

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

Meeting Agenda City Council

CITY COUNCIL / MUNICIPAL IMPROVEMENT DISTRICT NO. 1 /
REDEVELOPMENT SUCCESSOR AGENCY / JOINT POWERS
FINANCING AUTHORITY

Monday, May 12, 2025

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: May 12, 2025 06:00 PM Pacific Time (US and Canada)

Topic: CITY COUNCIL

Join from PC, Mac, iPad, or Android: https://us06web.zoom.us/j/85763041895

Join via audio:

+1 669 444 9171 (*6 mute/ unmute, *9 raise hand)

Webinar ID: 857 6304 1895

To speak during public comment portions of the agenda via zoom, please join the meeting and use the raise hand feature when the Mayor or Acting Mayor calls for public comment on the item you wish to address.

CLOSED SESSION REPORT

AGENDA REVIEW

1. MAYOR'S RECOGNITIONS AND ANNOUNCEMENTS

1A. <u>25-142</u> Presentation of Proclamation Declaring May 18th-24th as National Public

Works Week

Attachments: 09-National Public Works Week

1B. 25-150 Presentation of Proclamation for Water Safety Week

Attachments: 10 Proclamation Water Safety Month

1C. 25-152 Presentation of Proclamation Honoring Peace Officer Memorial Week

Attachments: 11-Peace Officer Memorial Week

1D. <u>25-148</u> Receive Presentation on the Fort Bragg Food Bank

1E. 25-147 Receive Presentation on the Redwood Coast Senior Center

Attachments: Presentation May 2025

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 cityclerk@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. <u>25-159</u> Adopt City Council Resolution Approving Contract Amendment with Truepoint

Solutions for Purchase and use of Accela Software and Implementation

Services

Attachments: RESO TRUEPOINT 1st Amend

RESO EX A - Truepoint Solutions SOW

5B. 25-155 Receive Report and Consider Approving an Amendment to the Joint Powers

Agreement of the Mendocino Council of Governments to Add Energy &

Climate Related Programs as Specific Powers

Attachments: RESO XXXX MCOG JPA

Ex A MCOG JPA All Amendments 1972-2020

MCOG letter 2025-04-18

5D. <u>25-161</u> Approve Minutes of November 12, 2024

Attachments: CC MINS 11-12-2024

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. 25-146 Receive a Report, Hold a Public Hearing, Receive Planning Commission's

Recommendation regarding Coastal Development Permit 1-25 (CDP 1-25), Design Review 1-25 (DR 1-25), Use Permit 1-25 (UP 1-25), Sign Permit 2-25 (SP 2-25) for 49 apartments including 41 one-bedroom and 8 two-bedroom

units at 860 Hazelwood.

Attachments: CC Staff Report - Hazelwood CDP DR UP 5-12-2025.docx

Att 1 CC Resolution Approving Hazelwood 49 Unit Senior Project.docx

Att 2 PC Recommendtaion - Hazelwood 49 Unit Senior Project.docx

Att 3 - Hazelwood Housing Incentives Staff Report 2-24-2025.pdf

Att 4 - Site Plan, Sign Plan

Att 5 - Floor Plans

Att 6 - Community Center Plan

Att 7 - Project Elevations

Att 8 - Project Renderings Hazelwood 4-7-2025

Att 9 - Colors and Materials - Hazelwood

Att 10 - Preliminary landscape plan - Hazelwood

Att 11 - Lighting Plan - Hazelwood

Att 12 - Civil Plans.mj.

Att 13 - Stormwater Management Plan - Hazelwood

Att 14 - Geotechnical Report - Hazelwood

Public Comment 7A

8. CONDUCT OF BUSINESS

8A. 25-88 Receive Report and Consider Adopting Resolution of the Fort Bragg City

Council Authorizing Submittal of an Application to the California Department of

Housing and Community Development for funding under the HOME Investment Partnerships Program; and if Selected, the Execution of a Standard Agreement, and Amendments Thereto, and of Any Related Documents Necessary to Participate in the HOME Investment Partnerships

Program

<u>Attachments:</u> Staff Report 05122025 HOME FY24

Att 1 - Resolution

Att 2 - HOME IPP NOFA FY24

Public Comment 8A

8B. 25-143 Receive Report and Consider Resolution Of The Board of Directors Of The

Fort Bragg Joint Powers Financing Authority Authorizing The Execution And Delivery Of The Installment Purchase Agreement With The City Of Fort Bragg Joint Powers Public Financing Authority And Assignment Of Payments

Thereunder To Everbank, N.A., And Related Documents And Official Actions

Attachments: Staff Report (Broadband Project)

Attachment 1: FB JPA - Authority Resolution re Broadband IPA 4902-6770-027

Attachment 2 Fort Bragg 2025 Installment Purchase Agreement

Attachment 3 Fort Bragg 2025 Assignment Agreement

Attachment 4 Fort Bragg 2025 Installment Purchase Agreement Redline

Attachment 5 City Staff Report

Attachment 6 (GFE)

8C. <u>25-141</u> Receive Report and Provide Direction to Staff Regarding Street Project

Planning and the Use of Unassigned Reserves; Including 1) Local Streets and

Roads and Funding Sources, 2) 2025 Pavement Preservation Project Direction 3) Stop-Gap Patch Paving Project, 4) Purchasing Equipment for Self-Performing Work, and 5) Escalating the 2027 Revitalization Project

Design

Attachments: 05122025 Streets Repair Planning Report

Att 1 - LSR and Street Funds Report

Att 2 - 2025 Project and Pavement Management Practices

Att 3 - Stop Gap Patch Paving

Att 4 - Pavement Equipment Purchase

Att 5 - 2027 Project Review

Public Comment 8C

8D. <u>25-162</u> Consider Approval of the Purchase of Mendocino Community Network (MCN),

Acceptance of the Due Diligence Report, and Authorization for the City Manager to Finalize and Execute the Purchase Agreement; CEQA Exempt

15378(b)(4).

Attachments: Staff Report

Resolution MCN Purchase

MUSD City of Fort Bragg Purchase Agreement

Due Diligence Report for MCN Acquisition

8E. 25-153 Receive Report and Consider Adoption of City Council Resolution Authorizing

City Manager to Execute a Contract with the County of Mendocino for a Two-Year Contract for Reimbursement of Social Services Liaisons Salary and

Benefits (Reimbursed Amount Not to Exceed \$500,000)

<u>Attachments:</u> <u>Staff Report-CC - Measure B Reimbursement for CRU Agreement</u>

RESO - Measure B Reimbursement for CRU Agreement

City of Fort Bragg \$500000 25-27 BHRS Measure B - For Signatures 042825

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., TUESDAY, MAY 27, 2025

STATE OF CALIFORNIA))ss.
COUNTY OF MENDOCINO)
	rjury, that I am employed by the City of Fort Bragg and that I ted in the City Hall notice case on May 9, 2025.
Diana Paoli	
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).



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

Text File

File Number: 25-142

Agenda Date: 5/12/2025 Version: 1 Status: Consent Agenda

In Control: City Council File Type: Proclamation

Agenda Number: 1A.

Presentation of Proclamation Declaring May 18th-24th as National Public Works Week

Proclamation

NATIONAL PUBLIC WORKS WEEK MAY 18th-24th, 2025



WHEREAS, public works professionals focus on infrastructure, facilities, and services that are of vital importance to sustainable and resilient communities and to public health, high quality of life, and well-being of the people of the City of Fort Bragg; and,

WHEREAS, these infrastructure, facilities, and services could not be provided without the dedicated efforts of public works professionals, who are engineers, managers, and employees at all levels of government and the private sector, who are responsible for rebuilding, improving, and protecting our nation's transportation, water supply, water treatment and solid waste systems, public buildings, and other structures and facilities essential for our citizens; and,

WHEREAS, it is in the public interest for the citizens, civic leaders, and children in the City of Fort Bragg to gain knowledge of and maintain an ongoing interest and understanding of the importance of public works and public works programs in their respective communities; and,

NOW, THEREFORE, I, Jason Godeke, Mayor of the City of Fort Bragg, on behalf of the entire City Council, do hereby designate the week of May 18th –24th, 2025, as National Public Works Week. I urge all citizens to join with representatives of the American Public Works Association and government agencies to recognize their substantial contributions to protecting our national health, safety and advancing quality of life for all.

SIGNED	this	12th	day	of I	May	2025
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SIGNED this 12" day of May, 2025	
	JASON GODEKE, Mayor
ATTEST:	
DIANA PAOLI, City Clerk	

No. 09-2025



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

Text File

File Number: 25-150

Agenda Date: 5/12/2025 Version: 1 Status: Consent Agenda

In Control: City Council File Type: Proclamation

Agenda Number: 1B.

Presentation of Proclamation for Water Safety Week



PROCLAMATION DECLARING May 2025 as WATER SAFETY MONTH



WHEREAS, The City of Fort Bragg is committed to ensuring the safety of all residents and visitors to our great city; and

WHEREAS, swimming and aquatic-related activities promote good physical and mental health and enhance the quality of life for all people; and

WHEREAS, according to the Centers for Disease and Prevention, ten people die from unintentional drownings every day, with about one in five being children 14 and younger; and

WHEREAS, basic water safety tips include: children should always be supervised by an adult; when a child or vulnerable adult has uninterrupted access to a body of water, barriers should be installed; children should be given swimming lessons at a young age, and everyone especially caregivers should learn CPR and have safety equipment such as floatation devices; and

WHEREAS, Water Safety Month in Fort Bragg is an opportunity to promote water safety and provide education on prevention of recreational water-related injuries, illness and deaths; and

WHEREAS, it is important for everyone including children, parents and caregivers to be aware of water safety rules and programs in order to prevent drowning and recreational water-related injuries; and

WHEREAS, the residents of Fort Bragg are aware of the contributions made by the recreational water industry, as represented by organizations involved in the National Water Safety Month Coalition, providing healthy places to recreate, learn and grow, build self-esteem, confidence and sense of self- worth which contributes to the quality of life in our community; and

WHEREAS, The Pool & Hot Tub Alliance with support from the American Red Cross, National Recreation and Park Association along with World Waterpark Association launch an annual public awareness campaign aimed at aquatic safety and drowning prevention in all aspects from backyard and local pools to lakes and beaches to inform and educate citizens of the many potential hazards and large benefits of utilizing aquatic attractions, programs, and services; now, therefore, be it resolved that the citizens of California recognize the importance of access to local pools, beaches and lakes for the health, wellness, development, inspiration, and safety of all Californians; and be it further resolved, that we declare the month of May 2025 as "National Water Safety Month".

NOW, THEREFORE, **I, Jason Godeke**, Mayor of the City of Fort Bragg, on behalf of the entire City Council, and I do hereby proclaim May as ""National Water Safety Month"

ATTEST:	SIGNED this 12th day of May, 2025

Jason Godeke, Mayor



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

Text File

File Number: 25-152

Agenda Date: 5/12/2025 Version: 1 Status: Business

In Control: City Council File Type: Proclamation

Agenda Number: 1C.

