, understanding, and acceptance of all members of our community; and

NOW, THEREFORE, I, Bernie Norvell, Mayor of the City of Fort Bragg, on behalf of the entire City Council, do hereby proclaim the month of June 2023 as LGBTQI+ Pride Month.

SIGNED this 12th day of June 2023.

BERNIE NORVELL,
Mayor

ATTEST:

Cristal Munoz, Acting City Clerk

No. 08-2023



City of Fort Bragg

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Text File

File Number: 23-187

Agenda Date: 6/12/2023

Version: 1

Status: Business

In Control: City Council

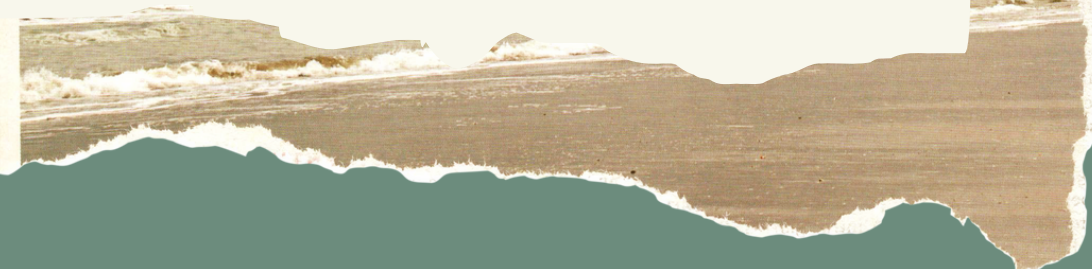
File Type:
Recognition/Announcements

Agenda Number: 1C.

Receive Presentation from Mendocino Coast Humane Society

Mendocino Coast Humane Society

Saving Lives, Serving Community
since 1987



Mission Statement

is to contribute to a better life
for animals and to inspire public
awareness of animal's needs



*We provide
shelter & care*

- For all dogs and cats impounded by Fort Bragg Police Department
- For dogs and cats (and sometimes rabbits and turtles) found by Fort Bragg residents
- For dogs and cats surrendered or found in surrounding county locations
- When space is available, we will take animals from high kill shelters

Current Population

Available- 60

Life Residents- 10

Awaiting S & N- 16

Under vet care- 5

Medical Foster- 8

Fostering- 4

Stray Hold- 3

Cats- 69
Dogs- 37

106 total



Cage Free Kitty Cottage!



Built in 2000!



Heated kennel flooring!



Shelter

Total Intake: 631
Animals

Adoptions: 523 Animals
Cats- 291
Dogs- 232

Strays: 191
Animals
Cats- 90
Dogs- 101

RT0: 89
Animals
Cats- 15
Dogs- 74

Clinic

Spays & Neuters

Public:
661

Shelter
346

Total:
1007

Other & Misc.
Veterinary
Services:
900+

2022-2023 Fiscal Year to date

Vet Clinic

Because of generous donors, Second Chance assistance, Eileen Hawthorn Fund and the group SOS, we were able to provide a variety of surgeries, wellness exams and support to over 900 coastal patients.

Our vision is to expand the size of our clinic in the 2023/24 year

This will make it possible for us to provide more coastal residents with affordable vet care!



clinic@mendocinohumane.org

Other services offered...

City dog licensing

We issue yearly
dog licenses for
city residents.
\$25–altered dogs
\$55–unaltered

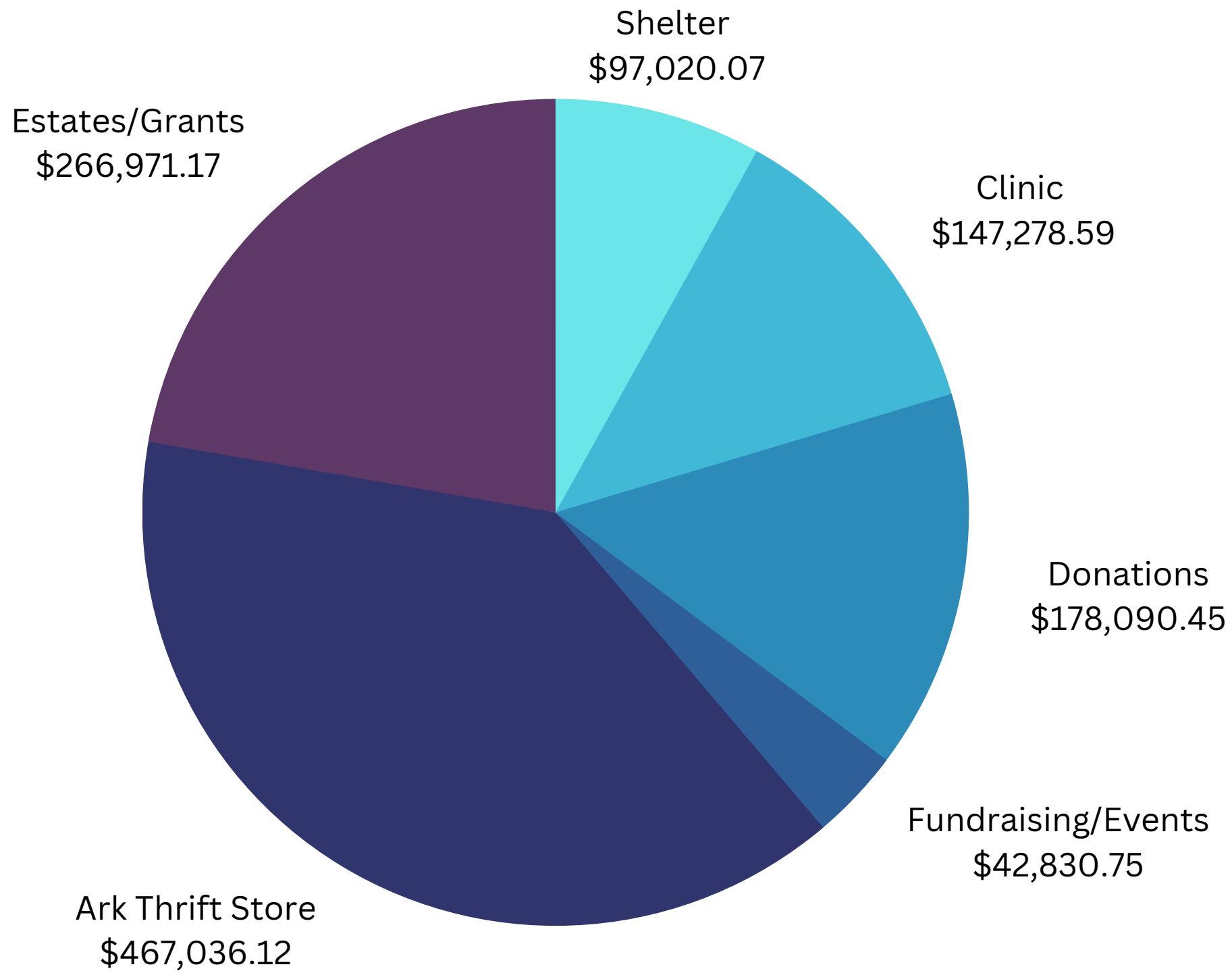


Low cost vaccinations

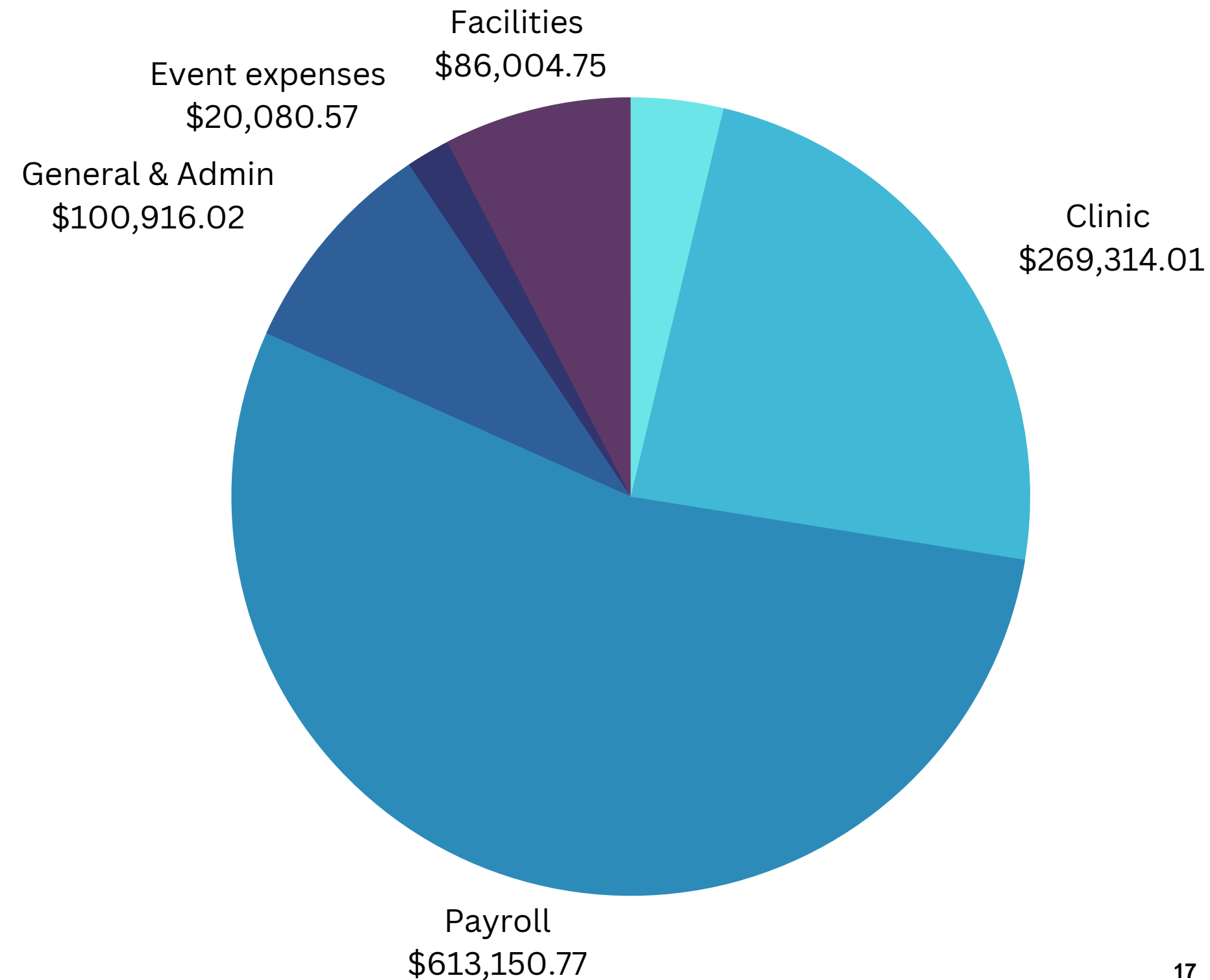
Our clinic offers vaccine
and microchipping
5 days/wk by
appointment

MCHS Financials...

Where it comes from...

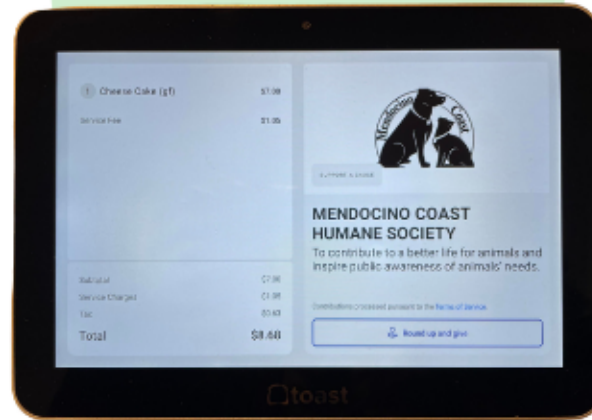


Where it goes...



7 Days to Donate...

Round up @ Goodlife Cafe



Stop by Goodlife Cafe in Mendocino and buy some yummy treats. Be sure to round up your total to MCHS during checkout!

Donation Boxes

We have donation boxes all over the Mendocino & Fort Bragg area, Look for our logo and drop some change in one!



Buying See's Candies



We sell See's Candies at The Ark & at our shelter! Be sure to stop by and buy some sweet treats.

Supporting The Ark

Shopping & donating at The Ark is one of the easiest ways to donate!



Monthly Dine Out

MCHS has a monthly dine out for a local restaurant. A portion of the proceeds go towards the humane society. Go try some delicious food while donating at the same time!



Other Ways...

- Amazon Wish List
- Monthly Sustaining Donation
- Direct Donation

For more information or links to donate in the ways listed above- visit our website www.mendocinohumane.org

Fostering Saves Lives

Our foster program is ever-changing and we are always searching for new families willing to foster with us.

Types of fostering...

Medical &
Behavioral
Foster

Foster
Trial
Adoption

Through our foster program, we are able to help animals transition into forever homes easier, as well as help our shelter with space issues.



We have something that will interest everyone! Whether it's dog walks, cat socialization, helping with events, or even folding laundry- MCHS has got you covered!

Volunteer Program

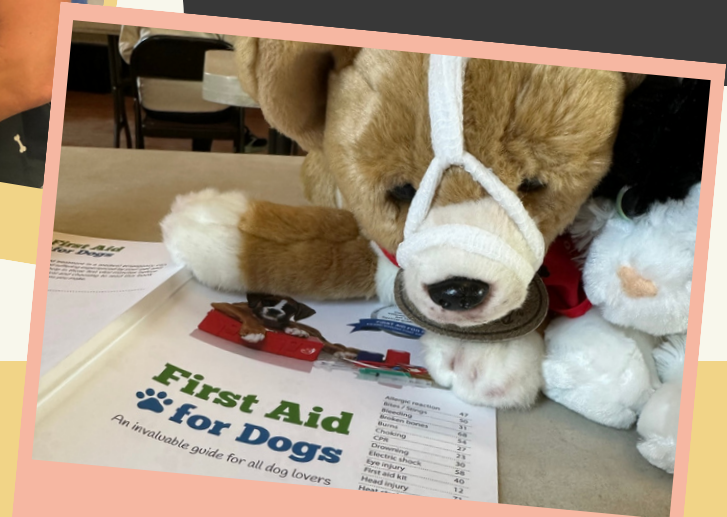
Give back to your community!

Email

volunteer@mendocinohumane.org
today to get started!

As a volunteer you are able to help the well-being of adoptable animals and give them hope for a brighter tomorrow!

Our volunteer program provides a plethora of opportunities for community members of all ages!



Borrow-A-Buddy

Fieldtrips with adoptable shelter dogs

Our program enables you to take an adoptable dog on a fun local field trip away from the adoption center.

*Gives a deserving pup love, exercise, and exposure to potential adopters.

*Gain a fun-loving buddy for the day... and possibly longer if you fall in love!

We provide everything you need

- collar & leash
- waste bags
- treats
- water & dish
- towels
- adoption vest
- Happy shelter dog



Available 7 days a week

Thank you!





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Text File

File Number: 23-186

Agenda Date: 6/12/2023

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Staff Report

Agenda Number: 5A.

Resolution of the Fort Bragg City Council Approving a Professional Services Agreement with Mendocino Coast Humane Society for Provision Of Animal Care and Shelter Services and Dog Licensing Program and Authorizing City Manager to Execute Same (Amount Not to Exceed \$18,000 in FY 2022-2023 Account No. 110-4110-0319 \$31,500 in FY 2023-24; Account No. 110-4200-0314)

RESOLUTION NO. ____-2023

RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH MENDOCINO COAST HUMANE SOCIETY FOR PROVISION OF ANIMAL CARE AND SHELTER SERVICES AND DOG LICENSING PROGRAM AND AUTHORIZING CITY MANAGER TO EXECUTE SAME (AMOUNT NOT TO EXCEED \$18,000 in FY 2022-2023 ACCOUNT NO. 110-4110-0319 AND \$31,500 IN FY 2023-24; ACCOUNT NO. 110-4200-0314)

WHEREAS, the Mendocino Coast Humane Society (MCHS) is a non-profit organization that has served the Mendocino Coast since 1987 and which operates a “no kill” shelter and animal adoption center; and

WHEREAS, for over twelve years, the City of Fort Bragg (City) has contracted with the Mendocino Coast Humane Society for animal care and shelter services and for administration of the City’s dog licensing program; and

WHEREAS, the City has determined that MCHS’s continued services are necessary to ensure continuity in the provision of animal care and shelter services and a dog licensing program; and

WHEREAS, MCHS has agreed to provide animal care and shelter services and a dog licensing program for the City of Fort Bragg for a monthly fee of \$2,625 plus retention of revenues collected from services rendered and in conjunction with the dog licensing program; and

WHEREAS, based on all of the evidence presented, the City Council finds as follows:

1. Entering into a three-year contractual agreement with MCHS is the best available option for animal care and shelter services and a dog licensing program for City residents.
2. Continuing the partnership between the City of Fort Bragg and MCHS will result in easily accessible, professional, high quality, and reasonably-priced services for City residents and their animals.
3. Funds were appropriated in the City of Fort Bragg's FY 2023-24 budget for animal care and control services.

NOW, THEREFORE, BE IT RESOLVED that the Fort Bragg City Council does hereby approve a Professional Services Agreement with the Mendocino Coast Humane Society for provision of animal care and shelter services and a dog licensing program which is attached as Exhibit A and incorporated herein by reference, and authorizes the City Manager to execute the same (Amount not to exceed \$18,000 in FY 2022-2023 Account No. 110-4110-0319 and \$31,500 in FY 2023-24; Account No. 110-4200-0314).

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 12th day of June 2023 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RECUSED:

BERNIE NORVELL

Mayor

ATTEST:

June Lemos, CMC
City Clerk

**CITY OF FORT BRAGG
PROFESSIONAL SERVICES AGREEMENT WITH
MENDOCINO COAST HUMANE SOCIETY**

THIS AGREEMENT is made and entered into this 12th day of June, 2023 ("Effective Date"), by and between the CITY OF FORT BRAGG, a municipal corporation, 416 N. Franklin Street, Fort Bragg, California 95437 ("City"), and the MENDOCINO COAST HUMANE SOCIETY, 19691 Summers Lane, Fort Bragg, CA 95437, a California non-profit corporation ("Consultant").

W I T N E S S E T H :

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to perform dog licensing, animal shelter, and animal care services, 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.

E. WHEREAS, the legislative body of the City on June 12, 2023 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 AND BILLING

2.1. Compensation. Consultant shall be paid Two Thousand Six Hundred Twenty-Five Dollars (\$2,625.00) per month for the provision of services under this agreement with a total amount not to exceed Ninety-Four Thousand Five Hundred Dollars (\$94,500.00) unless this Agreement is amended. Additionally the City will provide a one-time payment at the beginning of this contract FY 2022-2023 of \$18,000 (Account 110-4110-0319).