Presentation of Proclamation Honoring Peace Officer Memorial Week





National Police Week - May 12 - 16, 2025

Peace Officers' Memorial Day - May 15, 2025

WHEREAS, the United States Congress and the President of the United States have designated May 15th as Peace Officers' Memorial Day and the week in which May 15th falls as National Police Week; and

WHEREAS, nationwide 147 peace officers were killed in the line of duty in 2024; and

WHEREAS, four California peace officers were killed in the line of duty in 2024; and

WHEREAS, members of the Fort Bragg Police Department, along with all of the other law enforcement partners who protect and serve our community, provide an essential role in safeguarding the rights and freedoms of the City of Fort Bragg; and

WHEREAS, it is important that all citizens know and understand the duties, responsibilities, hazards, and sacrifices of our law enforcement agencies, and that members of these law enforcement agencies recognize their duty to serve the people by safeguarding life and property, by protecting them against violence and disorder, and by protecting the innocent against deception and the weak against oppression; and

WHEREAS, the men and women of the Fort Bragg Police Department unceasingly provide a vital public service;

NOW, THEREFORE, I, Jason Godeke, Mayor of the City of Fort Bragg, on behalf of the entire City Council, call upon all citizens of Fort Bragg and upon all patriotic, civic and educational organizations to observe the week of May 12 – 16, 2025 as National Police Week with appropriate ceremonies and observances in which all of our people may join in commemorating law enforcement officers, past and present, who, by their faithful and loyal devotion to their responsibilities, have rendered dedicated service to their communities and, in so doing, have established for themselves an enviable and enduring reputation for preserving the rights and security of all citizens.

FURTHERMORE, I call upon all citizens of Fort Bragg to observe Thursday, May 15, 2025 as **Peace Officers' Memorial Day** in honor of those law enforcement officers who, through their courageous deeds, have made the ultimate sacrifice in service to their community in the performance of duty, and let us recognize and pay respect to survivors of our fallen heroes.

	SIGNED this 12th day of May, 2025
ATTEST:	
ATTEST.	JASON GODEKE, Mayor

DIANA PAOLI, City Clerk

No. 11-2025





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

Text File

File Number: 25-148

Agenda Date: 5/12/2025 Version: 1 Status: Business

In Control: City Council File Type:
Recognition/Announcements

Agenda Number: 1D.

Receive Presentation on the Fort Bragg Food Bank



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

Text File

File Number: 25-147

Agenda Date: 5/12/2025 Version: 1 Status: Consent Agenda

In Control: City Council File Type:

Recognition/Announcements

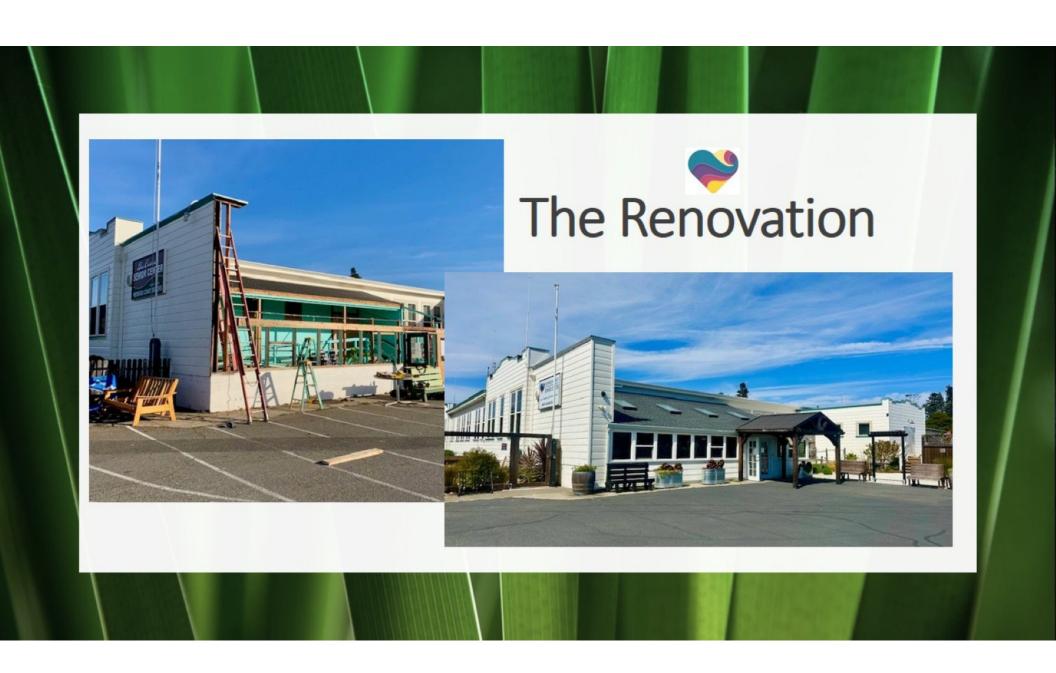
Agenda Number: 1E.

Receive Presentation on the Redwood Coast Senior Center



Serving the community since 1973

490 N Harold Street Fort Bragg **707-964-0443**





WHAT WE DO BEST!

- Served a total of over 57,000 meals
- Emergency Shelter
- Affordable Transportation
- Information and Outreach
- Senior Peer Counseling & Friendly Visitor Programs
- Adult Day Program
- Gratitude Garden
- Attic Thrift Store
- Fun Activities



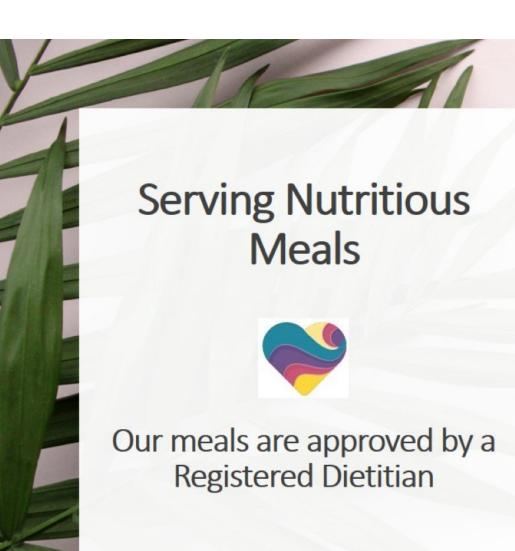




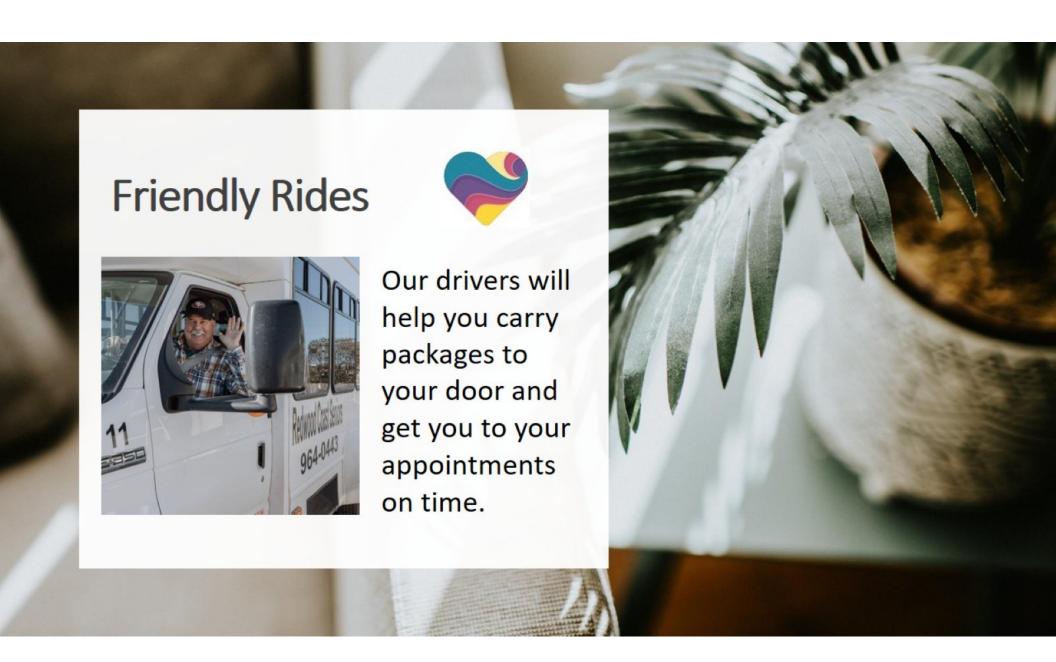
Who We Serve













Confidential and Compassionate



- Payee Representative Services
- CalFresh applications.
- HEAP, HUD and CARE applications.

- Senior Peer Counselors
- Friendly Visitors
- Adult Day Program











The Gratitude Garden







The Attic Thrift Store



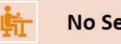
Save Our Seniors











No Senior should to hungry!





Thank You!

Jill Rexrode

Executive Director

Redwood Coast Seniors

490 N Harold Street

Fort Bragg CA 95437

707 964-0443

director@rcscenter.org

www.rcscenter.org





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

Text File

File Number: 25-159

Agenda Date: 5/12/2025 Version: 1 Status: Consent Agenda

In Control: City Council File Type: Consent Calendar

Agenda Number: 5A.

Adopt City Council Resolution Approving Contract Amendment with Truepoint Solutions for

Purchase and use of Accela Software and Implementation Services

RESOLUTION NO. XXXX-2025

RESOLUTION OF THE FORT BRAGG CITY COUNCIL
APPROVING FIRST AMENDMENT TO PROFESSIONAL SERVICES
AGREEMENT TRUEPOINT SOLUTIONS, LLC FOR PURCHASE AND
USE OF ACCELA SOFTWARE AND IMPLEMENTATION SERVICES
AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACT
(AMOUNT NOT TO EXCEED \$127,030.00)

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

WHEREAS, the City and Consultant entered into a Professional Services Agreement ("Contract") on August 13, 2024; and

WHEREAS, the Contract states that the City proposes to utilize the services of the Consultant as an independent contractor to provide implementation of Accela Civic Applications for Building, Planning, and Engineering, as more fully described herein, and for a total contract shall not exceed Eighty Seven Thousand Thirty Dollars (\$ 87,030.00); and

WHEREAS, the parties desire to amend the contract to extend the Term of Completion to August 31, 2025, and the term to November 30, 2025; and

WHEREAS, there are still sufficient funds budgeted for these activities;

NOW, THEREFORE, for the aforementioned reasons and other valuable consideration, the receipt and sufficiency of which is acknowledged, City and Consultant hereby agree that the Professional Services Agreement to provide implementation of Accela Civic Applications for Building, Planning, and Engineering, between the CITY and CONSULTANT dated August 13, 2024, is hereby amended as follows:

The above and foregoing Resolution was introduced by Councilmember

, seconded by Councilmember							
a regular meeting of the City Council of the City of Fort Bragg held on the 12th							
day of May, 2025, by the following vote:							
AYES:							
NOES:							
ABSENT:							
ABSTAIN:							
RECUSED:							
	IASON CODEKE						
	JASON GODEKE						
	Mayor						

ATTEST:	
Diana Paoli	
City Clerk	





City of Fort Bragg, CA Legacy Conversion- SOW

1/18/2025



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Conversion scope:	



I. Vendor Background & Qualifications

TruePoint Company History

TruePoint Solutions LLC is a privately held software and solutions company based in the Sacramento region. We bring an unparalleled level of experience designing, developing, implementing, and supporting complex government IT solutions. Our team has an average of 16+ years of public sector IT experience.

TruePoint Solutions was established in 2004 and became an Accela certified implementation partner in early 2005.

II. TruePoint Staff

TruePoint will assign talented staff that have in-depth knowledge of the Accela Civic Platform.

Keith Hobday will be the main point of contact for this engagement and ultimately responsible for all members of the TruePoint team.

III. Project Scope

The city would like to convert Legacy permit data into the Accela Civic Platform.

Conversion scope:

Conversion of data from 2003 to present.

 Permits from 2003 to Q2 of 2022. Create:

Permit Record
Propety Address information
Parcel (APN)
Contact Information
Custom Data Fields (up to 10)

Sample Data:

TruePoint Solutions	3	WWW.TruePointSolutions.Com



2007 BUILDING PERMIT TRACKING																	
LAST NAME	₽	PROPERTY ADDRESS	DESCRIPTION OF PROJECT	APN	DATE RECEIVED	DATE ROUTED	PUBLIC WORKS	FIRE	DATE ROUTED TO PLANNING	FORWARDED TO BUILDING	DATE APPLICANT CONTACTED	LETTER SENT:	FEES PAID	DATE PERMIT ISSUED	I PI	Business License fee	Building Permit Surcharge
WESTERLING	GORDON	401 N MAIN ST	REPAIR TRUSS	008-055-02	12/3					12/3			12/3		37.50	1.00	25.00
KATE ERICKSON/ GARY RILEY		413 FIR ST	KITCHEN, BATH, LAUNDRY REMODEL	008-086-13	3/19	3/20				3/20	3/29		3/29	3/29	675.00	18.00	450.00
CITY OF FORT BRAGG		416 N FRANKLIN ST	REMODEL CITY HALL	008-092-05	8/20	8/20	х	х	9/4	9/4			N/A	9/19			
DIMOCK	CHARLIE	435 N WHIPPLE	SITE IMPROVEMENTS	008-096-13	3/30	4/3	X		5/1	5/2			5/11	5/11	750.00	20.00	500.00

2. Permits from Q3 2022 to present. This information will come from Springbrook and be conveyed in a spreadsheet with similar quantities of data and average annual permit.

The city will be responsible for presenting all data to be converted in XLS format.

Tasks	Hours	Rate	Total	Comment
Business Analyst	72	\$165	\$11,880.00	
			\$0.00	Travel is not required
Total			\$11,880.00	

Services will be billed monthly on a T@M hourly basis for actual hours work is performed.

SIGNATURE

Agency acknowledges that it has read this SOW, understands it and agrees to be bound by its terms and conditions. The parties agree that this Agreement cannot be altered, amended or modified, except in writing that is signed by an authorized representative of both parties.

Accepted City of Fort Bragg, CA.	Accepted TruePoint Solutions
Ву:	Ву:
Print Name:	Print Name: Keith Hobday
Title:	Title: Implementation Director
Date:	Date:

|--|



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

Text File

File Number: 25-155

Agenda Date: 5/12/2025 Version: 1 Status: Consent Agenda

In Control: City Council File Type: Resolution

Agenda Number: 5B.

Receive Report and Consider Approving an Amendment to the Joint Powers Agreement of the Mendocino Council of Governments to Add Energy & Climate Related Programs as Specific

Powers

RESOLUTION NO. XXXX-2025

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FORT BRAGG APPROVING AN AMENDMENT TO THE JOINT POWERS AGREEMENT OF THE MENDOCINO COUNCIL OF GOVERNMENTS TO ADD ENERGY & CLIMATE RELATED PROGRAMS AS SPECIFIC POWERS

WHEREAS, the Mendocino Council of Governments (MCOG) was formed by a Joint Powers Agreement (attached as **Exhibit A**) in 1972 and amended in 1978, 1993, 1994, 2008, and 2020 by the Cities of Fort Bragg, Point Arena, Ukiah, and Willits and the County of Mendocino to serve as the Regional Transportation Planning Agency and other regional purposes; and

WHEREAS, the Joint Powers Agreement (JPA) identifies specific powers for which MCOG is responsible;

WHEREAS, the JPA currently identifies transportation planning, economic development planning, and housing production matters as MCOG's specific powers, and states that other specific powers may be expressly authorized by Resolutions adopted by the respective bodies of each of the parties to the agreement;

WHEREAS, in order to carry out agreements as a Governing Partner of the Northern California Rural Regional Energy Network (REN), a.k.a. Northern Rural Energy Network (NREN), it is proposed that the Joint Powers Agreement be amended to specify that the Joint Powers Agency has the authority to use public purpose program funds paid by ratepayers to plan, administer, and implement energy efficiency programs as approved by the California Public Utilities Commission;

WHEREAS, the MCOG Board of Directors also has been considering the possibility of forming a climate resilience or protection authority for the benefit of the region and related activities;

WHEREAS, the MCOG Board of Directors approved an amendment to add these specific powers at their meeting of April 7, 2025, and in order for such an amendment to take effect, it must be approved by resolutions adopted by the respective legislative bodies of each of the parties to this agreement;

WHEREAS, upon full execution of an amendment, MCOG shall prepare and file a notice of amendment with the California Secretary of State in accord with California Government Code Section 6503.5; therefore, be it

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

- 1) MCOG's Joint Powers Agreement Section 3 shall be amended as follows:
 - "3. MCOG shall have the power to serve the following specific purposes:
 - a. act as the transportation planning agency for Mendocino County, as designated by the Secretary of the Business and Transportation Agency

of the State of California.

- b. undertake economic development planning for Mendocino County,
- c. undertake planning related to the production of housing in the region, including activities related to development and implementation of the Regional Housing Needs Allocation Plan,
- d. <u>implement energy programs including partnership in the Northern</u>
 <u>California Rural Regional Energy Network, a.k.a. Northern Rural Energy</u>
 Network,
- e. <u>implement climate programs including potentially forming a climate</u> resilience or protection authority, and similar activities, and
- f. any other specific power, including regional planning in other functional areas besides transportation, economic development, housing, energy and climate programs, which has been expressly authorized by Resolutions adopted by the respective bodies of each of the parties to this agreement."
- 2) All other terms and conditions set forth in MCOG's Joint Powers Agreement of 1972 as amended in 1978, 1993, 1994, 2008, and 2020 shall remain in full force and effect.
- 3) This amendment shall become effective upon approval by resolution of each of the member agencies.

The above and foregoing Resolution was introduced by Councilmember

, seconded by , and passed and adopted at a regular meeting of the Fort Bragg City Council held on the 12th day of May 2025, by the following vote:

AYES:

NOES:
ABSENT:
ABSTAIN:
RECUSED:

JASON GODEKE
Mayor
ATTEST:

Diana Paoli City Clerk

JOINT POWERS AGREEMENT

MENDOCINO COUNCIL OF GOVERNMENTS

Incorporating All Amendments of 1978, 1993, 1994, 2008, and 2020

This is an Amendment to a Joint Powers Agreement executed in 1972 by the CITIES OF FORT BRAGG, POINT ARENA, UKIAH, and WILLITS, and the COUNTY OF MENDOCINO, that Agreement being the legal basis for the Mendocino County and Cities Area Planning Council (MCCPC). The 1978 and subsequent Amendments changed the name to MENDOCINO COUNCIL OF GOVERNMENTS (MCOG), clarified the powers and purposes of the agency, and established a new BOARD OF DIRECTORS. By this Amendment, the above Agreement is changed to read in its entirety as follows:

This AGREEMENT is made by and among the incorporated CITIES OF FORT BRAGG, POINT ARENA, UKIAH, and WILLITS, municipal corporations of the State of California, acting through their respective City Councils, and the COUNTY OF MENDOCINO a body politic and corporate subdivision of the State of California, acting through the Board of Supervisors (hereinafter referred to as PARTIES), as follows:

WHEREAS, Sections 6500 et seq., of the California Government Code (Title 1, Division 7, Chapter 5, Article 1) provide for agreements between two or more public agencies to jointly exercise any power common to the contracting parties; and,

WHEREAS, the parties hereto recognize that Mendocino County is changing from an isolated, rural area to a developed area with continuing expansion of its incorporated cities and formerly underdeveloped areas; and,

WHEREAS, by reason of this growth, governmental problems affecting incorporated and unincorporated areas jointly are frequently arising and are expected to increase in the near future; and,

WHEREAS, it is necessary and desirable that a single regional agency be created with authority to (1) assist and advise on such problems, and (2) in specified functional areas, develop plans and approve or disapprove, in whole or in part, projects to which such plans apply; and,

WHEREAS, existence of such an agency, and action by it upon certain transportation matters, economic development matters, and housing production matters appear necessary in order for the PARTIES to qualify for allocation of needed funds from the State and Federal Governments;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. The Mendocino County and Cities Area Planning Council (MCCPC) is hereby reconstituted as the MENDOCINO COUNCIL OF GOVERNMENTS (MCOG), which is hereby created and established pursuant to Sections 6500 et seq., of the California Government Code (Title 1, Division 7, Chapter 5, Article 1).

- 2. MCOG shall have the power to serve the following general purposes, which are advisory only:
 - a. provide a regular forum to facilitate discussion and the exchange of information on matters of mutual interest to the parties to this agreement,
 - b. serve as a vehicle for the joint sponsorship of informational workshops and training programs related to problems for local governments in Mendocino County, and
 - c. advise and assist the parties to this agreement in their efforts to deal with problems which they have in common, or which transcend jurisdictional boundaries.
- 3. MCOG shall have the power to serve the following specific purposes:
 - a. act as the transportation planning agency for Mendocino County, as designated by the Secretary of the Business and Transportation Agency of the State of California,
 - b. undertake economic development planning for Mendocino County,
 - undertake planning related to the production of housing in the region, including activities related to development and implementation of the Regional Housing Needs Allocation Plan, and
 - d. any other specific power, including regional planning in other functional areas besides transportation, economic development, and housing which has been expressly authorized by Resolutions adopted by the respective bodies of each of the parties to this agreement.

Nothing contained herein shall be construed as limiting in any manner the power of any of the respective parties or other public entities in the County to initiate and complete a local project within their respective jurisdictions. It is understood, however, the recommendations of the MCOG may be considered by agencies of the State or Federal Government in providing financial or other assistance to such a project. The MCOG shall take no action to preclude or discourage any direct appeal by any entity to any State, or Federal Agency for financial or other assistance in that entity's program before, during or after consideration of the proposal by the MCOG.