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 June 30, 2026. 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 June 30, 2026 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 the City Manager. 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 Judy Martin 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:

Judy Martin, Executive Director
Mendocino Coast Humane Society
19691 Summers Lane
Fort Bragg, CA 95437

IF TO CITY:

City Clerk
City of Fort Bragg
416 N. Franklin St.
Fort Bragg, CA 95437

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.

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.

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 6250 *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 6254.7, 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: _____
Peggy Ducey
Its: City Manager

By: _____
Judy Martin
Its: Executive Director

ATTEST:

By: _____
Cristal Munoz, Acting City Clerk

APPROVED AS TO FORM:

By: _____
Keith F. Collins
City Attorney

EXHIBIT A

Scope of Services

1. CONSULTANT will provide animal care and shelter services to the City of Fort Bragg as set forth below and as an extension of its existing operations at the Mendocino Coast Humane Society Animal Shelter ("Shelter") in accordance with all applicable State and City regulations.
 - a. Accept and provide shelter and care for all cats and dogs impounded by the City of Fort Bragg Police Department ("FBPD").
 - b. Accept and provide shelter and care for stray cats and dogs found within the city limits of the City of Fort Bragg. Feral cats will be spayed/neutered and returned to their original location.
 - c. Accept and provide shelter and care for cats and dogs that are surrendered by residents within the Fort Bragg city limits, subject to the CONSULTANT's Shelter capacity. CONSULTANT will maintain a Waiting List for those cats and dogs that they are unable to accept due to capacity. CONSULTANT may charge a Surrender Fee.
 - d. CONSULTANT will maintain reports for all Lost and Found cats and dogs
2. The Shelter's public hours of operation shall be, at a minimum:
Shelter will be open 6 days per week from 12 p.m. to 5 p.m., excluding Holidays. Shelter shall be open to the public for adoptions and to receive stray cats and dogs from the residents of Fort Bragg during business hours. CONSULTANT will accept cats and dogs from the FBPD six days per week from 8 a.m. to 5 p.m., excluding Holidays. The FBPD will be provided emergency access to the Shelter to drop off stray cats or dogs after hours and emergency telephone numbers for Shelter staff.
3. CONSULTANT'S Shelter operations will include shelter and care for all cats and dogs from the City of Fort Bragg, as identified in Section 1, above, except for vicious and aggressive animals; bite cases; quarantined animals; custody animals; and abuse cases. These animals will be cared for at Mendocino County's Ukiah shelter under a separate contract between the City and Mendocino County.
4. CONSULTANT will maintain adequate staffing levels to provide contracted services.
5. CONSULTANT will provide daily animal care, including:
 - a. cleaning and disinfecting kennels at least once per day
 - b. Feeding and watering all animals at least once per day
 - c. Socializing and exercising adoptable animals
 - d. Keeping facility neat and orderly
 - e. Providing or arranging for medical care as necessary in accordance with state and City regulations.
6. CONSULTANT will hold all impounded animals for the required stray period as established by State law. All impounded animals will be made available to the public for possible owner redemption during the required stray period as established by State Law.

7. CONSULTANT will promote and facilitate adoptions for animals. All cats and dogs that are adopted to a new owner will be spayed/neutered unless doing so is detrimental to their health.
8. CONSULTANT will encourage the use of volunteers to assist with animal socialization, special projects and community fund-raising efforts.
9. CONSULTANT will provide animal licensing services to City of Fort Bragg residents. CONSULTANT will notify existing license holders of City licensing requirements and procedures at least 45 days prior to expiration of their current County license. Upon payment of annual license fees, CONSULTANT will issue a serially numbered metallic dog license tag which is stamped with "Fort Bragg" and the year of issuance. CONSULTANT and CITY will establish protocols for sharing and updating licensing information and making it accessible to FBPD staff performing animal control enforcement services. CONSULTANT will also share licensing information with the Ukiah Animal Shelter to assist with owner redemptions of Fort Bragg animals.
10. CITY will be responsible for collection of delinquent Fort Bragg City license fees and shall retain all delinquent Fort Bragg City license fee revenues collected.
11. CONSULTANT will collect fees for services and fines in accordance with a fee and fine schedule established by resolution of the Fort Bragg City Council. CONSULTANT may waive the surrender, redemption and adoption fees and fines, as necessary, to facilitate redemption and adoption of animals. CONSULTANT may not waive license fees or state-mandated redemption fines for loose and/or unlicensed animals.
12. CITY will accept from CONSULTANT dead animals for disposal.
13. CONSULTANT and CITY will jointly promote spay and neuter activities, licensing programs, and micro-chipping services.
14. CONSULTANT will be responsible for administering rabies vaccines to dogs impounded by the FBPD as required by law. CONSULTANT will hold one Rabies Clinic per calendar year.
15. CONSULTANT will coordinate with the FBPD to provide the data necessary for the CITY to complete and file required annual rabies reports.
16. CONSULTANT will coordinate with City staff to ensure that all hearing requirements related to impounded animals are met. The City Manager or his/her designee will serve as the hearing officer.
17. CONSULTANT will maintain records and prepare reports documenting the following:
 - a. Licensing Report: including dogs licensed for residents of the City of Fort Bragg and licensing revenue collected.
 - b. Animal Statistics Report: for cats and dogs originating in the City of Fort Bragg including: receiving and redemption of animals, adoptions, and euthanasia;
 - c. Animal Statistics Report: for cats and dogs regardless of origination, including: receiving and redemption of animals, adoptions, and euthanasia;

- d. Impound Report: for all cats and dogs brought to the shelter by FBPD and City staff, including: impound and redemption revenue collected.
- e. Any such other reports and records as requested by the City and pertaining to its services as defined in this agreement.

CONSULTANT shall submit said reports to CITY on a monthly basis. The reports shall be submitted in a format that is mutually agreed upon by CITY and CONSULTANT.

- 18. CITY has the right to inspect books and records from which Animal Statistic Reports, Licensing Reports and Revenue Reports are prepared.
- 19. CONSULTANT will provide an annual presentation to the City Council regarding animal shelter operations in September or October of each year.
- 20. Day-to-day contract administration will be provided by the City Manager or his/her designee.

EXHIBIT B

CERTIFICATES OF INSURANCE AND ENDORSEMENTS



City of Fort Bragg

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

Text File

File Number: 23-122

Agenda Date: 6/12/2023

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Resolution

Agenda Number: 5B.

Resolution of the Fort Bragg City Council Approving Contract with Governmentjobs.com DBA NEOGOV for the Implementation of Human Resources Management Suite for the Public Sector and Authorizing City Manager to Execute Contract (Total Amount Not to Exceed \$36,891.30)
Adopt City Council Resolution Approving Professional Services Agreement with Governmentjobs.com DBA NEOGOV to Provide Human Resources Management Suite Software and Authorizing City Manager to Execute Contract (Amount not to Exceed T\$36,891.30.

RESOLUTION NO. ____-2023

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL
APPROVING CONTRACT WITH GOVERNMENTJOBS.COM DBA NEOGOV
FOR THE IMPLEMENTATION OF HUMAN RESOURCES MANAGEMENT
SUITE FOR THE PUBLIC SECTOR AND AUTHORIZING CITY MANAGER TO
EXECUTE CONTRACT (TOTAL AMOUNT NOT TO EXCEED \$36,891.30;
ACCOUNT NUMBER 521-4394-0384)**

WHEREAS, in the City's on-going effort to automate City processes, in April, 2023, Fort Bragg Human Resources solicited a proposal from Governmentjobs.com DBA NEOGOV ("Consultant") to implement a computerized Human Resources Management Suite for the Public Sector; and

WHEREAS, the computer modules selected are:

- Insight: Recruitment and application process
- Onboard: Processing new employees

WHEREAS, the Consultant supplied a scope of work and costs in accordance with the workload required for project completion as described in the contract; and

WHEREAS, per the Fort Bragg Municipal Code Section 3.20.040 decisions to award contracts in the amount greater than \$25,000 shall be made by the City Council; and

NOW, THEREFORE, BE IT RESOLVED that the Fort Bragg City Council does hereby approve a contract with NEOGOV to implement the Human Resources Management Suite for the Public Sector and authorize the City Manager to execute contract (total amount over three years not to exceed \$36,891.30; 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 12th day of June, 2023, by the following vote:

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

ATTEST:

Cristal Munoz, Acting City Clerk

BERNIE NORVELL
Mayor

A group of four diverse professionals (three men and one woman) are gathered around a table, smiling and looking at a laptop screen. They are in a modern office setting with a brick wall in the background. The image is split into two vertical panels: the left panel shows the woman and one man, while the right panel shows the other two men.

NEOGOV

HUMAN RESOURCES MANAGEMENT SUITE

for the public sector

Exhibit A Order Form



NEOGOV

Customer:

Governmentjobs.com, Inc. (dba "NEOGOV")
2120 Park Pl, Suite 100
El Segundo, CA 90245
United States
billing@neogov.com
Sales Rep: Tyler Olsen

Fort Bragg, City of (CA)
416 N. Franklin Street
Fort Bragg, CA 95437
USA

Quote Valid From: 6/6/2023
Quote Valid To: 6/30/2023

Quote Number: Q-11158
PaymentTerms: Annual,Net 30
Subscription Term in Months: 36

Employee Count: 76
Order Summary

Year 1

Licenses discounted 60% Setups discounted 50%

Service Description	Start Date	End Date	Term Price
Insight Subscription			\$1,886.00
Onboard Subscription			\$1,650.00
eForms Subscription			\$2,357.20
Candidate Text Messaging Subscription			\$179.60
Year 1 TOTAL:			\$6,072.80

Year 2

Licenses discounted 30%

Service Description	Start Date	End Date	Term Price
Insight Subscription			\$3,300.50
Onboard Subscription			\$2,887.50
eForms Subscription			\$4,125.10
Candidate Text Messaging Subscription			\$314.30
Year 2 TOTAL:			\$10,627.40

Year 3

Service Description	Start Date	End Date	Term Price
Insight Subscription			\$4,950.75
Onboard Subscription			\$4,331.25
eForms Subscription			\$6,187.65
Candidate Text Messaging Subscription			\$471.45
Year 3 TOTAL:			\$15,941.10

Year 1

Licenses discounted 60% Setups discounted 50%

Service Description	Start Date	End Date	Term Price
Insight Setup			\$1,500.00
Onboard Setup			\$1,250.00
eForms Setup			\$1,500.00
Year 1 TOTAL:			\$4,250.00

ORDER TOTAL: **\$36,891.30**

A. Terms and Conditions

1. Agreement. This Ordering Document and the Services purchased herein are expressly conditioned upon the acceptance by Customer of the terms of the NEOGOV Services Agreement either affixed hereto or the version most recently published prior to execution of this Ordering Form available at <https://www.neogov.com/service-specifications>. Unless otherwise stated, all capitalized terms used but not defined in this Order Form shall have the meanings given to them in the NEOGOV Services Agreement.
2. Effectiveness & Modification. Neither Customer nor NEOGOV will be bound by this Ordering Document until it has been signed by its authorized representative (the "Effective Date"). Unless otherwise stated in this Ordering Document, all SaaS Subscriptions shall commence on the Effective Date. This Ordering Document may not be modified or amended except through a written instrument signed by the parties.
3. Summary of Fees. Listed above is a summary of Fees under this Order. Once placed, your order shall be non-cancelable and the sums paid nonrefundable, except as provided in the Agreement.
4. Order of Precedence. This Ordering Document shall take precedence in the event of direct conflict with the Services Agreement, applicable Schedules, and Service Specifications.

B. Special Conditions (if any).

**"Fort Bragg, City of
(CA)"**

Signature:

Print Name:

Date:



City of Fort Bragg

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

Text File

File Number: 23-172

Agenda Date: 6/12/2023

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Scope of Work

Agenda Number: 5C.

Approve Scope of Work for a RFP for Construction Management Contract for 2022 Streets
Rehabilitation Project



CITY OF FORT BRAGG

REQUEST FOR PROPOSALS FOR CONSTRUCTION MANAGEMENT SERVICES FOR THE 2022 STREETS REHABILITATION PROJECT, PWP-00120

The City of Fort Bragg is seeking proposals from qualified construction management consultants interested in contracting with the City to perform construction management, staking, materials testing, and Storm Water Pollution Prevention Plan (SWPPP) management services for the 2022 Streets Rehabilitation Project (Project).

Project Description

The City is preparing to start construction on the 2022 Streets Rehabilitation Project, City Project No. PWP-00120. Construction is anticipated to begin around the first week in **August 2023** and continue **One Hundred Nine (109) working days**. The Project includes the rehabilitation of pavement of up to eight (8) streets throughout the City, including approximately 3.5 miles of street striping on seven additional streets, several sections of sidewalk (curb, gutter, and ADA curb ramp) installation, and rehabilitation of the specialty stamped crosswalks in the downtown business district as further described in the bid package. The Design Engineer's Opinion of Probable Costs for base bid items is approximately \$2,662,410 or \$3,351,824 with both of the alternative bid items included.

Method of Payment

Respondents should present a single proposal that includes the full scope of work under Base Bid items and any Alternates. The City is requesting that the consultant submit a Base Bid "not to exceed" amount for Items 1 through 13 below, and any additional costs associated with each alternate listed in Item 14 for a total Base Bid plus alternate "not to exceed" amount.

SCOPE OF WORK

This contract would consist of the following tasks:

Inspection and Materials Testing:

1. Become familiar with the Project Plans and Specifications. Demonstrate appropriate knowledge with relevant State of California and City of Fort Bragg specifications, standards and requirements.
2. Complete construction staking, including coordination with the City and the Contractor to obtain workable data. City survey monuments may need to be identified in the project area.
3. Coordinate site visits during construction to:

- a. Obtain materials samples and perform the laboratory testing for materials as specified in the project construction documents, including: determining the in-place density of aggregate bases, asphalt concrete paving, and other materials as required.
 - b. Obtain from the construction contractor all required submittals and review them for conformance with construction document requirements.
 - c. Ensure that all traffic control devices are in place and working properly.
 - d. Mark out exact physical locations and total number of HMA (Type A) Digouts.
 - e. Provide continuous inspection during asphalt concrete placement to check temperature of asphalt mix, thickness of paving, conformance to gutter pan, and surface rolling operation.
 - f. Ensure that street signs and markings conform to plans and specifications and verify performance.
 - g. Count and verify all utilities are raised to grade.
 - h. Inspect existing conditions in the affected areas (public and private) and ensure that the contractor protects or repairs/replaces as directed in the construction documents.
4. Materials testing for the Class 2 Aggregate Base, Type II Slurry Seal, Type A Hot Mix Asphalt, Cold Plane Asphalt Concrete, Portland Cement Concrete, Controlled Density Fill (CDF) and Controlled Low Strength Material (CLSM) backfill, etc. Testing and inspections shall be performed in accordance with the appropriate Caltrans (CTM), ASTM Test Methods, or as otherwise specified in the contract documents and specifications.
- a. Comparison of maximum material density from the laboratory analysis to the in-place density indicated by the nuclear moisture density gage.
 - b. Laboratory testing for quality control of aggregate base and asphalt concrete in accordance with Caltrans frequency tables, including sieve analysis, sand equivalent, fine and coarse durability, and moisture density curves.
 - c. In-place density of the compacted materials shall be determined using a nuclear moisture density gage in accordance with the appropriate Caltrans Test Method. In the event that the nuclear density of the compacted asphalt concrete falls below the minimum compaction requirement, cores shall be taken to verify results.
 - d. Determination that the contractor is meeting the Project relative compaction requirements.
5. Ensure Traffic Signal Loop Detector is installed according to Technical Specifications and tested by contractor for performance standards in accordance with the Caltrans Encroachment Permit.
6. Environmental Conformance
- a. Ensure that work conforms to the approved Storm Water Pollution Prevention Plan (SWPPP).
 - b. Perform required stormwater sampling inspections, record keeping, and report preparation as needed for compliance with SWPPP.
 - c. Observe dust levels and ensure dust control in accordance with City standards.
 - d. Ensure compliance with the Fort Bragg Construction and Demolition Recycling Ordinance, City of Fort Bragg Municipal Code Chapter 15.34.

Construction Management and Reporting:

7. Coordination with the City Public Works Department during all phases of the work.
8. Schedule, attend, and Chair regular progress meetings with the City and the Contractor; prepare and distribute meeting agendas and minutes. Meetings include a kick-off meeting and then weekly as needed during primary construction phases.
9. Compilation of field and laboratory data into both bound and digital submittals to the City of Fort Bragg.
10. Submittal of an electronic copy of the finished product in PDF, AutoCAD, Microsoft Word, and Excel (as applicable).
11. Document work activities with construction photos and report safety concerns, important conversations, and adherence to construction schedules.
12. Compilation and submittal of "As Built" annotated plans for the Project.
13. Administration of budgeting, document control, record keeping, contract administration, prevailing wage, and certified payroll compliance. In the submittal, describe the firm's experience with state, federal, and other agencies involved in the construction process for municipal projects and experience with Prevailing Wage labor compliance. Provide recent examples of reports for each category.
14. Provide information and progress reports for Press Releases, including traffic flow impacts or other neighborhood disruptions for posting on the City's website and social media.

Alternatives:

15. The City is requesting that the consultant submit a proposal, which includes the added cost associated with managing each of the alternative bid items so that the Construction Management contract scope will be consistent with the scope of work selected for completion by the contractor. Provide a separate cost for the alternates. The Alternate locations described in the bid packet are:

Alternative 1: Pine St & Harold St, Harold & Redwood Ave, E Oak St, S Harold St & S Lincoln St, Harold St

Alternative 2: S Harold St, Azalea Cir., Penitenti Way

PROPOSAL SUBMITTAL REQUIREMENTS

1. Proposers should send a complete digital proposal, collated into one PDF document and two (2) printed copies of the completed proposals and cost bid so that it is received by the City no later than **2:00 p.m. on, July 13, 2023** to:

City of Fort Bragg
Attention: Cristal Munoz, Acting City Clerk
416 North Franklin Street
Fort Bragg, CA 95437

2. Format: Printed proposal should be 8 ½ x 11 inches, printed two-sided on recycled and recyclable paper with removable bindings, bound in a single document and organized in sections following the order specified under contents.

3. Contents: Proposal shall contain the following information:

A. Firm Description

Provide a description of your firm and list relevant information about capabilities, size, rate of services, and length of time in existence. The proposal shall include the name of the firm submitting the proposal, its mailing address, telephone number, email address, and the name of an individual to contact if further information is desired.

C. Key Personnel Qualifications

Identify key personnel and their respective roles, describe the qualifications of all professional personnel to be employed, include a synopsis of relevant work experience and a résumé for each professional.

D. References

The prospective contractor shall provide names, addresses and telephone numbers for at least three public agencies for whom the firm has performed work similar to that proposed in this request. A summary statement describing relevant experience for each assignment shall be provided.

E. Scope of Work

Provide an explanation of tasks associated with the project, including how you propose to complete each task, describe the overall approach to the project, including any specific techniques that will be used, and administrative and operations management expertise that will be employed.

G. Work Schedule

Provide a time schedule for completion of work, include major tasks and timeframes.