4. MCOG shall have a BOARD OF DIRECTORS consisting of seven members. The City Council of each of the four incorporated cities in Mendocino County (the cities of Fort Bragg, Point Arena, Willits and Ukiah) shall annually appoint one of its members to serve as a member of the MCOG Board of Directors. The Board of Supervisors of the County of Mendocino shall annually appoint two of its members plus one public appointee to serve as members of the MCOG Board of Directors. In selecting the public appointee, the Board of Supervisors shall give first preference to a countywide elected official. If a countywide elected official does not apply for the position, then the Board of Supervisors may appoint any registered voter of Mendocino County who has an interest in regional transportation issues. Each elected member of the MCOG Board of Directors shall serve only so long as he or she holds the appropriate elective office, and each member shall serve at the pleasure of their respective appointing authority.

MCOG has adopted its own bylaws as allowed by the amendment of 1993.

The appointing authority, for each regular member it appoints, may appoint an alternate member to serve in place of the regular member when the regular member is absent or disqualified from participating in a meeting of the Council of Governments. Agency alternates must be an elected official.

5. In addition to the incorporated Cities mentioned in this Agreement, any other City which may hereafter be incorporated within the boundaries of Mendocino County, and which may desire to participate in the activities of this Council of Governments may do so by executing this agreement without prior approval or ratification of the named parties herein and shall thereafter be bound by all of the terms and conditions of this agreement as of the date of execution, and shall have all of the rights of the named Cities in relation to the provisions of this Agreement, including the right to appoint a member to the MCOG Board of Directors.

In the event of conflict amongst the members to the MCOG relative to specific issues, individual resolutions may be requested from each of the member agencies to be directed back to the MCOG for review and final action.

- 6. The undersigned parties to this agreement pledge full cooperation, and agree to appoint members to the MCOG Board of Directors as specified above. The MCOG shall assign individuals to serve as members of any MCOG committee (s) who shall act for and on behalf of their member agencies in any or all matters which shall come before MCOG, subject to any necessary and legal approval of their acts by the legislative bodies of said member agencies.
- 7. The MCOG acting as the Regional Transportation Planning Agency for Mendocino County shall be administered in accordance with the Transportation Development Act. Funding for this function shall consist of Local Transportation Funds, State Transit Assistance Funds and any federal or state grants. Any other function(s) identified in Section 3 of this agreement must have a correlating funding source for administrative reimbursement.
- 8. The County Auditor shall be the depositary and shall have custody of all funds of MCOG from whatever source and shall hold and disburse such monies in accord with Section 6505.5. There shall be strict accountability by all parties and by MCOG of all funds. MCOG shall contract with a certified public accountant to make an annual audit. The minimum requirements of such an audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code and shall conform to generally accepted auditing standards. Where an audit is made, a report thereof shall be filed as public records with each of the contracting parties to the agreement and also with the County Auditor-Controller. The cost of the audit shall be borne by MCOG (Section 6505).
- 9. This agreement shall be effective for a period of one year and shall be automatically renewed from year to year thereafter unless and until one of the parties hereto, by Resolution of its legislative body, terminates its consent to the exercise of these joint powers herein agreed upon, and gives written notice of such to MCOG at least ninety days prior to the end of the annual term. In the event of such notice of termination, MCOG shall

have continuing authority to act upon all applications filed with it prior to receipt of said ninety day notice of termination and shall take such action in regard thereto as is required under the laws, regulations and policies established by the particular state or federal agency to whom such applications have been made. Upon the conclusion of such action and expiration of said ninety day notice period, following receipt of said notice, this agreement shall be automatically renewed for another annual term without the withdrawn entity as a party to the agreement, and without a member of the Board of Directors appointed by the withdrawn entity. Once any entity has filed proper notice of withdrawal, there shall be a single sixty day period, during which any remaining Party or Parties to the agreement may also file a ninety day notice of withdrawal, regardless of the expiration date of the annual term.

- 10. This agreement may be amended at any time by the parties to the agreement. In order for such an amendment to take effect, it must be approved by Resolutions adopted by the respective legislative bodies of each of the parties to this agreement.
- 11. This amendment shall take effect upon (1) its execution by the legislative body of each of the parties to the above Joint Powers Agreement, such execution occurring by Resolution of the respective legislative bodies, and (2) receipt of a letter from the Secretary of the Business and Transportation Agency of the State of California, officially designating the Mendocino Council of Governments as the transportation planning agency for Mendocino County according to Section 29532(b) of the Government Code of the State of California.
- 12. MCOG shall prepare and file a notice of this agreement, or any amendment thereto, with the Office of the Secretary of State in accord with Section 6503.5.

CITY OF FORT BRAGG:	DATE:
Mayor	
Approved:	ATTEST:
City Attorney	City Clerk
CITY OF POINT ARENA:	DATE:
Mayor	
Approved:	ATTEST:
City Attorney	City Clerk

CITY OF WILLITS	S:	DATE:	
	Mayor		
Approved:	City Attorney	ATTEST: City Clerk	
CITY OF UKIAH:	Mayor	DATE:	
Approved:	City Attorney	ATTEST: City Clerk	
COUNTY OF ME	ENDOCINO: Chair, Board of Supervisor	DATE:	
Approved:	County Counsel	ATTEST: Clerk of the Board	
Cities of Fort Br	ents and amending resolutions are ex ragg, Point Arena, Willits, and Ukiah		
County of Men	ice Mayor; City Attorney and/or City C docino Board of Supervisors; County Counsel;		
	accuracy of this document. Originals ar res have been received by MCOG.	re on file at MCOG's offices <i>of each member age</i>	псу—
/s/ September :	15, 2020		
Janet M. Orth,	MCOG Deputy Director / CFO		



Mendocino Council of Governments

Administration: Suite B (707) 463-1859

Nephele Barrett, Executive Director

Transportation Planning: Suite G (707) 234-3434

525 South Main Street~Ukiah~California~95482 www.mendocinocog.org

April 18, 2025

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

Re: Proposed Amendment to MCOG
Joint Powers Agreement

Dear Ms. Paoli:

On April 7, 2025, MCOG's Board of Directors unanimously voted to amend the Joint Powers Agreement (JPA) by adding energy and climate related programs to the specific purposes and powers of the Council. The Board directed staff to circulate the enclosed amendment text, in the form of a sample resolution, to the five parties to MCOG's Joint Powers Agreement, for approval by resolution of each of their legislative bodies.

The JPA states as follows:

10. This agreement may be amended at any time by the parties to the agreement. In order for such an amendment to take effect, it must be approved by Resolutions adopted by the respective legislative bodies of each of the parties to this agreement.

Based on previous letters of support from the JPA membership, MCOG has joined as a partner in creating the Northern Rural Energy Network (NREN), to use public purpose program funds paid by utility ratepayers to plan, administer, and implement energy efficiency programs. This will benefit all of Mendocino County. MCOG also is interested in pursuing climate-related program work in its regional role.

Therefore, we request that the City Council, as a party to the JPA, consider this matter at the next available opportunity, according to your agenda procedures.

I have enclosed our sample resolution with Exhibit A (the current JPA in effect) in electronic form, which has been reviewed and approved by the Council, for your use and reference.

If there are any questions, you are welcome to contact me at 463-1859 or by email to orthj@dow-associates.com, or at the address on this letterhead. Thank you for your assistance and cooperation.

Sincerely,

Janet M. Orth

Deputy Director & CFO

Via email

Enc: Sample Resolution with exhibit

cc: Councilmember Rafanan



City of Fort Bragg

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

Text File

File Number: 25-161

Agenda Date: 5/12/2025 Version: 1 Status: Consent Agenda

In Control: City Council File Type: Minutes

Agenda Number: 5D.

Approve Minutes of November 12, 2024



City of Fort Bragg

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

Meeting Minutes City Council

THE FORT BRAGG CITY COUNCIL MEETS CONCURRENTLY
AS THE FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT
NO. 1 AND THE FORT BRAGG REDEVELOPMENT
SUCCESSOR AGENCY

Tuesday, November 12, 2024

6:00 PM

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

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE

ROLL CALL

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

CLOSED SESSION REPORT

None.

AGENDA REVIEW

Mayor Norvell indicated that during the Closed Session, the order of agenda items would be changed, placing item 9B before item 9A.

1. MAYOR'S RECOGNITIONS AND ANNOUNCEMENTS

1A. 24-1010 Proclamation for Veteran's Appreciation Day

Mayor Norvell read the Proclamation Recognizing November 11th as Veteran's Appreciation Day. The Proclamation was presented to Richard Neils from the American Legion.

1B. 24-982 Presentation on Local Students' Recent Visit to Otsuchi, Japan

Councilmember Albin-Smith discussed her experience traveling with the Fort Bragg Otsuchi Cultural Exchange Association. Students from Fort Bragg High School presented a slideshow about the group's recent visit to Otsuchi.

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

- (1) Richard Neils, Gabriel Quinn Maroney, Judy Valadao, and Jenny Shattuck.
- (2) None.
- (3) None.

3. STAFF COMMENTS

None.

4. MATTERS FROM COUNCILMEMBERS

Vice Mayor Godeke expressed his gratitude to the volunteers and Conservation Works for their assistance in planting trees at the CV Starr Dog Park. He mentioned that they will continue seeking potential locations for future tree plantings. Additionally, he announced his intention to run for Mayor of Fort Bragg. Councilmember Albin-Smith shared her experience as a pole inspector in Mendocino, noting that her workload has been busier than usual. She emphasized the importance of the democratic process and encouraged anyone interested in helping with future elections to sign up with the Mendocino County Registrar. She also announced that the Symphony of the Redwoods will be holding a concert this weekend. Councilmember Peters reported that he attended the Veterans Memorial ceremony honoring all the men and women who have served the country. He took a moment to thank everyone who participated in the recent election, noting that it was a strong campaign. While the final results are still pending, he stated that he would refrain from celebrating any victories until the results are officially confirmed.

5. CONSENT CALENDAR

Approval of the Consent Calendar

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

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

5A. 24-1000 Adopt Resolution Declaring Property as Exempt Surplus Land and Authorizing the Public Works Director to Execute the Right-Of-Way Contract and Grant Deed for Temporary Construction Easements and Disposition of Real Property to the California Department of Transportation (Parcel 13259-1, -2)

This Resolution was adopted on the Consent Calendar.

Enactment No: RES 4866-2024

5B. 24-1001 Resolution of the Fort Bragg City Council Establishing a Compensation Plan and Terms and Conditions of Employment for Exempt At-Will Executive Classifications

This Resolution was adopted on the Consent Calendar.

Enactment No: RES 4867-2024

5C. 24-1002 Resolution of the Fort Bragg City Council Amending the Pay Rates and Ranges for Exempt, At-Will Classifications Reflecting Cost of Living Adjustment

This Resolution was adopted on the Consent Calendar.

	Enactment No: RES 4868-2024
5D. <u>24-1003</u>	Accept Fort Bragg Fire Station Roof Replacement Project as Complete and Direct City Clerk to File Notice of Completion
	This Consent Calendar was approved on the Consent Calendar.
5E . <u>24-1005</u>	Approve Purchase of Building from Thermo Bond Buildings to be used as Data Hut in Broadband Project (Amount Not to Exceed \$210,725.00)
	This Consent Calendar was approved on the Consent Calendar.
5F . <u>24-996</u>	Receive and File Minutes of the September 24, 2024 Community Development Committee Meeting
	This Committee Minutes was received and filed on the Consent Calendar.
5G . <u>24-997</u>	Receive and File Minutes of the October 22, 2024 Community Development Committee Meeting
	This Committee Minutes was received and filed on the Consent Calendar.