F. Budget and Schedule of Charges

Provide a "Not to Exceed" amount and a list of Personnel Rates, Equipment Charges, Travel Reimbursement Costs, and Job Descriptions for Personnel. Please be aware that prevailing wage rates may apply to preconstruction work, such as inspection and land surveying, for public works projects.

H. Insurance

The individual or firm receiving the contract shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, employees or subcontracts as set forth in Section 13 of Exhibit A which is attached hereto and incorporated by reference herein. Any requests for reduction in the insurance amount shall be included in the proposal. **The cost of such insurance shall be included in the consultant's proposal.**

I. Consultant Agreement

The City's standard consultant services agreement is attached as Exhibit A. Please identify if your firm would have any issues with the provisions of the City's standard consulting services agreement. All requests for amendments to language in the agreement **must** be included in the proposal.

EVALUATION CRITERIA

Proposals will be evaluated on the basis of the following criteria:

- Qualifications of Individuals and Firm Experience/Performance
- Proposal Contents & Scope of Work
- Cost Proposal, including Budget/Resource Allocation

The above selection criteria are provided to assist proposers and are not meant to limit other considerations that may become apparent during the course of the selection process.

Proposals will be reviewed and evaluated by the City of Fort Bragg and a recommendation for award of contract will be presented to the Fort Bragg City Council.

OTHER CONSIDERATIONS

The City of Fort Bragg reserves the right to reject any and all proposals. This Request for Proposals does not commit the City to award contract, pay any costs incurred in the preparation of proposals, or to procure or contract for supplies or services.

The City of Fort Bragg reserves the right to negotiate with any qualified source or to cancel, in part of or in its entirety, this Request for Proposals, if it is in the best interest of the City to do so. The City may require the selected consultant to participate in negotiations, and submit such price, technical or other revisions of the proposal that may result from negotiations.

RFP SCHEDULE

RFP Release	June 13, 2023
Deadline for Written Questions	July 03, 2023
Proposals Due	July 13, 2023
Interviews (as needed)	Week of July 17, 2023
Selection	July 24, 2023

QUESTIONS

Questions should be directed to:

Chantell O'Neal, Assistant Director of Engineering
City of Fort Bragg
416 North Franklin Street
Fort Bragg, CA 95437
(707) 961-2823 Ext. 133
Email: coneal@fortbragg.com

ATTACHMENTS

Exhibit A – City's Standard Professional Services Agreement

**CITY OF FORT BRAGG
PROFESSIONAL SERVICES AGREEMENT
WITH**

THIS AGREEMENT is made and entered into this ____ day of _____, ____ [date, date & year] ("Effective Date"), by and between the CITY OF FORT BRAGG, a municipal corporation, 416 N. Franklin Street, Fort Bragg, California 95437 ("City"), and _____, a [state] [type of corporation] [address] ("Consultant").

W I T N E S S E T H :

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to perform construction management, staking, materials testing, and Storm Water Pollution Prevention Plan (SWPPP) management services for the Maple Street Storm Drain and Alley Rehabilitation Project 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 _____, [date] 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 AND BILLING

2.1. Compensation. Consultant's total compensation shall not exceed _____ Dollars (\$ _____ .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 _____, 20____. 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 _____, 20____, [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 [REDACTED]. 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 [REDACTED] 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:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Tel: [REDACTED]
Fax: [REDACTED]

IF TO CITY:

City Clerk
City of Fort Bragg
416 N. Franklin St.
Fort Bragg, CA 95437
Tel: 707-961-2823
Fax: 707-961-2802

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.

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 6250 *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 6254.7, 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.

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: _____
Peggy Ducey
Its: City Manager

By: _____

Its: _____

ATTEST:

By: _____
June Lemos, CMC
City Clerk

APPROVED AS TO FORM:

By: _____
Keith F. Collins
City Attorney

EXHIBIT A

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

EXHIBIT B

CERTIFICATES OF INSURANCE AND ENDORSEMENTS



City of Fort Bragg

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

Text File

File Number: 23-180

Agenda Date: 6/12/2023

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Consent Calendar

Agenda Number: 5D.

A Resolution of the Fort Bragg City Council Authorizing the City Manager to Act on Behalf of the City for the Purpose of Applying for a Grant with the State Water Resources Control Board to Fund a Planning Study for the Construction of a Recycled Water Facility

RESOLUTION NO. -2023

A RESOLUTION OF THE FORT BRAGG CITY COUNCIL AUTHORIZING THE CITY MANAGER TO ACT ON BEHALF OF THE CITY FOR THE PURPOSE OF APPLYING FOR A GRANT WITH THE STATE WATER RESOURCES CONTROL BOARD TO FUND A PLANNING STUDY FOR THE CONSTRUCTION OF A RECYCLED WATER FACILITY

WHEREAS, the City of Fort Bragg ("City") is seeking funding through the State Water Resources Control Board ("SWRCB") to conduct a recycled water facility planning study; and

WHEREAS, the City Council desires to authorize the City Manager to sign and file, on behalf of the City, a financial assistance application for a grant agreement from the SWRCB for the planning, design and construction of a recycled water facility; and

WHEREAS, the City Council desires to authorize the City Manager to, among other things, sign and file, on behalf of the City, all necessary documents to conduct a planning study for the design and construction of a recycled water facility; and

NOW, THEREFORE, BE IT RESOLVED that the Fort Bragg City Council does hereby authorize and designate the City Manager, or the City Manager's designee, to provide the assurances, certifications and commitments required for the SWRCB financial assistance application, including executing a financial assistance agreement from the SWRCB and any amendments or changes thereto.

BE IT FURTHER RESOLVED that the City Council authorizes the City Manager to represent the City in carrying out the City's responsibilities under the grant agreement, including certifying disbursement requests on behalf of the City and compliance with applicable State and federal laws.

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 12th day of June, 2023, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSED:

BERNIE NORVELL
Mayor

ATTEST:

Cristal Munoz, Acting 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: 23-169

Agenda Date: 6/12/2023

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Committee Minutes

Agenda Number: 5E.

Receive and File Minutes of the March 09, 2023 Public Works and Facilities Committee Meeting



City of Fort Bragg

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

Meeting Minutes Public Works and Facilities Committee

Thursday, March 9, 2023

3:00 PM Town Hall, 363 N. Main Street and Via Video Conference

MEETING CALLED TO ORDER

Chair Peters called the meeting to order at 3 P.M.

ROLL CALL

Committee Members Peters and Albin-Smith were present along with Public Works Director John Smith and Assistant Director Chantell O'Neal.

Present: 2 - Tess Albin-Smith and Lindy Peters

COMMITTEE MEMBERS PLEASE TAKE NOTICE

ZOOM WEBINAR INVITATION

1. APPROVAL OF MINUTES

1A. [23-051](#) Approve Minutes of February 9, 2023

A motion was made by Committee Member Peters and seconded by Committee Member Albin-Smith, that the Committee Minutes be approved for Council review.

The motion carried by the following vote:

Aye: 2 - Committee Member Albin-Smith and Committee Member Peters

2. PUBLIC COMMENTS ON NON-AGENDA ITEMS

Public Comments were received from Ron White, Carrie Durkee, and Robert Hovart.

3. CONDUCT OF BUSINESS

3A. [23-052](#) Director Oral Report on Departmental Projects and Items of Interest

Director Smith gave the report. Smith began by describing the solar projects that are in process with the intent of receiving commitment before the April 2023 funding deadline. Smith discussed the reservoir project and the solar panels proposed for that project including the potential for clean energy generation and mentioned there are five other City facilities being considered for potential roof mount solar installations.

Other discussion items included the purchase of the MCRPD project, desalination regulatory work, Pudding Creek Bridge Widening, broadband funding opportunities, distribution system master planning, the water meter replacement project - increased meter accuracy, water

recycling (AKA reclamation), water treatment plant project funding and details, and the biosolids dryer that is currently under reconstruction.

Assistant Director O'Neal reviewed current streets project parameters and dates and demonstrated how-to report potholes or other street conditions using the City's website.

Albin-Smith asked about the plan at Oak and Harold as well as the plan for bicycling safety through town.

Public Comment was received from Ron White, Robert Hovart, Valerie Stanley, Jacob Patterson, and Paul Clark.

3B. [23-031](#) Discuss Signal Pole Replacement for Main Street at Laurel

O'Neal provided the oral report, discussing options for the replacement of traffic signal poles at Main and Laurel. The cost to replace the decorative poles in kind is approximately \$250,000 if programmed and managed by the City. Alternately, the project can be relinquished to Caltrans and the poles can be replaced with their standard galvanized poles.

No Public Comment was received on this item.

Discussion: Peters recommended project be given to Caltrans and Albin-Smith requested City staff consider sources of funding to replace the decorative poles. As the vote was split, the Committee recommended this item be brought forward to the Mid-Year budget review for a determination by the full Council.

4. MATTERS FROM COMMITTEE / STAFF

Several questions were posed during public comment, the following includes details of those responses.

Director Smith responded to the trash can inquiry, indicating that staff is preparing a grant application for procurement of new cans, some of which will be placed at the north coast trail parking lot. Peters recommended additional signage near proposed garbage receptacles. Albin-Smith recommended that one or two cans be put out there sooner - outside the grant program.

Peters discussed the City's historic intent to participate in the Evergreen program, the pothole issue, and the need to get information updates out to the public.

ADJOURNMENT

Chair Peters adjourned the meeting at 3:59 P.M.



City of Fort Bragg

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

Text File

File Number: 23-175

Agenda Date: 6/12/2023

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Minutes

Agenda Number: 5F.

Approve Minutes of May 22, 2023



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, May 22, 2023

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

AGENDA REVIEW

1. MAYOR'S RECOGNITIONS AND ANNOUNCEMENTS

Mayor Norvell announced that he was appointing Vice Mayor Godeke and himself to the new CV Starr ad hoc committee for the next six months, through November 22, 2023 and he is appointing Councilmember Peters and Councilmember Rafanan to the Animal Shelter ad hoc committee for the next six months, through November 22, 2023 as well.

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

- (1) None.
- (2) None.
- (3) None.

3. STAFF COMMENTS

City Manager Ducey announced that the budget workshop for the FY 23-24 will be on May 24th at 1:30 (CV Starr) and 2:30 (City). She also shared that City Council will hold a Special City Council meeting on June 5th at 5pm for the Grocery Outlet Public Hearing. Police Chief Cervenka gave an update on the current status of the receivership case on Whipple Street.

4. MATTERS FROM COUNCILMEMBERS

Vice Mayor Godeke stated he attended the Community Development Committee where they discussed upcoming changes from the State on ADU's specifications and the committee agreed to support restaurants any way they can as the State is moving away from allowing restaurants to use outdoor dining tents. Councilmember Albin-Smith stated she attended the Public Works and Facilities Meeting and is reminding the public that they can attend in person or online.

Councilmember Peters reported that the City is aware of the traffic caused by the lane closures as they work on the Pudding Creek Bridge and that he will attend the next Fire Board meeting. Councilmember Rafanan mentioned the Coast Cats Project, a local non-profit that provides assistance to injured or abandoned cats.

5. CONSENT CALENDAR

A motion was made 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. [23-164](#)** Accept Certificate of Completion for Bollard and Street Light Project and Direct City Clerk to File Notice of Completion

This Certificate of Completion was accepted on the Consent Calendar.

- 5B. [23-155](#)** Receive and File Minutes of February 9, 2022, April 13, 2022, June 8, 2022, June 21, 2022, August 10, 2022, September 14, 2022, September 22, 2022, October 12, 2022, November 9, 2022, December 14, 2022 and January 11, 2023 Finance and Administration Committee Meetings.

These Committee Minutes were received and filed on the Consent Calendar.

- 5C. [23-163](#)** Approve Minutes of May 8, 2023

These Minutes was approved on the Consent Calendar.

6. DISCLOSURE OF EX PARTE COMMUNICATIONS ON AGENDA ITEMS

None.

7. PUBLIC HEARING

None.

8. CONDUCT OF BUSINESS

- 8A. [23-078](#)** Receive Report and Consider Adoption of City Council Resolution Approving the Contract with Redwood Roofers, City Project PWP-00128; Authorizing City Manager to Execute Contract (Amount Not to Exceed \$105,841.00, Account No. 427-4876-0731); and Finding the Project Exempt from CEQA under 14 CCR 15268

Assistant Director Engineering O'Neal presented this item. The City has awarded Redwood Roofers the contract to replace the Corporation Yard roof.

Public Comments: George Reinhardt

There was some discussion and this contract was approved.

A motion was made by Councilmember Peters, seconded by Councilmember Albin-Smith, that this 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

8B. [23-156](#) Discuss Reservoir Project Design Engineering Request for Proposals and Recommend Release

Assistant Engineering Diane O'Connor reported on this project. She presented the different components to this project and is hoping to send out requests for proposals to interested contractors.

Public Comment: None.

Discussion: Council unanimously directed staff to proceed with the request for proposals for this project.

This Staff Report was referred to staff for further action.

9. CLOSED SESSION

Mayor Norvell recessed the meeting at 6:31 PM; the meeting reconvened to Closed Session at 6:39 PM.

9A. [23-166](#) CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION Pursuant to Paragraph (1) of Subdivision (d) of Gov. Code Section 54956.9. City of Fort Bragg v. Mendocino Railroad

9B. [23-165](#) CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION: Initiation of litigation pursuant to paragraph (4) of Gov Code Section 54956.9: (two cases)

Mayor Norvell reconvened the meeting to Open Session at 7:46 PM and reported that no reportable action was take on the Closed Session items.

ADJOURNMENT

Mayor Norvell adjourned the meeting at 7:46 PM.

BERNIE NORVELL, MAYOR

June Lemos, MMC, 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: 23-173

Agenda Date: 6/12/2023

Version: 1

Status: Public Hearing

In Control: City Council

File Type: Resolution

Agenda Number: 7A.

Receive Report, Conduct Public Hearing, and Consider Adopting Resolution of the Fort Bragg City Council Determining that the Public Interest and Necessity Require the Acquisition of Certain Real Property Interests for a Public Project and Directing the Filing of Eminent Domain Proceedings



AGENCY: City Council
MEETING DATE: June 12, 2023
DEPARTMENT: Public Works
PRESENTED BY: John Smith
EMAIL ADDRESS: jsmith@fortbragg.com

AGENDA ITEM SUMMARY

TITLE:

Staff Report Regarding Resolution of Necessity for the Acquisition of 1.65 Acres of Permanent Easement on the Property Identified as APNs 019-630-05, 019-640-01, 019-640-04 for the Purpose of Constructing a Primary Water Transmission Line

SUMMARY:

The City of Fort Bragg proposes to construct a section of a primary water transmission line that delivers raw water from sources at Waterfall Gulch, Newman Reservoir, and Summers Lane Reservoir to the City's water treatment plant and all uses appurtenant thereto ("Project"). The existing primary raw water transmission line is reaching the end of its service life and pipe failures are becoming more regular and widespread. The Project's purpose is to increase the reliability and resilience of the raw water supply system. This requires the construction of a subsurface waterline and certain associated facilities within the property identified as APNs: 019-630-05, 019-640-01, and 019-640-04.

To accommodate the Project, the City needs to acquire a permanent easement ("Permanent Easement") which is more fully described and depicted in the Resolution.

The larger parcel within which the Permanent Easement is located is owned by Redwood Timber Company LLC, RJS TIC HTC LLC, PV TIC HTC LLC, and RMB TIC HTC LLC ("Owner"). The property's current use is a timber operation.

Public Works and consultant staff have been in contact with representatives for the subject property Owner since 2019 to work on Project details and attempt to obtain the needed Permanent Easement by negotiation. Unfortunately, City efforts to resolve this matter by negotiation have not resulted in an executed agreement to date.

As a voluntary acquisition has not been reached with the Owner, at this time Staff recommends the adoption of a Resolution of Necessity to protect the Project's current construction schedule.

DISCUSSION:

Pursuant to Section 19, Article I of the California Constitution, Section 37350.5 and 38730 of the California Government Code, Sections 1230.010 et seq. 1240.010 of the California Code of Civil Procedure, Section 14.04.010 et seq. of the Fort Bragg Municipal Code and other applicable law, the City is authorized to acquire the Permanent Easement by eminent domain, provided certain procedural steps are followed.

Property considered for acquisition by the City is typically appraised, and an offer thereafter made to the owner of record based on the approved appraisal. Pursuant to

Section 7267 of the Government Code, these requirements do not apply to the acquisition of any easement or right-of-way to be acquired for the construction, reconstruction, alteration, enlargement, maintenance, renewal, repair, or replacement of subsurface waterlines. As such, the offer typically required by Section 7267.2 of the Government Code does not need to be made to the Owner.

The City is in the process of having the Permanent Easement appraised and intends to make an offer to the Owner for the appraised amount following approval of same. However, due to the Project's construction schedule, it is City staff's recommendation that the City commence an eminent domain action to acquire the Permanent Easement. Prior to the filing of an eminent domain action, the City must hold a hearing on the proposed Resolution of Necessity (Exhibit 1). The hearing must be duly noticed, which notice must give the Owner an opportunity to be heard, provided that the Owner has timely filed a request to be heard in writing with the City prior to the hearing. Attached is a copy of the Notice of Hearing, which was delivered in accordance with the applicable statutes (Exhibit 2).

After conducting the public hearing, if the City makes the following findings, the City should adopt by at least a two-thirds (2/3) vote of the City Council the attached Resolution, authorizing condemnation proceedings for the purpose of acquiring the Permanent Easement.

With respect to environmental review, the Project was previously analyzed by the City in connection with Resolution No. 4546-2022, which adopted a Mitigated Negative Declaration ("MND") for the Project. A Notice of Determination was filed with the County Clerk of the County of Mendocino and California Office of Planning and Research—State Clearinghouse and recorded in the Mendocino County Clerk's office on May 27, 2022. Acquiring the Permanent Easement for the Project is consistent with the Project analyzed in the MND. Therefore, no further environmental review is needed.

The findings to be made are as set forth in the Resolution of Necessity. Specifically, the City must find as follows:

1. That the public interest, convenience and necessity require the proposed Project.

As proposed, the Project will serve the public purposes discussed above of providing reliable and resilient raw water to the public. It is necessary to construct the Project to connect Waterfall Gulch, Newman Reservoir, and Summers Lane Reservoir to the City's water treatment plant. The Project is needed to increase the reliability and resilience of the raw water supply system.

The proposed Project will increase reliability by constructing a new pipeline located in more stable route that is less likely to be subjected to slope instability. The new pipeline will be constructed such that it can withstand the pressure of reverse flow, so that the City's reservoirs may be filled with water from the Noyo River, via the City's water treatment plant, during times of high river flows, reducing impacts on riparian habitats along the Noyo River, Newman Gulch, Waterfall Gulch, and Hare Creek during periods of low flows. This would not be possible without the new pipeline.

The Project will also enable the City to retain an existing pipeline in place to provide backup access to raw water in the event there is an impact to the ability of the new pipeline to deliver water. The existing water pipeline flows entirely by gravity, while the new water pipeline will be pumped for a short section, which requires electricity to pump the pipeline. If there were a power outage affecting the new pump station, the existing pipeline would be available to provide water to the City's water treatment plant.

2. That the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

The location of Waterfall Gulch, Newman Reservoir, Summers Lane Reservoir and the City's water treatment plant is fixed. The waterline needed on the subject property is required to connect Waterfall Gulch, Newman Reservoir and Summers Lane Reservoir to the City's water treatment plant. The waterline's location will best minimize tree loss and avoid wetlands and environmentally sensitive areas within the Project boundaries, to the extent possible.

The City evaluated various pipeline corridor alternatives for this segment of the pipeline during the planning phase to optimize the pipeline alignment with due consideration of numerous engineering, environmental, geotechnical, land use, cost, and other important criteria. These alternatives for the northern portion merge into two possible alternatives in the southern portion, with one located on each side of Newman Gulch.

The Alternative routes considered include:

- (1) Following the existing water main alignment from Georgia Pacific Haul Road along the eastern side of a pond and then up onto the top of Newman Gulch along the eastern slopes to the Newman Gulch intake;
- (2) Following the Georgia Pacific Haul Road to the west before climbing up onto relatively flat terrain to the west of Newman Gulch, continuing to the Newman Gulch Intake on the west side of Newman Gulch; and
- (3) Taking a more easterly path than the existing alignment proposed for Alternative 1 that rejoins the existing alignment about halfway between the Newman Gulch Intake and the Georgia Pacific Haul Road, with two sub variants.

City staff undertook a detailed evaluation of these alternatives that considered the following factors:

- Capital costs and life cycle costs;
- Construction schedule;
- Ease of, and costs to, acquire easements/right-of-way;
- Ease of operation and maintenance;
- Constructability;
- Geotechnical and geologic hazard assessment;
- Environmental impacts;
- Ease of permitting;
- Extent of tree removal and THP;
- Pipe hydraulics and pipe sizing;
- Public impacts during and after construction.

Using these factors, Alternative Two (the alignment set forth in the Permanent Easement) was identified as the best alternative of all those considered. Alternative Two had better access, less environmental concerns including significantly less timber removal, mostly followed flatter terrain, and a lower landslide risk.

Alternative One was rejected because it was located in heavily forested areas, with steep slopes, cross slopes, and limited workspace for staging. It also paralleled closely an existing pond near the Georgia Pacific Haul Road that would likely create a number of environmental concerns. Alternative One had the most difficult access, major environmental concerns, and the highest likelihood of landslide mitigation efforts.

Alternative Three and its sub-variants had the longest overall length, crossed steep slopes, and one subvariant had increased environmental concerns regarding nearness to the existing pond.

3. That the property interest sought to be acquired is necessary for the Project.

The Project as proposed consists of a pipeline from sources at Waterfall Gulch, Newman Reservoir, and Summers Lane Reservoir to the City's water treatment plant. Without the acquisition of the Permanent Easement, the proposed Project in its present configuration cannot be completed. This is because the Pipeline Easement will include the necessary facilities that connect the upstream and downstream portions of the Project pipeline.

VALUE:

Questions relating to value are not relevant to this proceeding. However, that does not mean that negotiations for the acquisition of the property interests are at an end. If the City Council adopts the Resolution of Necessity, after the hearing, negotiations for the acquisition of the property interests may continue.

SUGGESTED ACTION

Staff recommends the City Council:

1. Conduct a hearing on the Resolution finding and determining that the public interest, convenience and necessity require the acquisition of certain property interests for

public purposes (applicable to property identified as APNs: 019-630-05, 019-640-01, 019-640-04); and

2. Review the evidence presented, including this staff report and public comments and close the hearing; and
3. Adopt the Resolution authorizing the commencement of eminent domain proceedings so as to acquire the Easements described in the Resolution (Note: This requires an affirmative two third (2/3) vote of the City Council); and
4. Authorize the City Manager to execute such documents as may be necessary to implement the acquisition of the Easements.

ATTACHMENTS

Exhibit 1 - Resolution of Necessity with Exhibits

Exhibit 2 - Notice of Hearing (dated May 24, 2023)

Exhibit 3 – Updated Notice of Hearing (May 31, 2023)

RESOLUTION NO. ____-2023

A RESOLUTION OF THE FORT BRAGG CITY COUNCIL DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE THE ACQUISITION OF CERTAIN REAL PROPERTY INTERESTS FOR A PUBLIC PROJECT AND DIRECTING THE FILING OF EMINENT DOMAIN PROCEEDINGS

(Applicable to Property: APNs 019-630-05, 019-640-01, 019-640-04)

The City Council of the City of Fort Bragg does hereby resolve as follows:

SECTION 1. The City Council of the City of Fort Bragg (hereafter "City"), after consideration of the staff report, staff presentation, discussion, oral testimony and evidence presented at the **June 12, 2023**, meeting of the City Council hereby finds, determines and declares as follows:

(a) The public interest, convenience and necessity require the proposed project; to wit, to construct a section of a primary water transmission line that delivers raw water from sources at Waterfall Gulch, Newman Reservoir, and Summers Lane Reservoir to the City's water treatment plant and all uses appurtenant thereto ("Project"); and

(b) The interests in real property to be acquired are located within the City of Fort Bragg, County of Mendocino, State of California and consist of the following:

A non-exclusive permanent subsurface easement, 1.65 acres (71,993 s.f.) in size, to survey, install, construct, reconstruct, alter, operate, remove, replace, inspect, repair, and maintain underground pipeline(s) for water and storm water (collectively, the "Facilities") in, under, across, and along that certain real property located in the County of Mendocino, State of California, described in Exhibit A and depicted in Exhibit B attached hereto ("Permanent Easement").

The Permanent Easement described herein shall be subject to the following terms and conditions set forth in Exhibit C attached hereto.

(c) The Project is planned and located in a manner that will be most compatible with the greatest public good and least private injury.

(d) The taking of the Permanent Easement is necessary for the proposed Project and such taking is authorized by Section 19, Article I of the California Constitution, Section 37350.5 and 38730 of the California Government Code, Sections 1230.010 et seq. 1240.010 of the California Code of Civil Procedure, Section 14.04.010 et seq. of the Fort Bragg Municipal Code and other applicable law.

(e) Because the Permanent Easement is being acquired for construction, reconstruction, alteration, enlargement, maintenance, renewal, repair, or replacement of subsurface waterlines

or appurtenances, per Government Code 7267, the provisions of subdivision (b) of Section 7267.1 and Section 7267.2 do not apply to the acquisition of the Permanent Easement.

(f) The necessary notice of hearing on this Resolution has been given, as required by Code of Civil Procedure Section 1245.235.

(g) The City has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain (the “right to take”) to acquire the Permanent Easement described herein.

(h) The City has fully complied with all the provisions of California’s Environmental Quality Act in regard to the proposed Project.

SECTION 3. The City Council further finds that if any portion of the area of the Permanent Easement has been appropriated to some public use, the public uses to which it is to be applied by the City, as described above, are more necessary and paramount public uses, pursuant to Code of Civil Procedure Section 1240.610 or, alternatively, will not unreasonably interfere with or impair the continuance of the public use as it then exists or may reasonably be expected to exist in the future, pursuant to Code of Civil Procedure Section 1240.510.

SECTION 4. The firm of Burke, Williams & Sorensen LLP, under the direction of the City Attorney, is authorized and directed to prepare, institute and prosecute in the name of the City such proceedings in the proper Court having jurisdiction thereof as may be necessary for the acquisition of said Permanent Easement, including the filing of an application for an Order for Possession prior to judgment.

SECTION 5. This Resolution shall be effective immediately upon its adoption.

SECTION 6. The City Clerk shall certify the adoption of this Resolution and certify this record to be a full true, correct copy of the action taken.

PASSED, APPROVED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF FORT BRAGG THIS 12th DAY OF JUNE 2023 BY THE FOLLOWING VOTE:

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

**Bernie Norvell
Mayor**

ATTEST:

**Cristal Muñoz
Acting City Clerk**

EXHIBIT 'A'
20' WATER LINE EASEMENT

Lying within the unincorporated area of County of Mendocino, State of California, and being a portion of the lands of Redwood Timber Company LLC, a Delaware limited liability company, as shown on that Co-Tenancy Agreement recorded under Document Number 2022-02810, Official Records of Mendocino County, said Redwood Timber Company LLC was formerly known and appears of record as Lyme Redwood Timberlands LLC, a Delaware limited liability company, as to an undivided 75.00000% interest; RJS TIC HTC, LLC, a California limited liability company, as to an undivided 0.78346% interest; PV TIC HTC, LLC, a California limited liability company, as to an undivided 3.40448% interest; and RMB TIC HTC, LLC, a California limited liability company, as to an undivided 20.81206% interest, as described by Grant Deed recorded under Document Number 2015-18090, Official Records of Mendocino County, said portion is more particularly described as follows:

Being all that portion of said lands of Redwood Timber Company LLC et al. lying within a strip of land, 20 feet in width, and lying 10 feet on each side of an underground water pipeline, the centerline of which is more particularly described as follows:

COMMENCING at a 1-inch iron pipe, not tagged, marking the easterly common corner of said lands of Redwood Timber Company LLC et al. and the lands of Don H. Celeri and Julia C. Celeri, Trustees of The Don H. Celeri and Julia C. Celeri Revocable Living Trust, as described by Grant Deed recorded under Document Number 1998-14070, Official Records of Mendocino County, and marking the common corner of Sections 8, 9, 16 and 17, Township 18 North, Range 17 West, Mount Diablo Base and Meridian as shown on that Record of Survey filed in Drawer 82 of Maps at Page 66, Mendocino County Records, from which a 1-inch rebar and cap stamped "LS 3184" as shown on said Record of Survey bears North 78°36'46" West 1345.06 feet; thence along the easterly boundary of said lands of Celeri Trust, South 1°37'31" West 409.30 feet; thence leaving said easterly boundary, North 74°58'04" West 4.35 feet; thence North 7°28'04" West 151.70 feet; thence North 6°49'26" East 107.35 feet; thence North 18°57'35" East 52.47 feet; thence North 7°54'51" East 53.83 feet; thence North 65°11'42" West 131.84 feet; thence North 76°59'23" West 130.62 feet; thence North 80°17'45" West 97.94 feet; thence North 54°14'13" West 37.23 feet to common boundary of said lands of Redwood Timber Company LLC et al. and said lands of Celeri Trust, and the POINT OF BEGINNING of the herein described centerline of said pipeline, from which said 1-inch rebar bears North 78°36'46" West 965.58 feet; thence leaving said common boundary the following courses:

North 54°14'13" West 52.68 feet;
thence North 59°34'07" West 88.80 feet;
thence North 69°06'28" West 102.70 feet;
thence South 87°42'51" West 50.31 feet;
thence North 83°25'16" West 105.69 feet;
thence North 71°21'09" West 108.39 feet;
thence North 75°51'19" West 68.05 feet;
thence North 58°49'20" West 142.83 feet;
thence North 45°40'28" West 107.30 feet;

Cinquini & Passarino, Inc.
1360 North Dutton Avenue, Suite 150
Santa Rosa, CA 95401

Page 1 of 6

CPI No.: 8466-19
Tel: (707) 542-6268 Fax: (707) 542-2106
www.cinquinipassarino.com

EXHIBIT 'A'
20' WATER LINE EASEMENT

thence North 63°54'49" West 76.83 feet;
thence North 32°33'54" West 54.12 feet;
thence North 37°57'00" West 160.08 feet;
thence North 56°15'41" West 101.35 feet;
thence North 31°47'21" West 202.07 feet;
thence North 44°33'52" West 70.35 feet;
thence North 33°56'28" West 61.76 feet;
thence North 10°20'25" East 41.43 feet;
thence North 5°27'13" East 51.02 feet;
thence North 36°34'39" West 52.16 feet;
thence North 29°20'17" West 72.83 feet;
thence North 11°33'23" West 76.84 feet;
thence North 36°44'08" West 26.66 feet;
thence North 18°20'21" West 30.95 feet;
thence North 7°23'46" East 76.65 feet;
thence North 30°45'06" West 138.10 feet;
thence North 17°26'29" West 73.57 feet, from which a 3/4-inch rebar and cap stamped "PLS 5940" marking the northeast corner of the lands of Templer as shown on said Record of Survey bears South 76°40'05" West 108.45 feet;
thence North 4°09'27" West 19.44 feet;
thence North 26°19'36" West 78.07 feet;
thence North 46°08'38" West 82.08 feet;
thence North 55°14'52" West 39.73 feet;
thence North 85°01'21" West 60.93 feet;
thence North 77°33'02" West 54.77 feet;
thence North 46°51'02" West 144.07 feet;
thence South 83°10'57" West 81.45 feet;
thence North 31°41'18" West 46.79 feet;
thence along a non-tangent curve to the right, the radius point of which bears South 31°41'18" East 372.00 feet, through a central angle of 17°26'08", for a length of 113.20 feet;
thence North 75°44'50" East 36.32 feet;
thence North 86°38'31" East 52.68 feet;
thence South 79°00'08" East 132.16 feet;
thence along a curve to the left having a radius of 188.00 feet, through a central angle of 62°31'01", for a length of 205.13 feet;
thence North 56°37'30" East 15.40 feet;
thence North 30°40'51" East 50.19 feet;
thence North 4°44'12" East 11.43 feet;
thence North 30°40'51" East 26.06 feet;
thence North 22°39'32" East 65.63 feet;
thence along a curve to the left having a radius of 133.00 feet, through a central angle of 17°31'09", for a length of 40.67 feet;
thence North 40°55'12" East 4.00 feet;

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Page 2 of 6

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EXHIBIT 'A'
20' WATER LINE EASEMENT

thence North 49°04'48" West 48.00 feet to the TERMINUS of the herein described centerline of said pipeline.

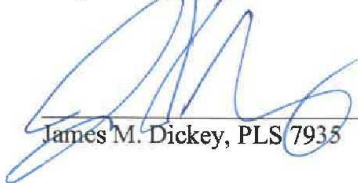
The northerly and southerly lines of said strip at the POINT OF BEGINNING shall be lengthened or shortened to terminate at the common boundary of said lands of Redwood Timber Company LLC et al. and said lands of Celeri Trust.

Containing 71,993 square feet (1.65 acres), more or less.

END OF DESCRIPTION

Being a portion of APN 019-630-05-00, 019-640-01-00 & -04-00

Prepared by Cinquini & Passarino, Inc.


James M. Dickey, PLS 7935



4/14/2023
Date

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THIS DIAGRAM IS FOR GRAPHIC PURPOSES ONLY. ANY ERRORS OR OMISSIONS SHALL NOT AFFECT THE LEGAL DESCRIPTION.

LEGEND

- ADJACENT PROPERTY BOUNDARY
 - - - EASEMENT CENTERLINE
 - - - SURVEY TIE
 [Hatched Box] WATER LINE EASEMENT AREA
 ● FOUND 1" IRON PIPE AS SHOWN
 ON R1, NO TAG
 ⊙ FOUND REBAR & CAP AS NOTED
 S.F. SQUARE FEET
 DN DOCUMENT NUMBER

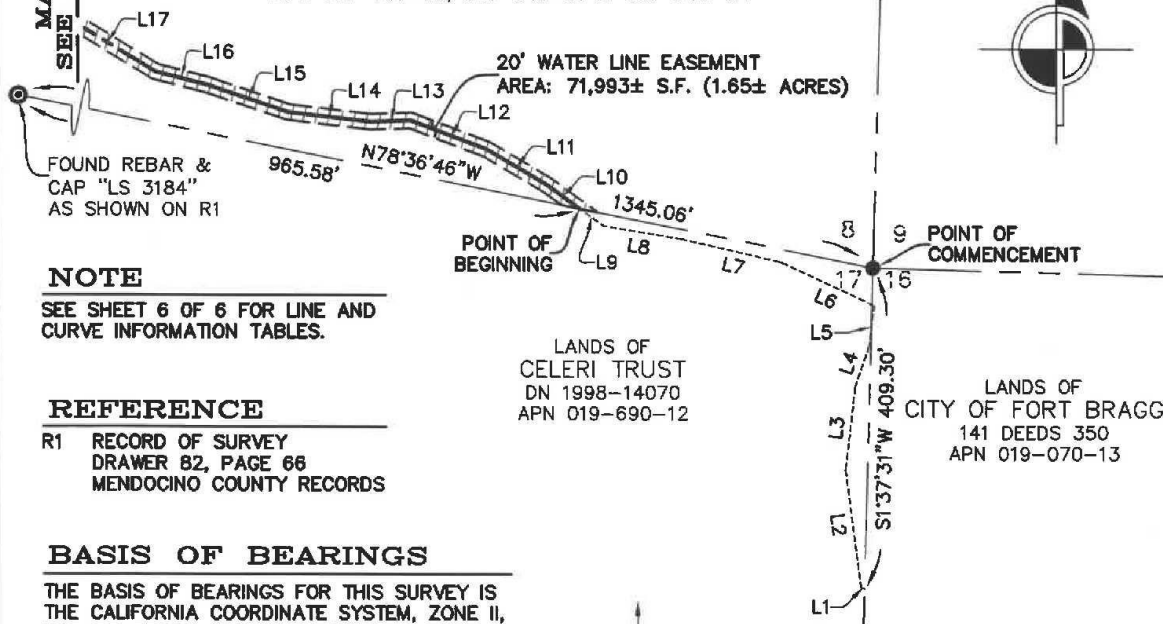


**SITE MAP
NO SCALE**

RECORD OF SURVEY
D 82, P 66

LANDS OF
REDWOOD TIMBER COMPANY LLC ET AL.
DN 2015-18090 & 2022-02810
APN 019-630-05, 019-640-01 & 019-640-04

20' WATER LINE EASEMENT
AREA: 71,993± S.F. (1.65± ACRES)



NOTE

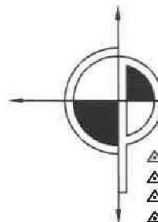
SEE SHEET 6 OF 6 FOR LINE AND CURVE INFORMATION TABLES.

REFERENCE

R1 RECORD OF SURVEY
DRAWER 82, PAGE 66
MENDOCINO COUNTY RECORDS

BASIS OF BEARINGS

THE BASIS OF BEARINGS FOR THIS SURVEY IS THE CALIFORNIA COORDINATE SYSTEM, ZONE 1 NAD 83, EPOCH 2017.50 AS DETERMINED LOCALLY BY A LINE BETWEEN CONTINUOUS GLOBAL POSITIONING SYSTEMS (CGPS) STATION P184 AND STATION P312; BEING NORTH 02°12'53" EAST AS DERIVED FROM GEODETIC VALUES PUBLISHED BY THE CALIFORNIA SPATIAL REFERENCE CENTER (CSRC).