6. DISCLOSURE OF EX PARTE COMMUNICATIONS ON AGENDA ITEMS

None.

7. PUBLIC HEARING

7A. 24-992 Receive a Report, Hold a Public Hearing, and Consider Adopting a Resolution of the Fort Bragg City Council Providing Preliminary Preapproval of Inclusionary Housing Incentives for Proposed Fort Bragg Apartments Project at 1151 South Main Street

Consultant Marie Jones presented the staff report.

Mayor Norvell opened the public hearing at 6:59 PM

Public Comment:

Jacob Patterson, Richard Miller, Michelle Blackwell, Paul Clark, and Jenny Shattuck.

Mayor Norvell closed the public hearing at 7:09 PM

Discussion:

Mayor Norvell and Councilmembers asked clarification questions and applicant was able to respond to several questions. They had a brief discussion and approved these incentives.

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

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

Enactment No: RES 4869-2024

7B. Receive a Report, Hold a Public Hearing, and Consider Adoption of a Proposed Resolution Adopting an Inclusionary Housing In Lieu Fee

Consultant Marie Jones presented the staff report.

Mayor Norvell opened the public hearing at 7:28 PM

Public Comment:

None.

Mayor Norvell closed the public hearing at 7:28 PM

Discussion:

There was extensive discussion regarding inclusionary housing fee's. They provided direction to update the fee schedule to be adopted with the resolution.

Mayor Norvell recessed the meeting at 7:30 PM and reconvened the meeting at 7:43 PM.

Moved by Councilmember Albin-Smith, seconded by Vice Mayor Godeke, that this Resolution be adopted. The motion carried by the following vote:

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

Enactment No: RES 4870-2024

8. CONDUCT OF BUSINESS

8A. 24-1004 Interview Applicants for Noyo Harbor Commission Appointments

City Clerk Diana Sanchez presented the staff report regarding this agenda item. Ted Williams, a member of the Mendocino County Board of Supervisors ad hoc committee, was present to assist in the joint appointment of the Noyo Harbor Commissioner Chair. Applicant Domenick Weaver provided an overview of his experience and qualifications for the position of Noyo Harbor Commissioner and answered questions from the Council.

Public Comment:

Jacob Patterson.

Discussion:

The council approved Jim Hurst to continue as Chair and appointed Domenick Weaver as the City of Fort Bragg's representative on the Noyo Harbor Commission.

A motion was made by Councilmember Peters, seconded by Councilmember Albin-Smith, that Jim Hurst continue as Chair and appointed Domenick Weaver as the City of Fort Bragg's representative on the Noyo Harbor Commission. The motion carried by the following vote:

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

8B. 24-1016 Discussion and Approval of 2024/25 Business Support and Economic Development Initiatives for the City of Fort Bragg

City Manager Isaac Whippy presented the staff report on this item and introduced Lia Morsell from Alley Way Art Project.

Public Comment:

Jenny Shattuck and Jacob Patterson.

Discussion:

There was some discussion and Council was supportive of these initiatives.

A motion was made by Councilmember Peters, seconded by Mayor Norvell, that the Staff Report be approved. The motion carried by the following vote:

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

8C. 24-1006 Receive Report and Provide Direction Regarding Priorities for Pro-Housing Zoning Amendment

Consultant Marie Jones presented the staff report.

Public Comment:

Jacob Patterson.

Discussion:

Council members sought clarification on this item, leading to extensive discussion. They also shared their priorities regarding Pro-Housing.

9. CLOSED SESSION

Mayor Norvell Recessed the meeting at 9:01 PM. The meeting reconvened to Closed Session at 9:10 PM.

9B. 24-1022 PUBLIC EMPLOYEE EVALUATION/DISCIPLINE/DISMISSAL/RELEASE

Title: City Manager

Pursuant to California Government Code 54957(b)

9A. 24-1021 PUBLIC EMPLOYEE EVALUATION/DISCIPLINE/DISMISSAL/RELEASE

Title: City Clerk

Pursuant to California Government Code 54957(b)

Mayor Norvell reconvened the meeting to Open Session at 9:50 PM and reported that no reportable action was taken on the Closed Session items.

ADJOURNMENT

Mayor Norvell adjourned the meeting at 9:50 PM.



City of Fort Bragg

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

Text File

File Number: 25-146

Agenda Date: 5/12/2025 Version: 1 Status: Public Hearing

In Control: City Council File Type: Staff Report

Agenda Number: 7A.

Receive a Report, Hold a Public Hearing, Receive Planning Commission's Recommendation regarding Coastal Development Permit 1-25 (CDP 1-25), Design Review 1-25 (DR 1-25), Use Permit 1-25 (UP 1-25), Sign Permit 2-25 (SP 2-25) for 49 apartments including 41 one-bedroom and 8 two-bedroom units at 860 Hazelwood.



CITY COUNCIL STAFF REPORT

TO: City Council DATE: May 12, 2025

DEPARTMENT: Community Development

PREPARED BY: Mare Jones Consulting

PRESENTER: Marie Jones

AGENDA TITLE: Receive a Report, Hold a Public Hearing, and Consider Adopting a Resolution Approving a Coastal Development Permit 1-25 (CDP 1-25), Design Review 1-25 (DR 1-25), Use Permit 1-25 (UP 1-25) and Sign Permit 2-25 (SP 2-25) for a Proposed 49-Unit Senior Housing Project Located at 860 Hazelwood (APN 018-210-29). Statutorily exempt from CEQA pursuant to section 15332 - Class 32 In-Fill Development Projects and 15192 Infill Housing Development.

APPLICATION NO.: Coastal Development Permit 1-25 (CDP 1-25),

Design Review 1-25 (DR 1-25), Use Permit 1-25 (UP 1-25), Sign Permit (2-25) application submittal

January 7, 2025.

APPLICANT: AMG Associates

PROPERTY OWNER: Moura Angelina F TTEE

AGENT: Jacob Soroudi

REQUEST: Coastal Development Permit, Use Permit, Design

Review and Sign Permit to construct a new three-story multi-family project. One building is proposed with a total of forty-nine units. The proposed project includes 41 one-bedroom (613 SF) and 8 two-bedroom (802 SF), with one reserved for an on-site manager. Each unit features a private patio or balcony. The remaining units will be income-restricted for low income seniors (62+) earning 30-60% of the Mendocino County area median income. Amenities include a community center with a kitchen, exercise room, laundry, and

business center. The site will include 75 parking spaces (38 EV-adaptable) and 18 bicycle spaces. The carport roofs will accommodate solar panels that will provide electricity to the Project. Additional on-site amenities include a community garden with raised planter beds, covered picnic tables with BBQs, and a fenced dog park. The project also includes extensive landscaping, a large stormwater bioswale, and offsite improvements to Hazelwood Street. The applicant has requested the following inclusionary housing incentives: an increase in the height limit from 35 feet to 43 feet and a reduction in the required parking.

LOCATION: 860 Hazelwood

APN: 018-210-29-00 (2.997 acres)

ZONING: High Density Residential (RH)/ Coastal Zone

ENVIRONMENTAL

DETERMINATION: Statutorily exempt from CEQA pursuant to section

15332 - Class 32 In-Fill Development Projects and

15192 Infill Housing Development.

SURROUNDING LAND USES:

NORTH: Moura Senior Housing EAST: Single Family Residential SOUTH: Single Family Residential WEST: Single Family Residential

APPEALABLE PROJECT: Appealable to California Coastal Commission.

RECOMMENDATION

Adopt a Resolution of the Fort Bragg City Council Approving Coastal Development Permit 1-25 (CDP 1-25), Design Review 1-25 (DR 1-25), Use Permit 1-25 (UP 1-25), Sign Permit (SP 2-2025) for a 49-Unit Affordable Senior Multifamily Project and Associated Infrastructure Located at 860 Hazelwood, Subject to the Findings and all Standard and Special Conditions.

PROJECT BACKGROUND

Per the California Coastal Records project, this parcel has been developed since prior to 1970s with a single-family home and an accessory storage building. The property has an onsite well and septic system.

On February 24, 2025, the City Council held a public hearing and preapproved the following inclusionary housing incentives for this proposed project.

- An increase in the maximum height from 35 feet to 43 feet for the elevator shaft.
- A reduction in the minimum parking from 114 stalls to 75 parking spaces, which is

above the minimum parking required by Density Bonus law. The applicant is not required to use an incentive for the automatic parking reduction required by Density Bonus law.

Please see the attached staff report for the City Council's discussion and deliberation regarding the requested inclusionary housing incentives (Attachment 3).

DECISION PROCESS

As this project includes inclusionary housing the City Council will have the final approval authority over the inclusionary Housing incentives which are awarded for this project. Consequently, the Planning Commission reviewed the project and held a public hearing and made a recommendation to the City Council recommending approval of the project on April 30, 2025. New special conditions recommended by the Planning Commission are noted in purple text.

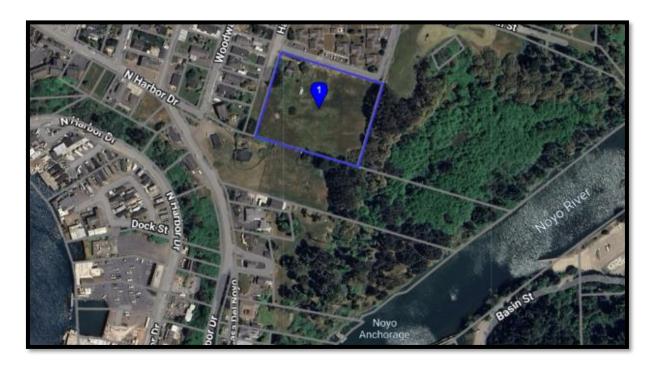
The City Council has the final review authority for all the permits and the inclusionary incentives.

PROJECT DESCRIPTION

The project applicant proposes to construct a 49-unit multifamily project consisting of the following components:

- One 38-foot-tall building with 41 one-bedroom (613 SF) eight two-bedroom (802 SF) units. One unit will be an on-site manager and the remaining units will be income-restricted for seniors (62+) earning 30-60% of the Mendocino County area median income.
- Each unit features a private patio or balcony.
- Amenities include a community center with a kitchen, exercise room, laundry, and business center.
- The site will include 75 parking spaces (38 EV-adaptable) and 18 bicycle spaces. The carport roofs will accommodate solar panels to provide electricity to the project.
- Additional on-site amenities include a community garden with raised planter beds, covered picnic tables with BBQs, and a fenced dog park.
- Landscaping includes 5,200 SF of building landscaping as well as 9,491 SF of parking lot landscaping, and a large open undeveloped field of 40,000 SF. The Landscaping plan includes 34 native trees.
- The project would also include installation of sidewalk, curb, and gutter along the parcel boundaries that front Hazelwood Street

Figure 1: Site Location



COASTAL GENERAL PLAN CONSISTENCY ANALYSIS - HOUSING POLICIES

As conditioned, the project would be consistent with all Coastal General Plan policies. The project is supported by and helps implement many housing policies of the Coastal General Plan and the City's Housing Element as described below. Policies and goals are noted by italics. Coastal General Plan policies which are not housing specific are analyzed under the appropriate section heading on subsequent pages.

The proposed project implements the following Housing Element policies:

Goal H-2 Provide a range of housing, including single-family homes, townhouses, apartments, and other housing types to meet the housing needs of all economic segments of the community.

Policy H-2.7 Infill Housing: Encourage housing development on existing infill sites in order to efficiently utilize existing infrastructure.

The project includes studios and two- and one-bedroom apartments on an infill site.

Policy H-3.2 Encourage Senior Housing: Allow senior housing projects to be developed with density bonuses and flexible parking standards were found to

be consistent with maintaining the character of the surrounding neighborhood consistent with the requirements of Policy H-3.5.

The proposed project would provide 48 affordable apartments for seniors.

Policy H-3.9 Housing for the Disabled: Continue to facilitate barrier-free housing in new development.

The project includes forty-nine ADA accessible residential units.

Policy H-4.1 Equal Housing Opportunity: Continue to facilitate non-discrimination in housing in Fort Bragg.

This project will provide housing units without discrimination based on race, gender, sexual orientation, marital status, or national origin.

COASTAL GENERAL PLAN CONSISTENCY ANALYSIS - LAND USE POLICIES

The Coastal General Plan includes the following definition for the parcel's Land Use designation:

High Density Residential (RH). This designation is intended to allow a variety of higher density housing types, including townhouses, apartments, and mobile home parks on sites that are large and provide important open space or large properties where the City wishes to see creative planning and design. It is assigned primarily to larger parcels where innovative site design can provide for a mix of housing types, aesthetic and functional open space areas, and other features that enhance the development and the neighborhood. With issuance of a conditional use permit, limited neighborhood-serving commercial uses are permitted, such as convenience stores, cafés and restaurants located primarily on individual parcels or in small clusters of retail establishments. The allowable density range is 10 to 15 units per acre. Residential densities above 6 units per acre may only be permitted for projects which include open space, provide affordable housing, clustered housing, energy conservation, and/or aesthetically pleasing design features.

As an affordable senior apartment project with extensive open space the project meets the requirements of the definition of the Land Use Designation in the Coastal General Plan.

The following Coastal General Plan Policies in the Land Use Element are also relevant to the project:

Policy LU-5.7: Adequate parking should be provided to serve coastal access and recreation uses to the extent feasible. Existing parking areas serving recreational uses shall not be displaced unless a comparable replacement area is provided.

There is no Coastal Access available or proposed from this site so that project will not have an impact on coastal access.

Policy LU-10.1: Preserve Neighborhoods: Preserve and enhance the character of the City's existing residential neighborhoods.

The proposed project would be located within an existing neighborhood which includes a number of senior affordable housing apartments and would be compatible with this existing development patterns.

Policy LU-10.2: Locating New Development. New residential, commercial, or industrial development, except as otherwise provided in the LCP, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. Where feasible, new hazardous industrial development shall be located away from existing developed areas.

The proposed project would be located in an area already surrounded by development on three sides. The project complies with this policy.

Policy LU-10.3: The location and amount of new development shall maintain and enhance public access to the coast by: (1) facilitating the extension of transit services where feasible; (2) providing non-automobile circulation within the development that includes circulation connections outside of the development; (3) assuring that the recreational needs of new residents will be supported by onsite recreational facilities and/or off-site local park recreational facilities to ensure that coastal recreation areas are not overloaded; and (4) utilizing smart growth and mixed-use development concepts where feasible to improve circulation and reduce auto use, where such auto use would impact coastal access roads.

- The proposed project could enhance transit services to the site and Special Condition 26 is included to require the applicant to work with MTA to determine if the addition of a transit stop at the property is warranted and feasible.
- 2. The project provides pedestrian and bicycle access in and through the project.
- 3. The project site plan includes community gardens, picnic tables and open space to meet the recreational needs of the residents.
- The proposed project includes a reduced number of parking spaces (per density bonus law) which will reduce parking and auto use. The project complies with this policy.

Policy LU-10.4: Ensure Adequate Services and Infrastructure for New Development. Development shall only be approved when it has been demonstrated that the development will be served with adequate water and wastewater treatment. Lack of adequate services to serve the proposed development shall be grounds for denial of the development.

As analyzed later in the report under the CDP section this project can be served by existing services. As conditioned the project complies with this policy.

Policy LU-10.5: Minimize Impacts on Air Quality and Green House Gasses. New development shall: 1) be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development, and 2) minimize energy consumption and vehicle miles traveled.

Fort Bragg is compliant with Air Quality standards except for PM-10. The proposed project would not include any wood burning stoves and so would not contribute further to PM-10 emissions. The state Building Code requires multifamily projects to utilize the lowest GHG producing HVAC systems and on-site PV for energy use reductions. This project would be located in a city and so would minimize vehicle miles traveled relative to other projects in the County. The project complies with this policy.

Policy LU-10.6: Protect Special Communities. New Development shall, where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

The proposed project is not located in a special community or neighborhood as defined by the City's LCP.

Policy LU-10.7: Priority for Coastal Dependent Uses. Coastal-dependent developments shall have priority over other developments on or near the shoreline. Except as provided elsewhere in this division, coastal-dependent developments shall not be sited in a wetland. When appropriate, coastal-related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support.

The proposed project is not near the shoreline. There is no wetland on site. Residential housing can be considered coastal-related development because the City has a severe housing crisis and working families (most of whom work in the coastal dependent hotel, restaurant, retail, fishing and logging sectors) cannot find housing and so many coastal related businesses cannot expand or attract/retain employees.

COMPLIANCE WITH CLUDC ZONING STANDARDS

DEVELOPMENT STANDARDS

The proposed project complies with all required zoning standards for the High Density Residential. See Table 2. for specific standards and project details.

Table 2 – Compliance with Zoning Standards				
Development Aspect	Zoning Requirement (RH)	Proposed Project	Compliance	
Front setback	20 feet	20 feet	Yes	
Rear Setback	10 feet	105 feet	Yes	
Side Setback	20 ft for multi- story buildings of 3 or more units on a site abutting an RS or RL zone		Yes	
Site Coverage	70%	51%	Yes	
Height Limit	35 feet	42' 7" feet	Yes, per Inclusionary Housing Incentive	
Floor Area Ratio (FAR)	No limitation for residential projects	0.36 (47,100/130,550SF)	Yes	
Density	10 to 15 units/acre	16.39 units/acre.	Yes, per State Density Bonus Law	

SITE STANDARDS

Parking

Seventy-two parking spaces are proposed for the project at a rate of 1.5 spaces/unit. As a 100% affordable project, the applicant is eligible for State Density Bonus Law parking requirements. State Density Bonus Law (65915p1) requires affordable housing projects to meet the following minimum parking ratios:

- (A) Zero to one bedroom: one onsite parking space
- (B) Two to three bedrooms: one and one-half onsite parking spaces, which requires

Per State Density Bonus Law, the City can only require the following parking

- Forty-one 1-bedroom units = 41 parking spaces
- Eight 2-bedroom units = 12 parking spaces

Maximum required parking = 53 parking spaces. The applicant has achieved compliance with Density Bonus Law parking requirements. The Planning Commission can request a special condition to reduce the parking provided to 53 spaces.

An analysis of the parking lot's conformance with the CLUDC follows:

 ADA. Three of the parking spaces are designated as ADA spaces, and only two are required by CLUDC Chapter 17.36.

- **EV.** California's CalGreen code requires, for new multifamily projects, that 10% of parking spaces be EV-capable and 40% of parking spaces be EV-ready. The applicant has proposed to meet these requirements with 31 EV parking spaces, which meets this requirement.
- **Bicycles.** The applicant's site plan includes 18 bicycle parking spaces, which is exceeds the requirement.
- **Motorcycles.** One motorcycle parking space is required for every 50 vehicle spaces provided.

Special Condition 1: Prior to the issuance of the building permit, the applicant shall submit a revised parking plan with one motorcycle parking space for approval by the Community Development Director. The motorcycle parking spaces can replace a regular parking space. If the applicant chooses to reduce the amount of parking to the minimum required per State Density Bonus Law, the applicant shall resubmit the site plan to the Director of Community Development for approval.

Parking Lot Zoning Standards. The proposed project complies with all but one of the required standards for parking lots as noted in Table 4 below.

Table 4: Development Standards for Proposed Parking Lot			
Develop- ment Standards	Requirements	Proposal	
Parking Lot Visibility	Section 17.42.120 of the CLUDC requires that "off street parking be located so that it is not visible from the street fronting the parcel."	Yes. The residential parking is located to the north and east of the residential building. Hazelwood is a dead-end street with few parcels fronting the street. Given the need for seniors to readily access their units, the parking location can be found to be in conformance with this requirement.	
Parking Space Dimension s	Ninety-degree angle parking should have a minimum space width of 9 feet and a minimum space depth of 18 feet.	Yes. The proposed parking lot offers 9-foot-wide spaces and a space depth of 18 feet.	
Driveway width and depth	The minimum driveway width for 90-degree angle parking is 23 feet.	Yes. The proposed parking lot driveway width is 26 feet.	

Driveway Cueing Area	Section 17.36.090 B1 requires "A nonresidential development that provides 50 or more parking spaces shall have access driveways that are not intersected by a parking aisle, parking space, or another access driveway for a minimum distance of 20 feet from the street right-of-way, to provide a queuing or stacking area for vehicles entering and exiting the parking area."	Yes. The parking lot entrances are located in back of the right of way by 27 feet, in compliance with this requirement. Moura Senior Housing has a drive way located 23 feet from the northern most driveway into the parking lot. Currently this area has extensive shrubs and trees that inhibit visibility. See Special Condition 2.
Distance from Street Corners	Per 17.36.100B1 Each driveway shall be separated from the nearest street intersection as follows, except where the City Engineer allows less separation: 1. A minimum of 150 feet from the nearest intersection, as measured from the centerline of the driveway to the centerline of the nearest travel lane of the intersecting street	The project complies with this requirement. The driveway on the northeast side of the parcel is 395 feet away from the intersection with South Street.
Parking Lot Landscaping	Per section 17.34.050C5a, Multifamily, commercial, and industrial uses shall provide landscaping within each outdoor parking area at a minimum ratio of 10 percent of the gross area of the parking lot. Location of landscaping. Landscaping shall be evenly dispersed throughout the parking area, as follows: i) Orchard-style planting (the placement of trees in uniformly spaced rows) is encouraged for larger parking areas. ii) Parking lots with more than 50 spaces shall provide a concentration of landscape elements at primary entrances, including, at a minimum, specimen trees, flowering plants, enhanced paving, and project identification. iii) Landscaping shall be located so that pedestrians are not required to	The proposed site plan includes 19,000 SF of parking lot and 9,500 SF of landscaped area, which exceeds the minimum landscaping requirement of 1,900 SF. i) The landscaping plan includes redwoods, California Sycamore, and shore pines planted throughout the parcel and parking lot as required. ii) Landscaping is not concentrated at the entrance to the property. See Special Condition 3. iii) Landscaped areas do not interfere with pedestrian

cross unpaved landscaped areas to	access	throughout	the
reach building entrances from parked	parking lo	t and the proje	ect.
cars. This shall be achieved through			
proper orientation of the landscaped			
fingers and islands, and by providing			
pedestrian access through landscaped			
areas that would otherwise block direct			
pedestrian routes.			