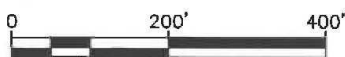


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LAND SURVEYING

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 ▲ TOPOGRAPHIC
 ▲ CONSTRUCTION
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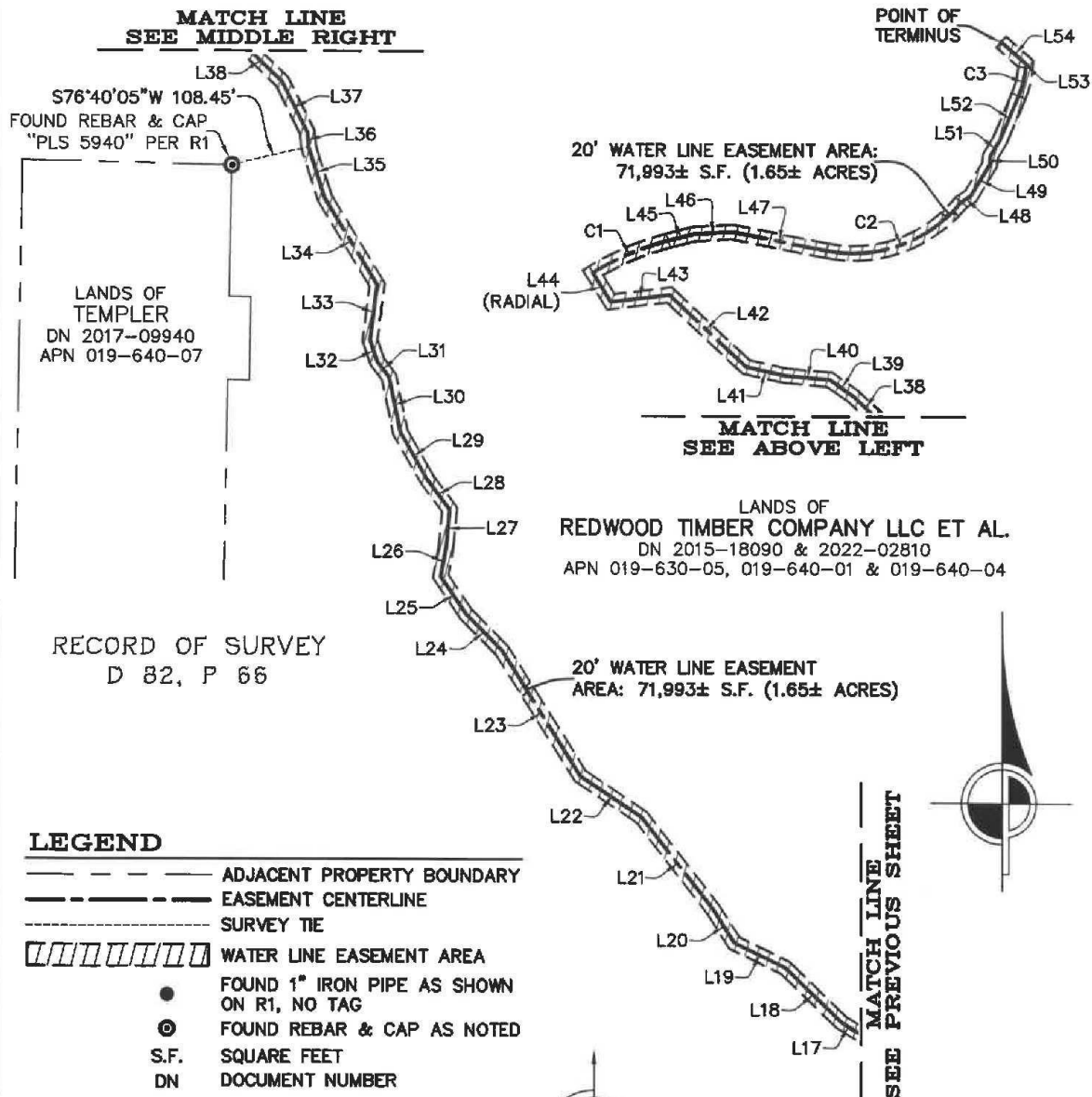


JOB NAME: FORT BRAGG RAW WATER LINE	DRAWN BY: AJD	CHECKED BY: JD
	SCALE: 1"=200'	DATE: 2/27/23
DESCRIPTION: 20' WATER LINE EASEMENT- LANDS OF REDWOOD TIMBER CO. LLC	JOB #: 8466-19	PAGE: 4 OF 6

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Apr 14, 2023 -- 10:59am

EXHIBIT 'B'

THIS DIAGRAM IS FOR GRAPHIC PURPOSES ONLY. ANY ERRORS OR OMISSIONS SHALL NOT AFFECT THE LEGAL DESCRIPTION.



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Apr 14, 2023 -- 11:00am

JOB NAME: FORT BRAGG RAW WATER LINE	DRAWN BY: AJD	CHECKED BY: JD
DESCRIPTION: 20' WATER LINE EASEMENT- LANDS OF REDWOOD TIMBER CO. LLC	SCALE: 1"=200'	DATE: 2/27/23
	JOB #: 8466-19	PAGE: 5 OF 6

EXHIBIT 'B'

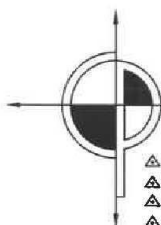
THIS DIAGRAM IS FOR GRAPHIC PURPOSES ONLY. ANY ERRORS
OR OMISSIONS SHALL NOT AFFECT THE LEGAL DESCRIPTION.

Line Table		
Line #	Direction	Length
L1	N74°58'04"W	4.35'
L2	N7°28'04"W	151.70'
L3	N6°49'26"E	107.35'
L4	N18°57'35"E	52.47'
L5	N7°54'51"E	53.83'
L6	N65°11'42"W	131.84'
L7	N76°59'23"W	130.62'
L8	N80°17'45"W	97.94'
L9	N54°14'13"W	37.23'
L10	N54°14'13"W	52.68'
L11	N59°34'07"W	88.80'
L12	N69°06'28"W	102.70'
L13	S87°42'51"W	50.31'
L14	N83°25'16"W	105.69'
L15	N71°21'09"W	108.39'
L16	N75°51'19"W	68.05'
L17	N58°49'20"W	142.83'
L18	N45°40'28"W	107.30'
L19	N63°54'49"W	76.83'
L20	N32°33'54"W	54.12'

Line Table		
Line #	Direction	Length
L21	N37°57'00"W	160.08'
L22	N56°15'41"W	101.35'
L23	N31°47'21"W	202.07'
L24	N44°33'52"W	70.35'
L25	N33°56'28"W	61.76'
L26	N10°20'25"E	41.43'
L27	N5°27'13"E	51.02'
L28	N36°34'39"W	52.16'
L29	N29°20'17"W	72.83'
L30	N11°33'23"W	76.84'
L31	N36°44'08"W	26.66'
L32	N18°20'21"W	30.95'
L33	N7°23'46"E	76.65'
L34	N30°45'06"W	138.10'
L35	N17°26'29"W	73.57'
L36	N4°09'27"W	19.44'
L37	N26°19'36"W	78.07'
L38	N46°08'38"W	82.08'
L39	N55°14'52"W	39.73'
L40	N85°01'21"W	60.93'

Line Table		
Line #	Direction	Length
L41	N77°33'02"W	54.77'
L42	N46°51'02"W	144.07'
L43	S83°10'57"W	81.45'
L44	N31°41'18"W	46.79'
L45	N75°44'50"E	36.32'
L46	N86°38'31"E	52.68'
L47	S79°00'08"E	132.16'
L48	N56°37'30"E	15.40'
L49	N30°40'51"E	50.19'
L50	N4°44'12"E	11.43'
L51	N30°40'51"E	26.06'
L52	N22°39'32"E	65.63'
L53	N40°55'12"E	4.00'
L54	N49°04'48"W	48.00'

CURVE TABLE			
CURVE #	RADIUS	DELTA	LENGTH
C1	372.00'	17°26'08"	113.20'
C2	188.00'	62°31'01"	205.13'
C3	133.00'	17°31'09"	40.67'



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JOB NAME: FORT BRAGG RAW WATER LINE	DRAWN BY: AJD	CHECKED BY: JD
DESCRIPTION: 20' WATER LINE EASEMENT- LANDS OF REDWOOD TIMBER CO. LLC	SCALE: NO SCALE	DATE: 2/27/23
	JOB #: 8466-19	PAGE: 6 OF 6

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Apr 14, 2023 - 11:01am

EXHIBIT "C"

TERMS AND CONDITIONS OF PERMANENT EASEMENT

Trimming.

Easement holder may from time to time, trim or cut down, without easement holder paying compensation, any and all trees and brush now or hereafter located within said Permanent Easement.

Ingress/Egress.

Easement holder, and its employees, contractors, agents and assigns ("Authorized Users") shall have the right of reasonable egress and ingress over and across the remaining servient larger parcel to allow for access to personnel, vehicles, and construction equipment, to, from, and along the Permanent Easement at any time, without prior notice, including the right to use existing roadways, driveways, drive aisles, and parking areas, if any, within the larger parcel as shall be convenient and necessary to access the Facilities and/or the Permanent Easement; provided however, that nothing shall prevent or limit landowner's right to close such roadways, driveways, drive aisles, or parking areas, if any, and to provide easement holder or its Authorized Users with comparable alternative access to the Permanent Easement.

No Interference.

Following the initial construction and installation of the Facilities in the Permanent Easement, any further use, maintenance, operation, alteration, addition to, inspection, repair, removal, reconstruction, and/or replacement of the Facilities by easement holder shall be undertaken in a manner so as to minimize interference with the use and operation of, and access to, landowner's larger parcel.

Improvements.

No building, fences, walls or other permanent structures of any kind, flammable substance, wells, reservoirs, or other obstructions, and no deep rooted trees, deep rooted shrubs or other plants or vegetation, shall be installed, constructed, erected, placed, planted or maintained within the Permanent Easement without prior written consent of the easement holder, which consent shall not be unreasonably withheld, conditioned or delayed. Nor shall the ground level in the Permanent Easement area be diminished or substantially added to, nor shall any fences be constructed that will interfere with the maintenance, repair and operation of said Facilities.

Location.

Easement holder and its Authorized Users shall have the right to mark the location of the Permanent Easement in a manner which will not interfere with the landowner's reasonable and lawful use of the Permanent Easement and will not interfere with its customary business operations.

Exclusivity.

Except for preexisting easements, if any, no other easement or easements shall be granted within the Permanent Easement without the prior written consent of easement holder, which consent shall not be unreasonably withheld, conditioned or delayed. Landowner shall have the right to use the surface of the Permanent Easement for any purpose that does not interfere and is not inconsistent with the rights granted to easement holder under this Easement.

Compliance with Laws.

Easement holder is responsible for any damage to landowner's property caused by easement holder's or the Authorized Users' activities related to the Easement. In the event easement holder's or Authorized Users' activities damage landowner's larger property, then subject to any restrictions set forth herein, easement holder shall restore the damaged area to its prior condition to the best it is able. Any work performed by easement holder or the Authorized Users in the Permanent Easement must be performed in a good and workmanlike manner and easement holder shall be solely responsible for obtaining all applicable permits necessary to install, repair, maintain and/or replace the Facilities.

Indemnity.

Easement holder shall indemnify, defend and hold harmless landowner from and against any action, cause of action, liability, suit, costs and expenses (including court costs and reasonable attorneys' fees), claim, liens (including mechanics' liens), or demand whatsoever (collectively, "Claims") brought or asserted by any third person whomsoever, at law or in equity, arising out of or in connection with easement holder's installation, repair, maintenance and/or operation of the Facilities in the Permanent Easement, or use of the Permanent Easement, provided, however, that this indemnity shall not extend to that portion of such loss or damage that shall have been caused by landowner's comparative negligence or willful misconduct.

Hazardous Substances.

Nothing contained herein shall authorize easement holder or the Authorized Users to bring Hazardous Substances onto the Permanent Easement, or authorize any release of Hazardous Substances in, on, under or from same. For the purposes of this Easement, Hazardous Substances (or any derivation thereof) means any and all hazardous materials, toxic substances, chemicals, contaminants, pollutants, solid wastes or waste, as defined by any applicable environmental law, and also includes, but is not limited to, any lead paint, mold, radon, petroleum, petroleum products, petroleum by products, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous waste, toxic substances, toxic chemicals, chemicals, pesticides, radioactive materials, polychlorinated biphenols, methane, soil vapor, gas, linoleum, and surface and subsurface man-made media left at or underneath the larger property, and any other element, compound, mixture, solution, substance, material, waste or the like which may pose a present or potential danger to human health and safety, biota or the environment.

Assignment.

Easement holder shall have the right to assign any portions, or all of the rights granted under this Easement.

NOTICE OF HEARING
(Cal. Code Civ. Proc. § 1245.235)

**NOTICE OF HEARING REGARDING THE INTENTION OF THE CITY
OF FORT BRAGG TO CONSIDER THE ADOPTION OF A
RESOLUTION FINDING AND DETERMINING THAT THE PUBLIC
INTEREST AND NECESSITY REQUIRE THE ACQUISITION OF
CERTAIN REAL PROPERTY INTERESTS FOR A PUBLIC
PROJECT AND DIRECTING THE FILING OF EMINENT DOMAIN
PROCEEDINGS**

TO:

Lyme Redwood Timberlands LLC
Austin Vanderhoof, Registered Agent for Service of Process
18625 Sutter Blvd. Suite 900,
Morgan Hill, CA 95037

Redwood Timber Company LLC
Zachary M. Jones, General Manager
90 W. Redwood Ave.
Fort Bragg, CA 95437

RJS TIC HTC LLC, TIC HTC LLC, RMB TIC HTC LLC
Austin Vanderhoof, Registered Agent for Service of Process
18625 Sutter Blvd., Suite 900
Morgan Hill, CA 95037

Stephen F. Johnson (via email only)
Mannon, King, Johnson, & Wipf, LLP
200 N. School St. Suite 304
P.O. Box 419
Ukiah, CA 95482
steve@mkjlex.com

YOU ARE HEREBY NOTIFIED, pursuant to Code of Civil Procedure Section 1230.010, *et seq.*, that the Fort Bragg City Council will hold a Public Hearing on **June 12, 2023 at 6:00 p.m.** in the Town Hall, 363 N. Main Street, Fort Bragg, California, to consider the adoption of a Resolution of Necessity for acquisition by eminent domain of certain real property interests for the purpose of constructing a section of a primary water transmission line that delivers raw water from sources at Waterfall Gulch, Newman Reservoir, and Summers Lane Reservoir to the City's water treatment plant and all uses appurtenant thereto ("Project").

The interests in real property to be acquired are located within the City of Fort Bragg, County of Mendocino, State of California and consist of the following:

A non-exclusive permanent subsurface easement, 1.65 acres (71,993 s.f.) in size, to survey, install, construct, reconstruct, alter, operate, remove, replace, inspect, repair, and maintain underground pipeline(s) for water and storm water (collectively, the "Facilities") in, under, across, and along that certain real property located in the County of Mendocino, State of California, described in Exhibit A and depicted in Exhibit B attached hereto ("Permanent Easement").

The Permanent Easement described herein shall be subject to the following terms and conditions set forth in Exhibit C attached hereto.

You, as a person claiming or having an interest in and to the Permanent Easement, are hereby notified that you have the right to appear and be heard on the issues to be considered at that hearing. The issues which will be considered are set forth in California Code of Civil Procedure Section 1240.030, and include:

1. Whether the public interest and necessity require the Project;
2. Whether the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
3. Whether the Permanent Easement to be acquired is necessary for the Project;
4. Because the Permanent Easement is being acquired for construction, reconstruction, alteration, enlargement, maintenance, renewal, repair, or replacement of subsurface waterlines or appurtenances, per Government Code 7267, the provisions of subdivision (b) of Section 7267.1 and Section 7267.2 do not apply to the acquisition of the Permanent Easement;
5. Whether the necessary notice of hearing on this Resolution has been given, as required by Code of Civil Procedure section 1245.235;
6. Whether the City has fully complied with all the provisions of California's Environmental Quality Act in regard to the proposed Project; and
7. Whether the City has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain (the "right to take") to acquire the Permanent Easement.

A copy of the proposed Resolution of Necessity will be available 18 days prior to the June 12, 2023 hearing in the City Clerk's Office at City Hall, 416 N. Franklin Street, Fort Bragg, California.

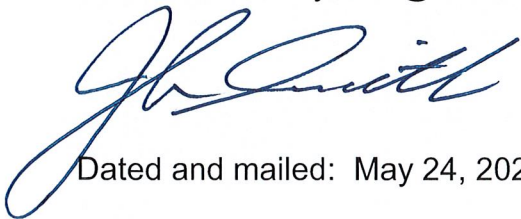
If you wish to be heard at this hearing, you **MUST FILE A WRITTEN REQUEST**, indicating your intent to appear and be heard within 15 days after the date of mailing of this Notice. Failure to file a written request to appear and be heard within 15 days after the date of mailing of this Notice may result in a waiver of the right to appear and be heard by the City Council. The written request to appear and be heard should be filed with:

City Clerk's Office
City Hall
416 N. Franklin Street
Fort Bragg, California 95437

The amount of the compensation to be paid for the acquisition of the Permanent Easement is not a matter or issue being heard by the City at this time. An appraisal of the Permanent Easement is being prepared on behalf of the City and a summary of it will be shared with you upon its completion. If you elect not to appear and not to be heard, you will only be foreclosed from raising in a court of law the issues that are the subject of this noticed hearing and that are concerned with the right to take the Permanent Easement by eminent domain.

This notice is not intended to foreclose future negotiations between you and the City on the amount of compensation to be paid for the Permanent Easement. Nor will your nonappearance at this noticed hearing prevent you from claiming greater compensation than the City's appraisal, as may be determined by a court of law in accordance with the laws of the State of California.

If you have any questions regarding this notice, please contact John Smith, Director of Public Works, at jsmith@fortbragg.com, 707-961-2823 ext. 136.



Dated and mailed: May 24, 2023

Attachments:

Exhibit A—Legal Description of Permanent Easement
Exhibit B—Exhibit Depicting the Permanent Easement
Exhibit C—Terms and Conditions of Permanent Easement

cc (with attachments):
Lyme Redwood Timberlands LLC
Austin Vanderhoof, Registered Agent for Service of Process
18625 Sutter Blvd. Suite 900,
Morgan Hill, CA 95037

Redwood Timber Company LLC

4863-2560-3167 v1

LA #4813-0614-7500 v1

Zachary M. Jones, General Manager
90 W. Redwood Ave.
Fort Bragg, CA 95437

RJS TIC HTC LLC, TIC HTC LLC, RMB TIC HTC LLC
Austin Vanderhoof, Registered Agent for Service of Process
18625 Sutter Blvd., Suite 900
Morgan Hill, CA 95037

Stephen F. Johnson (via email only)
Mannon, King, Johnson, & Wipf, LLP
200 N. School St. Suite 304
P.O. Box 419
Ukiah, CA 95482
steve@mkjlex.com

REQUEST TO BE HEARD ON RESOLUTION OF NECESSITY

4863-2560-3167 v1

FOR THE ACQUISITION OF CERTAIN REAL PROPERTY INTERESTS

Name _____ Telephone _____

Address _____

Date _____ Signature _____

DECLARATION OF PROOF OF SERVICE BY CERTIFIED MAIL

I, the undersigned, declare as follows:

I am over the age of 18 and not a party to the above-entitled action. My business address is City Hall, 416 N. Franklin Street, Fort Bragg, California 95437.

On May 24, 2023, I served true copies of the foregoing Notice of Hearing on each of the following named persons by placing for deposit, by certified mail return receipt requested, in the United States Postal Service sealed envelopes containing the same on said date at the United States Post Office located at 203 N. Franklin St., Fort Bragg, California 95437 and addressed respectively, as follows:

Lyme Redwood Timberlands LLC
Austin Vanderhoof, Registered Agent for Service of Process
18625 Sutter Blvd. Suite 900,
Morgan Hill, CA 95037

Redwood Timber Company LLC
Zachary M. Jones, General Manager
90 W. Redwood Ave.
Fort Bragg, CA 95437

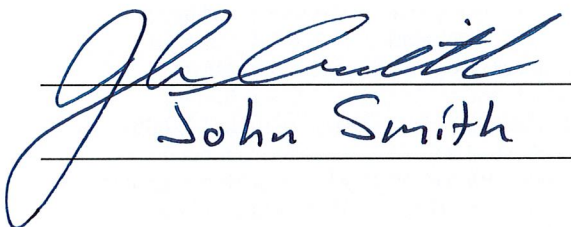
RJS TIC HTC LLC, TIC HTC LLC, RMB TIC HTC LLC
Austin Vanderhoof, Registered Agent for Service of Process
18625 Sutter Blvd., Suite 900
Morgan Hill, CA 95037

Stephen F. Johnson (via email only)
Mannon, King, Johnson, & Wipf, LLP
200 N. School St. Suite 304
P.O. Box 419
Ukiah, CA 95482
steve@mkjlex.com

I am familiar with the Post Office's practice for collecting and processing of correspondence for mailing at said address. The correspondence referenced above would be deposited in the United States Postal Service that same day in the ordinary course of business; and said envelopes were sealed and placed for collection and mailing on the date following ordinary business practices.

I declare under penalty of perjury, under laws of the State of California that the foregoing is true and correct.

Executed on May 24, 2023 at City Hall, Fort Bragg California.



John Smith

EXHIBIT 'A'
20' WATER LINE EASEMENT

Lying within the unincorporated area of County of Mendocino, State of California, and being a portion of the lands of Redwood Timber Company LLC, a Delaware limited liability company, as shown on that Co-Tenancy Agreement recorded under Document Number 2022-02810, Official Records of Mendocino County, said Redwood Timber Company LLC was formerly known and appears of record as Lyme Redwood Timberlands LLC, a Delaware limited liability company, as to an undivided 75.00000% interest; RJS TIC HTC, LLC, a California limited liability company, as to an undivided 0.78346% interest; PV TIC HTC, LLC, a California limited liability company, as to an undivided 3.40448% interest; and RMB TIC HTC, LLC, a California limited liability company, as to an undivided 20.81206% interest, as described by Grant Deed recorded under Document Number 2015-18090, Official Records of Mendocino County, said portion is more particularly described as follows:

Being all that portion of said lands of Redwood Timber Company LLC et al. lying within a strip of land, 20 feet in width, and lying 10 feet on each side of an underground water pipeline, the centerline of which is more particularly described as follows:

COMMENCING at a 1-inch iron pipe, not tagged, marking the easterly common corner of said lands of Redwood Timber Company LLC et al. and the lands of Don H. Celeri and Julia C. Celeri, Trustees of The Don H. Celeri and Julia C. Celeri Revocable Living Trust, as described by Grant Deed recorded under Document Number 1998-14070, Official Records of Mendocino County, and marking the common corner of Sections 8, 9, 16 and 17, Township 18 North, Range 17 West, Mount Diablo Base and Meridian as shown on that Record of Survey filed in Drawer 82 of Maps at Page 66, Mendocino County Records, from which a 1-inch rebar and cap stamped "LS 3184" as shown on said Record of Survey bears North 78°36'46" West 1345.06 feet; thence along the easterly boundary of said lands of Celeri Trust, South 1°37'31" West 409.30 feet; thence leaving said easterly boundary, North 74°58'04" West 4.35 feet; thence North 7°28'04" West 151.70 feet; thence North 6°49'26" East 107.35 feet; thence North 18°57'35" East 52.47 feet; thence North 7°54'51" East 53.83 feet; thence North 65°11'42" West 131.84 feet; thence North 76°59'23" West 130.62 feet; thence North 80°17'45" West 97.94 feet; thence North 54°14'13" West 37.23 feet to common boundary of said lands of Redwood Timber Company LLC et al. and said lands of Celeri Trust, and the POINT OF BEGINNING of the herein described centerline of said pipeline, from which said 1-inch rebar bears North 78°36'46" West 965.58 feet; thence leaving said common boundary the following courses:

North 54°14'13" West 52.68 feet;
thence North 59°34'07" West 88.80 feet;
thence North 69°06'28" West 102.70 feet;
thence South 87°42'51" West 50.31 feet;
thence North 83°25'16" West 105.69 feet;
thence North 71°21'09" West 108.39 feet;
thence North 75°51'19" West 68.05 feet;
thence North 58°49'20" West 142.83 feet;
thence North 45°40'28" West 107.30 feet;

Cinquini & Passarino, Inc.
1360 North Dutton Avenue, Suite 150
Santa Rosa, CA 95401

Page 1 of 6

CPI No.: 8466-19
Tel: (707) 542-6268 Fax: (707) 542-2106
www.cinquinipassarino.com

EXHIBIT 'A'
20' WATER LINE EASEMENT

thence North 63°54'49" West 76.83 feet;
thence North 32°33'54" West 54.12 feet;
thence North 37°57'00" West 160.08 feet;
thence North 56°15'41" West 101.35 feet;
thence North 31°47'21" West 202.07 feet;
thence North 44°33'52" West 70.35 feet;
thence North 33°56'28" West 61.76 feet;
thence North 10°20'25" East 41.43 feet;
thence North 5°27'13" East 51.02 feet;
thence North 36°34'39" West 52.16 feet;
thence North 29°20'17" West 72.83 feet;
thence North 11°33'23" West 76.84 feet;
thence North 36°44'08" West 26.66 feet;
thence North 18°20'21" West 30.95 feet;
thence North 7°23'46" East 76.65 feet;
thence North 30°45'06" West 138.10 feet;
thence North 17°26'29" West 73.57 feet, from which a 3/4-inch rebar and cap stamped "PLS 5940" marking the northeast corner of the lands of Templer as shown on said Record of Survey bears South 76°40'05" West 108.45 feet;
thence North 4°09'27" West 19.44 feet;
thence North 26°19'36" West 78.07 feet;
thence North 46°08'38" West 82.08 feet;
thence North 55°14'52" West 39.73 feet;
thence North 85°01'21" West 60.93 feet;
thence North 77°33'02" West 54.77 feet;
thence North 46°51'02" West 144.07 feet;
thence South 83°10'57" West 81.45 feet;
thence North 31°41'18" West 46.79 feet;
thence along a non-tangent curve to the right, the radius point of which bears South 31°41'18" East 372.00 feet, through a central angle of 17°26'08", for a length of 113.20 feet;
thence North 75°44'50" East 36.32 feet;
thence North 86°38'31" East 52.68 feet;
thence South 79°00'08" East 132.16 feet;
thence along a curve to the left having a radius of 188.00 feet, through a central angle of 62°31'01", for a length of 205.13 feet;
thence North 56°37'30" East 15.40 feet;
thence North 30°40'51" East 50.19 feet;
thence North 4°44'12" East 11.43 feet;
thence North 30°40'51" East 26.06 feet;
thence North 22°39'32" East 65.63 feet;
thence along a curve to the left having a radius of 133.00 feet, through a central angle of 17°31'09", for a length of 40.67 feet;
thence North 40°55'12" East 4.00 feet;

Cinquini & Passarino, Inc.
1360 North Dutton Avenue, Suite 150
Santa Rosa, CA 95401

Page 2 of 6

CPI No.: 8466-19
Tel: (707) 542-6268 Fax: (707) 542-2106
www.cinquinipassarino.com

EXHIBIT 'A'
20' WATER LINE EASEMENT

thence North 49°04'48" West 48.00 feet to the TERMINUS of the herein described centerline of said pipeline.

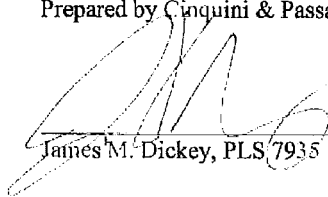
The northerly and southerly lines of said strip at the POINT OF BEGINNING shall be lengthened or shortened to terminate at the common boundary of said lands of Redwood Timber Company LLC et al. and said lands of Celeri Trust.

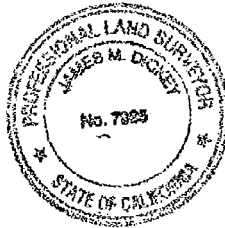
Containing 71,993 square feet (1.65 acres), more or less.

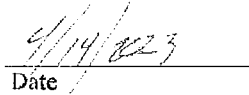
END OF DESCRIPTION

Being a portion of APN 019-630-05-00, 019-640-01-00 & -04-00

Prepared by Cinquini & Passarino, Inc.


James M. Dickey, PLS 7935



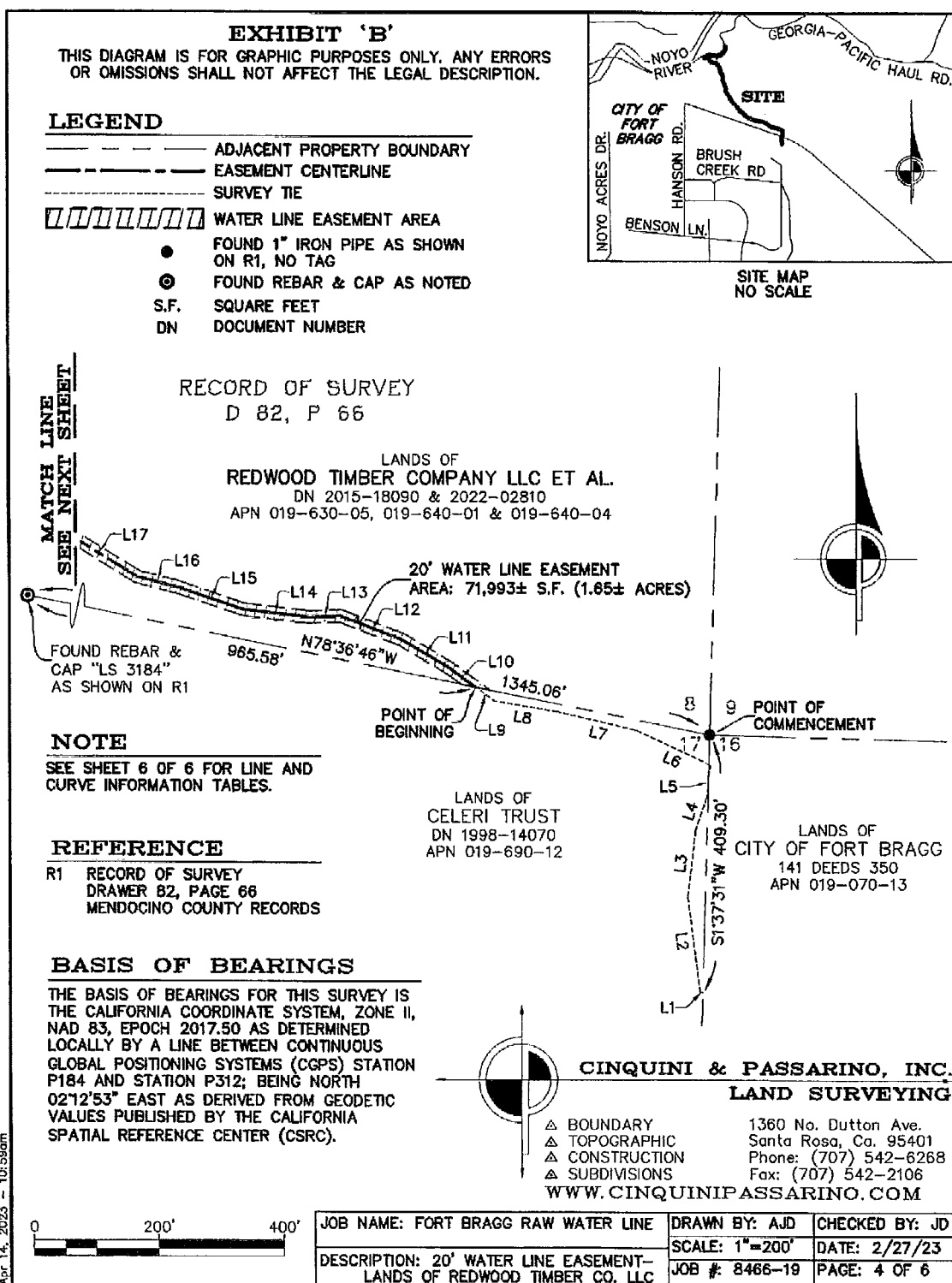

Date

Cinquini & Passarino, Inc.
1360 North Dutton Avenue, Suite 150
Santa Rosa, CA 95401

Page 3 of 6

CPI No.: 8466-19
Tel: (707) 542-6268 Fax: (707) 542-2106
www.cinquinipassarino.com

EXHIBIT "B"



Y:\8466\Ord\Exhibits\Phase 3\8466EXHT_Phase 3_Lyns Redwood.dwg
Apr 14, 2023 10:58am

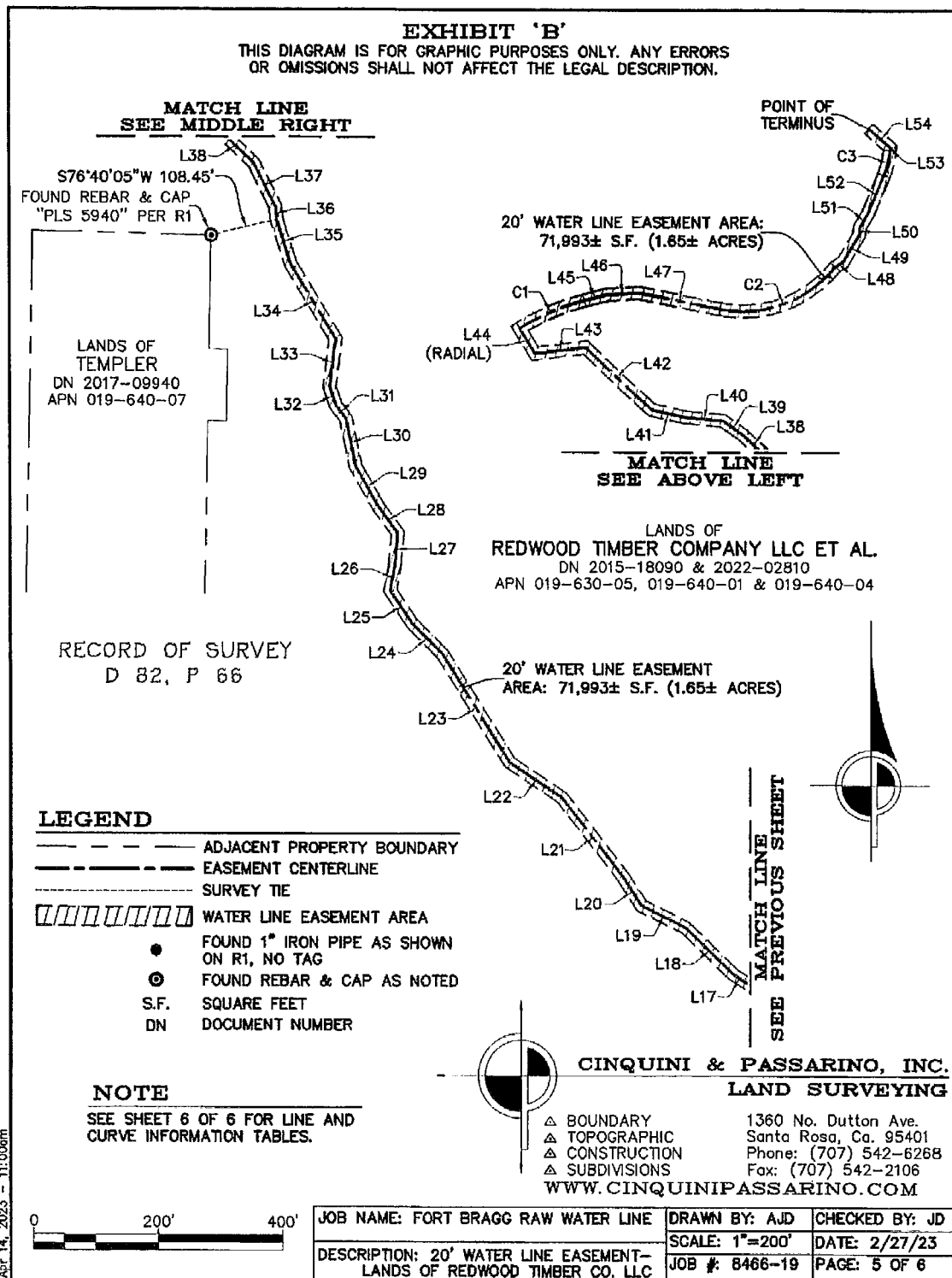


EXHIBIT 'B'

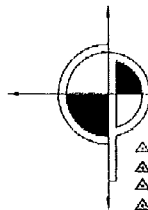
THIS DIAGRAM IS FOR GRAPHIC PURPOSES ONLY. ANY ERRORS
OR OMISSIONS SHALL NOT AFFECT THE LEGAL DESCRIPTION.