The project site plan complies with most of the site development standards for the parking lot. The Special Conditions below are recommended to address deficiencies:

Special Condition 2: The trees/bushes between Moura Senior Apartments' driveway and the proposed driveway shall be removed to facilitate visibility between the two driveways. All replacement plantings shall be native plants with a mature height of less than 42 inches.

Special Condition 3: The applicant shall install 50 SF of shrubs and grasses at the parking lot entrance. The parking lot entrances shall include enhanced paving (stamped and colored) crosswalk. These items will be installed prior to the issuance of occupancy permit.

Fencing & Screening

The applicant has proposed a 6-foot-high wood fence along the southern and northern property boundaries. This complies with the zoning standards for fencing.

Landscaping

The submitted landscaping plan includes 34 trees as follows: 14 parking lot shade trees and 20 accent trees. The landscaping plan includes 3,190 SF of common open space, 5,200 SF of building landscaping and 9,500 SF of parking lot and entryway landscaping.

Table 5: Landscaping & Open Space			
	Landscaping		
Parking Lot Landscaping	9,491 SF		
Common Open Space: Dog Park, Picnic Tables, Community Gardens	3,190 SF		
Building Landscaping	5,200 SF		
Total	17,881 SF		
Naturalized Open space	40,000 SF		
Total	57,000 SF		

The preliminary landscaping plan is in compliance with the City's CLUDC landscaping requirements and the open space policies of the Coastal General Plan, except that no details are shown for the shrub and ground cover category.

Special Condition 4: Prior to the issuance of Building Permits, the applicant shall submit a revised landscaping plan for review and approval by the Community Development Director. The revised landscaping plan shall identify native California shrubs and ground covers for the proposed landscaped areas of the project site.

Lighting

The CLUDC regulates outdoor lighting fixture height, energy efficiency and light spillover onto adjoining properties. The applicant has submitted light fixture specifications, and the selected lights are night sky compliant and the light standards are 15' which complies with the maximum height of 16 feet. The lighting plan illustrates that light does not leave the property at appreciable lumens as required by Policy CD-1.9.

Solid Waste Recycling & Material Storage

The site plan includes two solid waste dumpster enclosures, one near the south-west corner of the building and the other near the north east corner of the building. The design of the solid waste enclosures includes sufficient space for trash, recyclable and organic waste collection and storage. Additionally, the enclosures are designed to be secure against animal intrusion. However, it is not clear from the plan set that the trash enclosures are compatible with the appearance of the units, including using the same materials.

Special Condition 5: The applicant shall submit, for approval by the Director of Community Development, an elevation of the proposed trash enclosures which illustrates that they are clad in substantially similar materials/colors as the building.

USE PERMIT ANALYSIS

LAND USE

Multi-family housing requires a Use Permit in the RH (High Density Residential) zoning district. The Use Permit analysis is included later in this report.

COMPLIANCE WITH MULTIFAMILY REQUIREMENTS

The Coastal LUDC section 17.42.120 includes specific standards for multifamily projects and the project's compliance with each standard is analyzed in the table below.

Table 4: Compliance with CLUDC Multifamily Standards

	npliance with CLUDC Multifami		
Standard	Requirement	Project	Complies
Front Set Back	No more than 40% of the front setback may be paved.	Less than 12% of the front setback is paved with drive isles.	Yes
Open Space	Section 17.42.120 of the CLUDC requires that multifamily projects provide permanently maintained outdoor open space for each dwelling unit (private space) and for all residents (common space). Projects of more than 11 units must provide 100 SF of common open space/unit. Additionally, each unit should have either a 150-SF private patio or a 100-SF balcony.	Public Open Space. The project includes 3,190 SF of common landscaped open space but 4,900 SF is required. The project does not meet public open space requirements. The CLUDC requires that the common open space be accessible, continuous and usable, and the proposed project provides this in a picnic area, raised garden beds and pet area. Private Open Space. All ground	See Special Condition 6.
		floor units include a 150-SF patio as required by the code. All other units have a 100 SF balcony.	
Storage	Section 17.42.120 of the CLUDC requires that multifamily projects provide a minimum of 100 cubic feet of storage space outside of the unit.	Each unit includes an individual private storage space accessible from outside the unit's patio.	Yes
Window Orientation	Section 17.42.120 of the CLUDC requires that windows that are 10 feet or less from another unit should be located to provide privacy between units.	No units face other units in the project.	Yes
Accessory Structures	Accessory structures and uses (e.g., bicycle storage, garages, laundry rooms, recreation facilities, etc.) shall be designed and constructed with an architectural style, exterior colors and materials similar to the structures in the project containing dwelling units.	Please see special condition 7.	Yes

Outdoor Lighting	Outdoor lighting shall be installed and maintained along all vehicular access ways and major walkways, in compliance with 17.42.120F	The lighting plan complies with City requirements	Yes
Building Facades Adjacent to Streets	At least 75 percent of the facade of each building adjacent to a public street is occupied by habitable space with windows.	All of the buildings facing the street include 100% habitable space.	Yes
	Each facade adjacent to a street shall have at least one pedestrian entry into the structure.	The façade facing Hazelwood does not have a pedestrian entry and it would eliminate the private patio for two of the units facing Hazelwood to add an entry. The main building entryway is visible in profile from Hazelwood.	Inclusionary

Special Condition 6: The Building Permit Plan Set shall include a site plan that illustrates an additional 710 SF of public open space. This may be achieved either with an expansion of the existing open space facilities or by adding a walking trail to the open space to the south of the building.

Special Condition 7: The applicant shall submit elevations for all accessory structures that illustrate finishes and colors that are similar to those of the apartment building for approval by the Community Development Director prior to issuance of the Building Permit.

Use Permit Findings Analysis. The Planning Commission must make the following findings to approve the Use Permit for a multifamily housing development in the RH zoning district.

- 1. The proposed use is consistent with the General Plan, any applicable specific plan, and the Local Coastal Program;
 - As detailed throughout this report and as conditioned, the project is consistent with the Coastal General Plan and Local Coastal Program.
- 2. The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Development Code and the Municipal Code; The proposed use is allowed with Use Permit approval in the High Density Residential Zoning District and, as conditioned and analyzed in this report, the use complies with the CLUDC and the Municipal Code.
- 3. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and future land uses in the vicinity;

The vicinity includes the following residential land uses: two large senior housing developments to the north, two large multifamily housing developments also to the north, and a number of single-family homes to the west and south. There are two nearby nearly vacant parcels to the east and south. The proposed apartment units would be compatible with current multifamily residential uses in terms of design, location, size and operating characteristics. The project is large at 47,000 SF. The single-family homes located directly to the west of the proposed project could experience additional noise from the project parking lot. The closest home would be about 250 feet from the parking lot. Vehicle door slams, the loudest vehicle noise in a parking lot, are 64 decibels (at 50 feet) or 50 decibels at the closest house (250n feet). 50 decibels is considered "Quite" as follows: "50 dB is as loud as a quiet conversation, a quiet suburb, a quiet office, or a quiet refrigerator." The proposed project would not place an incompatible sound burden on the neighbors.

4. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities (e.g., fire protection, police protection, potable water, schools, solid waste collection and disposal, storm drainage, wastewater collection, treatment, and disposal, etc.), to ensure that the type, density, and intensity of use being proposed would not endanger, jeopardize, or otherwise constitute a hazard to the public interest, health, safety, convenience, or welfare, or be materially injurious to the improvements, persons, property, or uses in the vicinity and zoning district in which the property is located.

The proposed site is a flat lot which is easily accessible to emergency vehicles. The project site can effectively access sewer, water and storm drain utilities from the site per the Public Works Department and as required by Special Conditions in this report. The proposed site plan provides for effective vehicular access and solid waste collection. The project includes adequate stormwater filtration and conveyance systems.

DENSITY BONUS ANALYSIS

The CLUDC includes inclusionary housing requirements for projects of more than seven units. The proposed project would be 100% affordable and it exceeds the minimum affordability requirement (15%) of the City's inclusionary ordinance.

As 100% of the units are affordable to seniors with low incomes, the project qualifies, per State law, for a 50% density bonus, a parking reduction, and up to three planning incentives (Government Code 65915.(a)(3)(D)).

Regulatory Agreement. To ensure ongoing affordability, the applicant must enter into an Inclusionary Housing Regulatory Agreement per section 17.32.080 with the City of Fort Bragg. Special Condition below sets the timing and process to enter into the regulatory agreement.

Special Condition 8. Prior to issuance of the Certificate of Occupancy the applicant shall complete and enter into an Inclusionary Housing Regulatory Agreement per all of the requirements of section 17.32.080B with the City of Fort Bragg. The regulatory agreement will regulate 48 units as affordable to low income seniors.

Density Bonus Calculation. With current zoning, the project is eligible for a maximum of 44.9 units (15 units/acre X 2.997 acres). Additionally, per Government Code 65915(f)(2), the applicant is eligible for a 50% density bonus for agreeing to provide 100% of units at a rent affordable to low-income households. Per State Density Bonus law, the applicant could build as many as 67 units, and the applicant has requested 49 units (16.39 units/acre), which is a 9% density bonus and is permissible per state Density Bonus Law.

Inclusionary Housing Incentives. Furthermore, the applicant is allowed to request three zoning incentives from the City Council per Government Code Section 65915 (d)(2)(C). Accordingly, the City Council considered this project, and pre-approved the following two zoning incentives requested by the applicant:

- An increase in the maximum height from 35 feet to 43 feet to accommodate the elevator shaft only.
- Relief from the requirement to have an egress door visible from the street.

MJC recommends approval of the incentive based on the following findings:

- The requested incentives are required in order to provide for affordable housing costs as defined in Health and Safety Code Section 50052.5, or for rents for the targeted units to be set in compliance with Government Code Section 65915(c).
- 2. The concession or incentive will not have a specific adverse impact, as defined by Government Code Section 65589.5(d)(2), upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low and moderate income households.
- 3. The City has determined that the development incentives requested will not have any adverse effects on coastal resources.
- 4. The project is not feasible without the incentive.
- 5. The Fort Bragg City Council has identified affordable housing development as a top priority in the City's Strategic Plan and set a goal to develop 200 units of housing in Fort Bragg by 2026.
- 6. The Coastal Commission implements the California Coastal Act of 1976, and Section 30604(f) of the Coastal Act requires the Commission to encourage housing opportunities for persons of low or moderate income.

"Section 30604 (f) The commission shall encourage housing opportunities for persons of low and moderate income. In reviewing

residential development applications for low- and moderate-income housing, as defined in paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code, the issuing agency or the commission, on appeal, may not require measures that reduce residential densities below the density sought by an applicant if the density sought is within the permitted density or range of density established by local zoning plus the additional density permitted under Section 65915 of the Government Code, unless the issuing agency or the commission on appeal makes a finding, based on substantial evidence in the record, that the density sought by the applicant cannot feasibly be accommodated on the site in a manner that is in conformity."