Line Table		
Line #	Direction	Length
L1	N74°58'04"W	4.35'
L2	N7°28'04"W	151.70'
L3	N6°49'26"E	107.35'
L4	N18°57'35"E	52.47'
L5	N7°54'51"E	53.83'
L6	N65°11'42"W	131.84'
L7	N76°59'23"W	130.62'
L8	N80°17'45"W	97.94'
L9	N54°14'13"W	37.23'
L10	N54°14'13"W	52.68'
L11	N59°34'07"W	88.80'
L12	N69°06'28"W	102.70'
L13	S87°42'51"W	50.31'
L14	N83°25'16"W	105.69'
L15	N71°21'09"W	108.39'
L16	N75°51'19"W	68.05'
L17	N58°49'20"W	142.83'
L18	N45°40'28"W	107.30'
L19	N63°54'49"W	76.83'
L20	N32°33'54"W	54.12'

Line Table		
Line #	Direction	Length
L21	N37°57'00"W	160.08'
L22	N56°15'41"W	101.35'
L23	N31°47'21"W	202.07'
L24	N44°33'52"W	70.35'
L25	N33°56'28"W	61.76'
L26	N10°20'25"E	41.43'
L27	N5°27'13"E	51.02'
L28	N36°34'39"W	52.16'
L29	N29°20'17"W	72.83'
L30	N11°33'23"W	76.84'
L31	N36°44'08"W	26.66'
L32	N18°20'21"W	30.95'
L33	N7°23'46"E	76.65'
L34	N30°45'06"W	138.10'
L35	N17°26'29"W	73.57'
L36	N4°09'27"W	19.44'
L37	N26°19'36"W	78.07'
L38	N46°08'38"W	82.08'
L39	N55°14'52"W	39.73'
L40	N85°01'21"W	60.93'

Line Table		
Line #	Direction	Length
L41	N77°33'02"W	54.77'
L42	N46°51'02"W	144.07'
L43	S83°10'57"W	81.45'
L44	N31°41'18"W	46.79'
L45	N75°44'50"E	36.32'
L46	N86°38'31"E	52.68'
L47	S79°00'08"E	132.16'
L48	N56°37'30"E	15.40'
L49	N30°40'51"E	50.19'
L50	N4°44'12"E	11.43'
L51	N30°40'51"E	26.06'
L52	N22°39'32"E	65.63'
L53	N40°55'12"E	4.00'
L54	N49°04'48"W	48.00'

CURVE TABLE			
CURVE #	RADIUS	DELTA	LENGTH
C1	372.00'	17°26'08"	113.20'
C2	188.00'	62°31'01"	205.13'
C3	133.00'	17°31'09"	40.67'



CINQUINI & PASSARINO, INC.
LAND SURVEYING

△ BOUNDARY 1360 No. Dutton Ave.
△ TOPOGRAPHIC Santa Rosa, Ca. 95401
△ CONSTRUCTION Phone: (707) 542-6268
△ SUBDIVISIONS Fax: (707) 542-2106
WWW.CINQUINIPASSARINO.COM

JOB NAME: FORT BRAGG RAW WATER LINE	DRAWN BY: AJD	CHECKED BY: JD
DESCRIPTION: 20' WATER LINE EASEMENT- LANDS OF REDWOOD TIMBER CO. LLC	SCALE: NO SCALE	DATE: 2/27/23
	JOB #: 8466-19	PAGE: 6 OF 6

Y:\8466\Cad\Exhibits\Phase 3_Lyme Redwood.dwg
Apr 14, 2023 - 11:01am

EXHIBIT "C"

TERMS AND CONDITIONS OF PERMANENT EASEMENT

Trimming

Easement holder may from time to time, trim or cut down, without easement holder paying compensation, any and all trees and brush now or hereafter located within said Permanent Easement.

Ingress/Egress

Easement holder, and its employees, contractors, agents and assigns ("Authorized Users") shall have the right of reasonable egress and ingress over and across the remaining servient larger parcel to allow for access to personnel, vehicles, and construction equipment, to, from, and along the Permanent Easement at any time, without prior notice, including the right to use existing roadways, driveways, drive aisles, and parking areas, if any, within the larger parcel as shall be convenient and necessary to access the Facilities and/or the Permanent Easement; provided however, that nothing shall prevent or limit landowner's right to close such roadways, driveways, drive aisles, or parking areas, if any, and to provide easement holder or its Authorized Users with comparable alternative access to the Permanent Easement.

No Interference.

Following the initial construction and installation of the Facilities in the Permanent Easement, any further use, maintenance, operation, alteration, addition to, inspection, repair, removal, reconstruction, and/or replacement of the Facilities by easement holder shall be undertaken in a manner so as to minimize interference with the use and operation of, and access to, landowner's larger parcel.

Improvements.

No building, fences, walls or other permanent structures of any kind, flammable substance, wells, reservoirs, or other obstructions, and no deep rooted trees, deep rooted shrubs or other plants or vegetation, shall be installed, constructed, erected, placed, planted or maintained within the Permanent Easement without prior written consent of the easement holder, which consent shall not be unreasonably withheld, conditioned or delayed. Nor shall the ground level in the Permanent Easement area be diminished or substantially added to, nor shall any fences be constructed that will interfere with the maintenance, repair and operation of said Facilities.

Location.

Easement holder and its Authorized Users shall have the right to mark the location of the Permanent Easement in a manner which will not interfere with the landowner's reasonable and lawful use of the Permanent Easement and will not interfere with its customary business operations.

Exclusivity.

Except for preexisting easements, if any, no other easement or easements shall be granted within the Permanent Easement without the prior written consent of easement holder, which consent shall not be unreasonably withheld, conditioned or delayed. Landowner shall have the right to use the surface of the Permanent Easement for any purpose that does not interfere and is not inconsistent with the rights granted to easement holder under this Easement.

Compliance with Laws.

Easement holder is responsible for any damage to landowner's property caused by easement holder's or the Authorized Users' activities related to the Easement. In the event easement holder's or Authorized Users' activities damage landowner's larger property, then subject to any restrictions set forth herein, easement holder shall restore the damaged area to its prior condition to the best it is able. Any work performed by easement holder or the Authorized Users in the Permanent Easement must be performed in a good and workmanlike manner and easement holder shall be solely responsible for obtaining all applicable permits necessary to install, repair, maintain and/or replace the Facilities.

Indemnity.

Easement holder shall indemnify, defend and hold harmless landowner from and against any action, cause of action, liability, suit, costs and expenses (including court costs and reasonable attorneys' fees), claim, liens (including mechanics' liens), or demand whatsoever (collectively, "Claims") brought or asserted by any third person whomsoever, at law or in equity, arising out of or in connection with easement holder's installation, repair, maintenance and/or operation of the Facilities in the Permanent Easement, or use of the Permanent Easement, provided, however, that this indemnity shall not extend to that portion of such loss or damage that shall have been caused by landowner's comparative negligence or willful misconduct.

Hazardous Substances.

Nothing contained herein shall authorize easement holder or the Authorized Users to bring Hazardous Substances onto the Permanent Easement, or authorize any release of Hazardous Substances in, on, under or from same. For the purposes of this Easement, Hazardous Substances (or any derivation thereof) means any and all hazardous materials, toxic substances, chemicals, contaminants, pollutants, solid wastes or waste, as defined by any applicable environmental law, and also includes, but is not limited to, any lead paint, mold, radon, petroleum, petroleum products, petroleum by products, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous waste, toxic substances, toxic chemicals, chemicals, pesticides, radioactive materials, polychlorinated biphenols, methane, soil vapor, gas, linoleum, and surface and subsurface man-made media left at or underneath the larger property, and any other element, compound, mixture, solution, substance, material, waste or the like which may

pose a present or potential danger to human health and safety, biota or the environment.

Assignment.

Easement holder shall have the right to assign any portions, or all of the rights granted under this Easement.



CITY OF FORT BRAGG

Incorporated August 5, 1889

416 N. Franklin Street

Fort Bragg, CA 95437

Phone: (707) 961-2823 ex. 136

May 31, 2023

Re: Redwood Timber Hearing Notice

We provide an updated Notice of Hearing with "PV" added to the entity name. All other content, other than an update to the certificate of mailing reflecting mailing on May 31, 2023, remains the same as the Notice of Hearing mailed on May 24, 2023.

Sincerely,

John Smith
Director of Public Works

JUN 07 2023

City of Fort Bragg
Finance Department**DECLARATION OF PROOF OF SERVICE BY CERTIFIED MAIL**

I, the undersigned, declare as follows:

I am over the age of 18 and not a party to the above-entitled action. My business address is City Hall, 416 N. Franklin Street, Fort Bragg, California 95437.

On May 31, 2023, I served true copies of the foregoing Notice of Hearing on each of the following named persons by placing for deposit, by certified mail return receipt requested, in the United States Postal Service sealed envelopes containing the same on said date at the United States Post Office located at 203 N. Franklin St., Fort Bragg, California 95437 and addressed respectively, as follows:

Lyme Redwood Timberlands LLC
Austin Vanderhoof, Registered Agent for Service of Process
18625 Sutter Blvd. Suite 900,
Morgan Hill, CA 95037

Redwood Timber Company LLC
Zachary M. Jones, General Manager
90 W. Redwood Ave.
Fort Bragg, CA 95437

RJS TIC HTC LLC, PV TIC HTC LLC, RMB TIC HTC LLC
Austin Vanderhoof, Registered Agent for Service of Process
18625 Sutter Blvd., Suite 900
Morgan Hill, CA 95037

Stephen F. Johnson (via email only)
Mannon, King, Johnson, & Wipf, LLP
200 N. School St. Suite 304
P.O. Box 419
Ukiah, CA 95482
steve@mkjlex.com

I am familiar with the Post Office's practice for collecting and processing of correspondence for mailing at said address. The correspondence referenced above would be deposited in the United States Postal Service that same day in the ordinary course of business; and said envelopes were sealed and placed for collection and mailing on the date following ordinary business practices.

REQUEST TO BE HEARD ON RESOLUTION OF NECESSITY
FOR THE ACQUISITION OF CERTAIN REAL PROPERTY INTERESTS

Public Hearing 6/12/23 at 6:00 pm.

Name Stephen F. Johnson Telephone
707 468-9151

Address P.O. Box 419, Ukiah, CA 95482

Date 6/7/23 Steph F. Johnson Signature



City of Fort Bragg

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

Text File

File Number: 23-184

Agenda Date: 6/12/2023

Version: 1

Status: Business

In Control: City Council

File Type: ID Resolution

Agenda Number: 8A.

Receive Report and Consider Adoption of Municipal Improvement District No. 1 Resolution Approving the Contract with Fort Bragg Electric, for the Elm Street Lift Station Project; Authorizing City Manager to Execute Contract (Amount Not to Exceed \$98,417.00, Account No. 716-7007-0731 & 714-4713-0741); and Finding the Project Exempt from CEQA Under 14 CCR 15301b Existing Facilities



AGENCY: City Council
MEETING DATE: June 12, 2023
DEPARTMENT: Public Works
PRESENTED BY: J. Smith
EMAIL ADDRESS: jsmith@fortbragg.com

AGENDA ITEM SUMMARY

TITLE:

Receive Report and Consider Adoption of Municipal Improvement District No. 1 Resolution Approving the Contract with Fort Bragg Electric, for the Elm Street Lift Station Project; Authorizing City Manager to Execute Contract (Amount Not to Exceed \$98,417.00, Account No. 716-7007-0731 & 714-4713-0741); and Finding the Project Exempt from CEQA under 14 CCR 15301b Existing Facilities

ISSUE:

Public Works staff solicited informal quotes for the repairs to the Elm Street Lift Station. The City received three responses, two contractors who were unavailable to provide a quote and one responsive quote. The Elm Street Lift Station is a project in the City's 2022/2023 Capital Project list with an estimated cost of \$80,000. The lowest bid was received from Fort Bragg Electric for \$98,417.00. The remaining \$18,417 will be covered by the Machinery and Equipment line item from the Waste Water Enterprise Fund for the Municipal Improvement District.

ANALYSIS:

This project scope includes the replacement of the interior pump piping, addition of bypass valve for bypass pumping during construction, and replacement of all piping and valves. The replacement of The Elm Street Lift Station is necessary to prevent leaking and ensure the waste water collected within this section of town is efficiently pumped back to the waste water treatment plant where it will be treated.

The project is exempt under the California Environmental Quality Act (CEQA) 15301b Existing Facilities, which includes operation, repair, maintenance, permitting, leasing, licensing, and minor alteration of existing public facilities and publicly owned utilities used to provide electric power, natural gas, sewerage, or other public utility services.

RECOMMENDED ACTION:

Accept the bid of Fort Bragg Electric as the lowest responsible responsive bid, adopt the Municipal Improvement District No. 1 Resolution awarding the contract for construction to Fort Bragg Electric for The Elm Street Lift Station Project and find the project exempt from CEQA under 14 CCR 15301b.

ALTERNATIVE ACTION(S):

Refuse quotes and solicit the project again.

FISCAL IMPACT:

This project was budgeted for \$80,000 in the FY 22/23 CIP budget and the remaining \$18,417 will be covered by the Machinery and Equipment line item from the Waste Water Enterprise Fund for the Municipal Improvement District.

GREENHOUSE GAS EMISSIONS IMPACT:

There will be a short-lived increase of greenhouse gas emissions during construction from processes and equipment necessary for the performance of the work. All Air Quality Management District best management practices for minimizing greenhouse gas emissions during construction, such as reducing idling vehicles, will be incorporated into the daily activities of this project.

CONSISTENCY:

This project is consistent with General Plan Element 3 Public Facilities, which is intended to identify essential public facilities, buildings, and services and to ensure that the existing and future population of Fort Bragg is provided the best feasible level of public services and infrastructure. Repair of The Elm Street Lift Station will ensure that the public in the service area is provided the necessary service of waste water collection.

IMPLEMENTATION/TIMEFRAMES:

Start Construction – July 15, 2023

Complete Construction – September 30, 2023

ATTACHMENTS:

1. Resolution
2. Fort Bragg Electric Quotes

RESOLUTION NO. ID ____2023

**RESOLUTION OF THE FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT
NO. 1 APPROVING CONTRACT WITH FORT BRAGG ELECTRIC, INC. FOR
THE REPIPING OF ELM STREET LIFT STATION AND AUTHORIZING CITY
MANAGER TO EXECUTE CONTRACT (AMOUNT NOT TO EXCEED
\$98,417.00; ACCOUNT NO. 716-7007-0731 & 714-4713-0741) AND FINDING
THE PROJECT EXEMPT FROM CEQA UNDER 14 CCR 15301b**

WHEREAS, the existing lift station infrastructure at the Elm Street Liftstation are outdated and failing and need to be replaced ("the Project"); and

WHEREAS, quotes for the Project were solicited from three contractors; and

WHEREAS, one (1) bid was received, from Fort Bragg Electric, Inc., to complete this work; and

WHEREAS, the lowest responsive bid was received from Fort Bragg Electric Inc.; and

WHEREAS, staff has confirmed that Fort Bragg Electric, Inc. has the proper license, experience, and meets the necessary requirements to be considered a responsible and responsive bidder; and

WHEREAS, the project is funded by the Watewater Enterprise Budget for the procurement and installation of new pipes and pumps, with appropriations from Fiscal Year 2022/23, Account No. 716-7007-0731 & 714-4713-0741; and

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

1. The Fort Bragg Electric, Inc proposal meets the requirements of the Project and is considered responsive.
2. Fort Bragg Electric, Inc has the proper licenses to complete the Project.
3. Sufficient funds are available in the budget for the labor and materials to fully complete the Elm Street Lift Station project.

NOW, THEREFORE, BE IT RESOLVED that this Project is categorically exempt from CEQA, 14 CCR Section 15301b which allows for repair and maintenance to existing publicly-owned utilities including sewerage; and

BE IT FURTHER RESOLVED that the District Board of the Fort Bragg Municipal Improvement District No. 1 does hereby accept the proposal of Fort Bragg Electric, Inc, awarding the contract for the Elm Street Lift Station project, and authorizing the City Manager to execute the same (Amount Not to Exceed \$98,417.00; Account No. 716-7007-0731 & 714-4713-0741).

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 12th day of June, 2023, by the following vote:

AYES: Councilmembers
NOES: None.

ABSENT: None.
ABSTAIN: None.
RECUSED: None.

BERNIE NORVELL
Mayor

ATTEST:

Cristal Muñoz
Acting City Clerk

Fort Bragg Electric, Inc.

Mail: PO Box 1578, Fort Bragg, CA, 95437

License #391464

Tel: (707)964-9118 Fax: (707)964-1404 Email: dan@fortbraggelectric.com

PROPOSAL

To: City of Fort Bragg

Date: June 1, 2023

Attention: Alden Ramos

Office: 707-961-2825

Address: 416 N. Franklin Street
Fort Bragg, CA 95437

Fax: 707-961-2802

JOB NAME	JOB NUMBER	JOB ADDRESS
Elm Street Lift Station Repipe Stage 1		398 W Elm St Fort Bragg, CA 95437

PROPOSAL SUMMARY	AMOUNT
Base Bid Amount	\$31,396
Alternate 1	\$2,420
Total >>>>>	\$33,816

Fort Bragg Plumbing is pleased to present the following bid for **Elm Street Lift Station Repipe Stage 1**, dated **February 28, 2023**, and subject to the following inclusions, exclusions and qualifications:

BASE BID INCLUSIONS

- 1 Drill through floor around existing 12" discharge line.
- 2 Cut and remove 12" discharge piping from approximately 4' above floor to top of tee under floor.
- 3 Provide and install a new 12" Dezurik eccentric plug valve with gear operator and hand wheel.
- 4 Provide and install stainless steel support for new 12" plug valve.
- 5 Install new ductile iron plumbing from new plug valve above floor to top of 12" Tee under floor.
- 6 Coat ductile iron with Amerlock 2 part epoxy paint.

BASE BID EXCLUSIONS

- 1 Pumping is only included if Alternate 1 is approved,
- 2 Work not outlined above

ALTERNATE 1 INCLUSIONS

- 1 Provide 2 pumper trucks and operators for 2 hours to pump down discharge line.

ALTERNATE 1 EXCLUSIONS

- 2 Any additional pumping due to unanticipated flow or mechanical failure.
- 3 Work not outlined above

QUALIFICATIONS

- 1 This proposal is valid for 30 days from the above date.
- 2 Progress payments for completed work due as invoiced at the end of each month.
- 3 Payment due upon completion of work.

Fort Bragg Electric, Inc.

Mail: PO Box 1578, Fort Bragg, CA, 95437

License #391464

Tel: (707)964-9118 Fax: (707)964-1404 Email: dan@fortbraggelectric.com

We look forward to working with you on this project. If you have any questions, please do not hesitate to call.

PROPOSAL OF TERMS BY _____ Date June 1, 2023
FORT BRAGG ELECTRIC

BASE BID AMOUNT
ACCEPTANCE OF TERMS _____ Date _____

ALTERNATE 1
ACCEPTANCE OF TERMS _____ Date _____

CUSTOMER

Thank you for your business!

Fort Bragg Electric, Inc.

Mail: PO Box 1578, Fort Bragg, CA, 95437

License #391464

Tel: (707)964-9118 Fax: (707)964-1404 Email: dan@fortbraggelectric.com

PROPOSAL

To:	City of Fort Bragg	Date:	June 1, 2023
Attention:	Alden Ramos	Office:	707-961-2825
Address:	416 N. Franklin Street Fort Bragg, CA 95437	Fax:	707-961-2802

JOB NAME	JOB NUMBER	JOB ADDRESS
Elm Street Lift Station Repipe Stage 2		398 W Elm St Fort Bragg, CA 95437

PROPOSAL SUMMARY	AMOUNT
Base Bid Amount	\$64,601
Total >>>>>	\$64,601

Fort Bragg Plumbing is pleased to present the following bid for **Elm Street Lift Station Repipe Stage 2**, dated **February 30, 2023**, and subject to the following inclusions, exclusions and qualifications:

INCLUSIONS

- 1 Provide and install new ductile iron discharge piping from the discharges of both pumps to the top of the 12" valve installed in Stage 1.
- 2 Provide and install (2) new 6" Dezurik plug valves without gear operators for isolation of pumps.
- 3 Provide and install (2) new 6" Matco Norca 120WC WS&L swing check valves for each pump.
- 4 Provide and install (2) new blow off valves for each pump and pipe in PVC SCH80 to drain.
- 5 Provide and install (1) Valmatic 801A air and suction relief valve on top of 12" piping. Pipe discharge in PVC SCH80 to drain.
- 6 Provide and install new ductile iron suction piping from the suctions of both pumps to the 45 offsets above the floor.
- 7 Support both suction lines with stainless steel support.
- 8 Install new PVC SCH80 suction lines from bottom of new 45 offsets to suction ends in wet well.

EXCLUSIONS

- 1 Temporary bypass pumping provided by others.
- 2 Work not outlined above

QUALIFICATIONS

- 1 This proposal is valid for 30 days from the above date.
- 2 Progress payments for completed work due as invoiced at the end of each month.
- 3 Payment due upon completion of work.

We look forward to working with you on this project. If you have any questions, please do not hesitate to call.

Fort Bragg Electric, Inc.

Mail: PO Box 1578, Fort Bragg, CA, 95437

License #391464

Tel: (707)964-9118 Fax: (707)964-1404 Email: dan@fortbraggelectric.com

PROPOSAL OF TERMS BY _____ Date June 1, 2023
FORT BRAGG ELECTRIC

ACCEPTANCE OF TERMS _____ Date _____
CUSTOMER

Thank you for your business!



City of Fort Bragg

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

Text File

File Number: 23-171

Agenda Date: 6/12/2023

Version: 1

Status: Business

In Control: City Council

File Type: Staff Report

Agenda Number: 8B.

Receive Report and Provide Direction to Staff Regarding a Ballot Measure Extending Special Purpose Transactions and Use Tax for Street Maintenance and Improvements



AGENCY:	City Council
MEETING DATE:	June 12, 2023
DEPARTMENT:	Public Works
PREPARED BY:	Chantell O'Neal
EMAIL ADDRESS:	coneal@fortbragg.com

AGENDA ITEM SUMMARY

TITLE:

RECEIVE REPORT AND PROVIDE DIRECTION TO STAFF REGARDING A BALLOT MEASURE EXTENDING SPECIAL PURPOSE TRANSACTIONS AND USE TAX FOR STREET MAINTENANCE AND IMPROVEMENTS

ISSUE:

The special transaction and use tax (sales tax) for maintenance of City streets sunsets on December 31, 2024. The State Board of Equalization (SBOE) has indicated that the last election date upon which the voters could authorize an extension of the sales tax without interruption would be July 2024 as it takes 110 days for the SBOE to process the paperwork after election results are certified. At the City Council mid-year budget meeting, staff sought direction on the timing for this ballot measure and recommended that the ballot be placed on the November Special District election to be held on November 07, 2023. There were some questions about whether the special tax could be put to the voters at the County's Special Election, but staff has since confirmed with the City Attorney that as a special tax, this measure is eligible for an election that does not also include seats on the City Council.

ANALYSIS:

The City's street maintenance transaction and use tax ("street sales tax") ½-cent special sales tax is strictly used for street repairs. The street sales tax was adopted by a special all-mail ballot election on August 31, 2004, and again on August 27, 2014, and is set to expire on December 31, 2024. Attached is a copy of Fort Bragg Municipal Code Chapter 3.10: Special Purpose Transactions and Use Tax showing the current wording of the sales tax ordinance (Attachment 1).

As of December 2022, this tax has provided \$9,627,000 in revenue to be used for the sole purpose of repairing, maintaining, and reconstructing city streets since its renewal in 2014. Just in the last five (5) years, the Special Sales Tax Revenue has made it possible for the City to complete several important street maintenance and improvement projects including rehab of over 16 residential street segments, four (4) commercial street segments, and nine (9) alleys.

During the previous discussion at the mid-year budget, staff was directed to coordinate with one of the upcoming County election dates to avoid the need for calling our own special election to save on costs. The County currently has two elections scheduled before the November 2024 primaries; one is November 07, 2023, and the other is March 5, 2024. Staff recommends targeting the earliest date of November 07, 2023. By conducting the election at this time, should the measure fail to pass, the City would have an opportunity to make

modifications, do additional publicity and outreach, and conduct another special election on either March 5, 2024, or in conjunction with the regular November 2024 election. The current tax has a ten (10) year sunset, and the proposed measure is recommended to stay the same.

RECOMMENDED ACTION:

Direct staff to bring back a resolution at a future meeting calling for this ballot to be included on the County's Special District Election, November 07, 2023, for voter approval to extend the Special Purpose Transactions and Use Tax for Street Maintenance and Improvement; establishing policies and procedures in connection with the Election; and requesting the services of the Registrar of Voters in conducting the election.

- Provide direction to staff regarding any proposed changes to the ordinance.

ALTERNATIVE ACTION(S):

1. No action. This alternative would allow the special sales tax to sunset at the end of 2024.
2. Continue action and request staff to provide additional information and/or analysis at a future meeting.
3. Direct staff to conduct the election on another allowable date such as March 05, 2024, or November 05, 2024.

FISCAL IMPACT:

If the Council decides not to place a ballot measure before the voters or if the voters decide not to extend the sales tax, the City will lose approximately \$962,000 per year in revenues for street maintenance and improvement. The tax collected since 2014, broken down by fiscal year, is as follows:

Sales Tax Revenues		
Fiscal Year	Accrual	Expenditures
2014	\$ 824,812.16	\$ (163,247.49)
2015	\$ 1,018,025.21	\$ (63,777.39)
2016	\$ 867,714.80	\$ (82,680.99)
2017	\$ 911,155.73	\$ (2,402,013.00)
2018	\$ 995,352.54	\$ (588,905.90)
2019	\$ 904,485.22	\$ (1,915,902.66)
2020	\$ 968,513.91	\$ (273,576.21)
2021	\$ 1,118,016.87	\$ (216,690.59)
2022	\$ 1,226,073.41	\$ (1,674,220.33)
TOTALS	\$ 8,834,149.85	\$ (7,381,014.56)

Additionally, the local “voter-approved tax” qualifies the City as a “Self-Help City” which makes us eligible for annual appropriations from Local Partnership Program (LPP) dollars from the Road Maintenance and Rehabilitation Account (RMRA) State sales tax money. The City has been reimbursed \$888,000 since RMRA was passed in 2017, for use towards expenses directly associated with large street rehabilitation projects.

IMPLEMENTATION/TIMEFRAMES:

If the Council desires to move forward with the special election on November 07, 2023, staff will bring back a resolution at the June 26th meeting calling for a Special Election on November 07, 2023, for voter approval to extend the Special Street Sales Tax and establishing policies and procedures for the Election. The election results would then be certified the following month, and, if passed, the paperwork would be submitted to the State Board of Equalization, and there would be no interruption in collecting the sales tax. Should the measure not pass the Council can then determine whether to try again in March or November of 2024.

GREENHOUSE GAS EMISSIONS IMPACT:

There are no anticipated greenhouse gas emissions with placing the measure on the ballot.

CONSISTENCY:

The ballot measure is one way in which the Circulation Element of the City’s General Plan Policy C-3.1 “Roadway Improvements: In coordination with Caltrans and Mendocino County, plan for and seek funding for ongoing improvements to the local and regional road system to ensure that the roadway system operates safely and efficiently. Project applicants are fiscally responsible for their fair share of roadway improvements necessary to serve their projects” may be fulfilled.

Additionally, the collection and use of the Street Sales Tax on street projects is consistent with Chapter 3.10 of the Municipal Code and the State Road Maintenance and Rehabilitation Act of 2017.

ATTACHMENTS:

1. Fort Bragg Municipal Code Section 3.10: Special Purpose Transactions and Use Tax
2. 03222023 Mid-Year Budget Presentation

NOTIFICATION:

Street Construction List serve

CHAPTER 3.10

SPECIAL PURPOSE TRANSACTIONS AND USE TAX

Section

3.10.005	Title
3.10.010	Definition
3.10.015	Purpose
3.10.020	Use of other funding sources
3.10.025	Operative dates
3.10.030	Contract with state
3.10.040	Imposition of special transactions tax
3.10.050	Presumption as to place of sales
3.10.060	Imposition of special use tax
3.10.070	Adoption of certain sections of California Revenue and Taxation Code by reference
3.10.080	Limitations on adoption of state law and collection of use taxes
3.10.090	Permit not required
3.10.100	Exemptions and exclusions
3.10.120	Amendments
3.10.130	Enjoining collection prohibited
3.10.140	Use of tax proceeds and expenditure plan

3.10.005 TITLE.

This chapter shall be known as the “special purpose transactions and use tax” ordinance.

(Ord. 907, § 1, passed 09-23-2013)

3.10.010 DEFINITION.

For the purpose of this chapter, the following definition shall apply unless the context clearly indicates or requires a different meaning:

STREET. Includes all streets, highways, avenues, lanes, alleys, courts, or curbs in this City which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this state.

(Ord. 907, § 1, passed 09-23-2013)

3.10.015 PURPOSE.

The ordinance codified herein is adopted to achieve the following (and other) purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a special retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.91 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if 2/3 of the electors voting on the ordinance vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt a special retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the state of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a special retail transactions and use tax ordinance that imposes a tax and provides a measure therefor that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practical to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.

D. To adopt a special retail transactions and use tax ordinance that can be administered in a manner that will, to the degree possible consistent with the provisions of Parts 1.6 and 1.7 of Division 2 of the said Revenue and Taxation Code, minimize the cost of collecting City transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions thereof.

E. To provide a source of revenue for repairing, maintaining and reconstructing City streets. The revenue generated by the tax provided for herein shall be restricted to those uses. The tax is, therefore, a special tax.

(Ord. 907, § 1, passed 09-23-2013)

3.10.020 USE OF OTHER FUNDING SOURCES.

The City will continue to pursue and utilize alternate sources of funding, in addition to sales tax dollars, to complete repair, maintenance and reconstruction of City streets.

(Ord. 907, § 1, passed 09-23-2013)

3.10.025 OPERATIVE DATES.

This chapter shall be operative on January 1, 2015, and shall expire on December 31, 2024, unless an extension or re-authorization of this chapter is approved by the voters of the City at an election called for that purpose.

(Ord. 907, § 1, passed 09-23-2013)

3.10.030 CONTRACT WITH STATE.

Prior to the operative date, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation hereof. If the City has not contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract. The Council may make any technical amendments to this chapter required by the State Board of Equalization, except for any changes affecting the tax rate, its manner of collection, or the purpose for which the revenue from the tax may be used.

(Ord. 907, § 1, passed 09-23-2013)

3.10.040 IMPOSITION OF SPECIAL TRANSACTIONS TAX.

For the privilege of selling tangible personal property at retail, a special tax is hereby imposed upon all retailers in the City at the rate of 0.5% of the gross receipts of the retailer from the sale of all tangible personal property sold at retail in the City of Fort Bragg on and after the operative date of this chapter.

(Ord. 907, § 1, passed 09-23-2013)

3.10.050 PRESUMPTION AS TO PLACE OF SALES.

For the purposes of this chapter, all retail sales are consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the state or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the Board of Equalization.

(Ord. 907, § 1, passed 09-23-2013)

3.10.060 IMPOSITION OF SPECIAL USE TAX.

An excise tax is hereby imposed on the storage, use, or other consumption in the City of Fort Bragg of tangible personal property purchased from any retailer on or after the operative date of this chapter, at the rate of 0.5% of the sales price of the property subject to the tax. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

(Ord. 907, § 1, passed 09-23-2013)

3.10.070 ADOPTION OF CERTAIN SECTIONS OF CALIFORNIA REVENUE AND TAXATION CODE BY REFERENCE.

Except as hereinafter provided, and except insofar as they are inconsistent with the provisions of Parts 1.6 and 1.7 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 of Division 2 of said code, as amended and in force and effect on the operative date of this chapter, applicable to use taxes are hereby adopted and made a part of § 3.10.010 et seq., as though fully set forth herein.

(Ord. 907, § 1, passed 09-23-2013)

3.10.080 LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES.

In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the state of California is named or referred to as the taxing agency, the name of this City shall be substituted therefor. However, the substitution shall not be made when:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California.

2. The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof, rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this chapter.

3. In those sections, including, but not necessarily limited to, sections referring to the exterior boundaries of the state of California, where the result of the substitution would be to:

a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the state under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code; or

b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.

4. In Section 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

B. The word “City” shall be substituted for the word “State” in the phrase “retailer engaged in business in this State” in Section 6203 and in the definition of that phrase in Section 6203.

(Ord. 907, § 1, passed 09-23-2013)

3.10.090 PERMIT NOT REQUIRED.

If a seller’s permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor’s permit shall not be required by this chapter.

(Ord. 907, § 1, passed 09-23-2013)

3.10.100 EXEMPTIONS AND EXCLUSIONS.

A. There shall be excluded from the measure of the special transactions tax and the special use tax the amount of any sales tax or use tax imposed by the state of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

B. There are exempted from the computation of the amount of special transactions tax the gross receipts from:

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this state, the United States, or any foreign government.

2. Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or

by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this subsection, delivery to a point outside the City shall be satisfied:

- a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Chapter 2 of Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and
- b. With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this chapter.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this chapter.

5. For the purposes of subsections (B)(3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the special use tax imposed by this chapter the storage, use or other consumption in this City of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.
2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this state, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the state of California.
3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this chapter.
4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this chapter.

5. For the purposes of subsections (C)(3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in subsection (C)(7) of this section, a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

7. “A retailer engaged in business in the City” shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Chapter 2 of Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

D. Any person subject to special use tax under this chapter may credit against that tax any transactions tax or reimbursement for transaction tax paid to a district imposing, or retailer liable for, a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

(Ord. 907, § 1, passed 09-23-2013)

3.10.120 AMENDMENTS.

All amendments to Part 1 of Division 2 of the Revenue and Taxation Code made subsequent to the operative date of this chapter relating to sales and use taxes and which are not inconsistent with Parts 1.6 and 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Parts 1.6 and 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this chapter; provided, however, that no such amendment shall operate so as to affect the rate of tax imposed by this chapter.

(Ord. 907, § 1, passed 09-23-2013)

3.10.130 ENJOINING COLLECTION PROHIBITED.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against the state or this City, or against any officer of the state or the City, to prevent or enjoin the collection hereunder, or Parts 1.6 and 1.7 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

(Ord. 907, § 1, passed 09-23-2013)

3.10.140 USE OF TAX PROCEEDS AND EXPENDITURE PLAN.

All proceeds of the tax levied and imposed hereunder shall be accounted for and paid into a special fund or account designated for use for street repair, maintenance and reconstruction only, including related expenses as are deemed necessary by the City Council for the benefit of the residents of the City. Because the proceeds of the tax shall be used only for repairing, maintaining and reconstructing City streets, this section shall satisfy the expenditure plan requirement of Section 7285.91(c) of the Revenue and Taxation Code.

(Ord. 907, § 1, passed 09-23-2013)



KEEPING FORT BRAGG'S SPECIAL ½ CENT SALES TAX FOR STREET REPAIRS

06/12/23

SPECIAL STREET SALES TAX MEASURE

Special Sales Tax

It is not a new tax, it is a ten-year extension of the existing ½ cent special sales tax strictly used for street repairs.

FBMC* Chapter 3.10
Special Purpose
Transactions and Use Tax

2004-Present

Special Sales Tax for Street Repairs that has been in place since 2004. This tax was renewed in 2013, and currently expires December 31, 2024

Self-Help Cities

Only California Cities with a voter approved special street sales tax are eligible for certain annual funding allocations from RMRA*.

- * Fort Bragg Municipal Code (FBMC), [Chapter 3.10 Special Purpose Transaction and Use Tax](#)
- * Road Maintenance and Rehabilitation Act (RMRA), [\(SB1\) Road Maintenance and Rehabilitation Program FAQs](#)

SALES TAX REVENUE

PAVEMENT PROGRAM HI-LIGHTS

- LOCAL STREET SALES TAX 10-YEAR AVERAGE ANNUAL REVENUE ~ \$962,700
- LOCAL STREET SALES TAX 10-YEAR AVERAGE ANNUAL EXPENDITURE ~ \$894,000
- LOCAL PARTNERSHIP PROGRAM (LPP) SELF-HELP PROGRAM CONTRIBUTIONS ~ \$888,000 (SINCE 2017)
- ACCORDING TO THE CITY'S MOST RECENT [PAVEMENT MANAGEMENT REPORT](#), FORT BRAGG STREETS AND ALLEYS ARE IN NEED OF \$25.3 MILLION IN REPAIRS AND/OR RECONSTRUCTION OVER THE NEXT 10 YEARS.
- KEEPING IN PLACE THIS EXISTING DEDICATED FUNDING SOURCE FOR MAINTENANCE AND REPAIR OF FORT BRAGG STREETS AND ALLEYS WILL PROVIDE APPROXIMATELY \$13 MILLION IN REVENUES OVER THE NEXT 10-YEARS.

WHAT'S NEXT

Upcoming Projects

- [2022 Streets Project](#), is scheduled to be under construction this summer. This project will rehabilitate pavement of 8 streets, (including Franklin and Boatyard) re-stripe approximately 3.5 miles of streets, upgrade the stamped cross walks in downtown, and includes sections of sidewalk repairs along the project route.
- [2025 Streets Project](#), includes 36 street segments equivalent to approximately 6.4 miles of City Street, which will receive pavement preservation rehabilitation.

Proposed Ballot Measure

State Board of Equalizations, has indicated that the tax measure must be extended at least 110 days before the expiration to avoid lost revenues.

From: [Jacob Patterson](#)
To: [City Clerk](#)
Subject: Public Comment -- 6/12/23 CC mtg., Item No. 8B, Streets Tax
Date: Thursday, June 08, 2023 5:03:59 PM

City Council,

If you are going to ask the voters to extend the existing special streets tax, I recommend two modifications from last time.

First, I would not have the tax sunset this time. We will always need funding to maintain and repair our streets, alleys, and sidewalks, so why make the voters reapprove the tax every ten years?

Second, I recommend tightening the language about permitted uses and make it explicit that it can only be used for paving streets and alleys and the associated sidewalk segments. I do not think the funding should be used for other underground infrastructure like our storm drain system, which, although fed from flows off our streets, is not actually a component of the streets themselves. In fact, I will not vote for a special tax that is used for anything other than our paving projects and think that the City's past (IMO) misuse of this restricted funding for storm drain projects is a very valid reason for people to not vote for this extension. Moreover, based on the projected funding and to be generated and the much higher funding amount for projected paving needs means that we have more than enough paving projects to spend this money on without diverting it to other purposes like our storm drain systems. If we want to fund improvements to the storm drain system, we should identify alternative funding sources for those projects.

Regards,

--Jacob