- 7. The State of California has passed regulations to streamline and facilitate the construction of market rate and affordable multifamily developments including regulations that limit the ability of local jurisdictions to deny multifamily housing projects based on subjective criteria and the requirement to provide housing incentives and density bonuses for project that include affordable housing. Statewide housing laws, such as Density Bonus Law, the Housing Accountability Act, and the Housing Crisis Act, apply in the coastal zone in ways that are also consistent with the Coastal Act.
- 8. There are relatively few large parcels in Fort Bragg that support multifamily housing, as identified in the City's vacant parcel inventory. Most vacant parcels that can accommodate multifamily housing have an environmental constraint. This parcel does not have an environmental constraint.

COASTAL DEVELOPMENT PERMIT ANALYSIS

This section analyzes Coastal Resources (visual, archaeological, biological and public access) for the Coastal Development Permit for the project.

Visual Resources

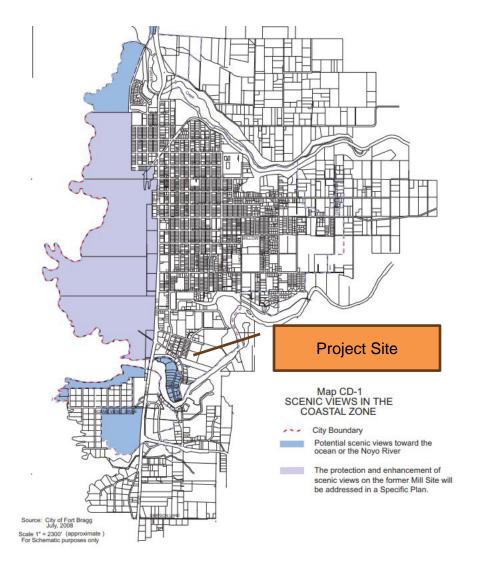
The project site is located east of Highway 1 and General Plan Policy CD-1.1 is not relevant to this project.

Policy CD-1.1: Visual Resources: Permitted development shall be designed and sited to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance scenic views in visually degraded areas.

Program CD-1.1.1: Require Design Review of new development or significant expansion to existing development located in areas designated "Potential Scenic Views Toward the Ocean or the Noyo River" on Map CD-1: Scenic Views in the Coastal Zone.

Policy CD-1.3: Visual Analysis Required. A Visual Analysis shall be required for all development located in areas designated "Potential Scenic Views Toward the Ocean or the Noyo River" on Map CD-1 except development listed in below.

The proposed project is not located in an area identified as a potentially scenic view on Map CD-1 of the Coastal General Plan (see next page). There are no views towards the ocean or Noyo River across the property from a public right of way.



The Coastal General Plan also includes the following additional visual resource policy:

Policy CD-1.4: New development shall be sited and designed to minimize adverse impacts

on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent.

Hazelwood is not a scenic road. A "Public Viewing Area" is defined in the City's Coastal General Plan as follows:

Public Viewing Area. A location along existing scenic public roads and trails or within public parklands or beaches where there are scenic views of the beach and ocean, coastline, mountains, ridgelines, canyons and other unique natural features or areas.

None of these features are visible on the property, through the property, or from the property.

Policy CD-2.5 Scenic Views and Resource Areas: Ensure that development does not adversely impact scenic views and resources as seen from a road and other public rights-ofway.

This property is not a scenic resource and there are no scenic views across to or from the property. The California Coastal Act defines scenic resources as the visual and scenic qualities of the coast, including beaches, headlands, bluffs and more. The Act also considers cultural features, historic sites and natural points of interest as scenic resources. The empty field with a few trees does not constitute a scenic resource per this definition of the Coastal Act.

Policy CD-1.5: All new development shall be sited and designed to minimize alteration of natural landforms by:

- 1. Conforming to the natural topography.
- **2.** Preventing substantial grading or reconfiguration of the project site.
- **3.** Minimizing flat building pads on slopes. Building pads on sloping sites shall utilize split level or stepped-pad designs.
- **4.** Requiring that man-made contours mimic the natural contours.
- **5.** Ensuring that graded slopes blend with the existing terrain of the site and surrounding area.
- **6.** Minimizing grading permitted outside of the building footprint.
- 7. Clustering structures to minimize site disturbance and to minimize development area.
- 8. Minimizing height and length of cut and fill slopes.
- **9.** Minimizing the height and length of retaining walls.

The project site is flat and will not require alterations of the natural landform of the site.

Cultural Resources

An archeological survey was completed for the site and the archaeologist concluded

that there is no evidence of archaeological sites or other historic resources. The survey provided no special direction for the handling of development in relation to cultural resources other than to recommend the City's standard Condition 6, which defines the standard required response if unknown resources are discovered during construction. No impacts to cultural resources are expected as a result of the project. The City of Fort Bragg consulted with the Sherwood Valley Band of Pomo, which has pre-historic, historic and present-day connections to the Fort Bragg Area. SVBP has not requested Native American monitoring during ground-disturbing activities, however is cultural resources or human remains are uncovered the applicant shall abide by the following special conditions:

Special Condition 9: If cultural resources are encountered during construction, work on-site shall be temporarily halted within 50 feet and marked off of the discovered materials, and workers shall avoid altering the materials and their context until a qualified professional archaeologist and tribal monitor has evaluated the situation and provided appropriate recommendations. Project personnel shall not collect or move cultural resources. No social media posting.

Special Condition 10: If human remains or burial materials are discovered during project construction, work within 50 feet of the discovery location, and within any nearby area reasonably suspected to overlie human remains, will cease (Public Resources Code, Section 7050.5). The Mendocino County coroner will be contacted. If the coroner determines that the remains are of Native American origin, it is necessary to comply with state laws regarding the disposition of Native American remains (Public Resources Code, Section 5097).

Environmentally Sensitive Habitat Areas, and Wetland and Riparian Protection A biological report was completed for the proposed project site in 2023. The survey found no wetlands or ESHA on site as follows:

- Stream, Rivers, and Anadromous Fish Habitat: No watercourses were present on or adjacent to the Study Area.
- **Riparian Habitat:** No riparian habitats or wet areas were present on or adjacent to the Study Area.
- Wetlands: The closest National Wetland Inventory (NWI) mapped wetland is a Freshwater Forested/Shrub Wetland approximately 220 feet from the Study Area. No wetlands, as defined by the USACE or CCC, were present within the Study Area.
- Other ESHA: Other ESHA's such as coastal sand dunes, pygmy forest, rookeries, and marine mammal haul outs are not present within the Study Area.
- **Sensitive Natural Communities:** No sensitive natural communities were identified during the site visits within or adjacent to the Study Area.

The study identified one non-sensitive natural community "Avena spp. - Bromus spp. Herbaceous Semi-Natural Alliance: Wild oats and annual brome grasslands" on site. Non-sensitive natural communities are not afforded special protection under CEQA, and/or

other Federal, State, and local laws, regulations, and ordinances. The report included no recommendations for the non-sensitive natural community on site.

The project report identifies a possibility for various special status bees, reptiles and bird species but did not identify any during field surveys except for an osprey that flew overhead.

The 2024 biological report included the following relevant special conditions:

Special Condition 11: The applicant shall complete a pre-construction bird survey within and adjacent to any proposed disturbance area within the Project area for nesting raptors and other protected bird species within 14 days prior to disturbance. The nesting survey radius around the proposed disturbance shall be identified prior to the implementation of the protected bird nesting surveys by a California Department of Fish and Wildlife qualified biologist and shall be based on the habitat type, habitat quality, and type of disturbance proposed within or adjacent to nesting habitat, but should be a minimum of 250 feet from any area of disturbance. If any nesting raptors or protected birds are identified during such pre-construction surveys, trees, shrubs or grasslands with active nests should not be removed or disturbed. A no disturbance buffer shall be established around the nesting site to avoid disturbance or destruction of the nest site until after the breeding season or after a qualified wildlife biologist determines that the young have fledged. The extent of these buffers shall be determined by a CDFW qualified wildlife biologist and shall depend on the special-status species present, the level of noise or construction disturbance, line of sight between the nest and the disturbance, ambient levels of noise and other disturbances, and other topographical or artificial barriers. These factors shall be analyzed by a qualified wildlife biologist to make an appropriate decision on buffer distances based on the species and level of disturbance proposed in the vicinity of an active nest.

Special Condition 12: The site shall be landscaped with locally native beefriendly plants and shrubs, such as: Sticky Monkeyflower (Mimulus aurantiacus) and Woolly Bluecurls (Trichostema lanatum). Coffeeberryshrubs (Rhamnus californica), manzanitas (Arctostaphylos sp) and ceanothuses California Poppy (Eschscholzia californica), California Aster (Aster chilensis). The applicant shall provide a revised landscaping plan that includes these plants and shrubs.

Special Condition 13. Furthermore, the open field to the south of the development shall only be mowed in summer, when there is fire risk, to provide native bees with habitat in the early spring. If native bees are observed the applicant shall install a native bee hotel.

Several policies within the Coastal General Plan, specifically CD-1.11, OS-5.1 and OS-5.2, require that existing native trees and vegetation should be preserved and protected,

as feasible.

Policy CD-1.11: New development shall minimize removal of natural vegetation. Existing native trees and plants shall be preserved on the site to the maximum extent feasible.

Policy OS-5.1 Native Species: Preserve native plant and animal species and their habitat.

Policy OS-5.2: To the maximum extent feasible and balanced with permitted use, require that site planning, construction, and maintenance of development preserve existing healthy trees and native vegetation on the site.

The site has three trees that would be removed as part of the project. all three trees are non-native Monterey Cypress which are considered locally invasive and so removal of these trees and replacement with the trees selected for the landscaping pallet would increase the number of native trees on the property.



As conditioned, the project would include entirely native plant landscaping, and as such will "preserve native plant species and the habitats" on site (the species if not the exact individual plants).

General Plan Policy OS-5.4 prohibits the planting of non-native invasive plants. As

conditioned no such plants are proposed form the project site.

Policy OS-5.4: Condition development projects, requiring discretionary approval to prohibit the planting of any species of broom, pampas grass, gorse, or other species of invasive non-native plants deemed undesirable by the City.

Coastal Commission staff have requested a special condition to explicitly prohibit these plants in the future.

Special Condition 14: The applicant shall not plant or allow any volunteer growth of any species of broom, pampas grass, gorse, or other species of invasive non-native plants listed on the California Invasive Plant Council (CALIPC) website on the project site.

Public Access

Chapter 17.56 of the Coastal Land Use and Development Code outlines public access requirements:

17.56.030: Access Location Requirements. Vertical, lateral, and/or blufftop access shall be required by the review authority in compliance with this Chapter, in the locations specified by the Open Space, Conservation, and Parks Element of the Coastal General Plan.

The project is not in an area used by the public to access the coast nor is it identified in the Coastal General Plan as a location for public access to the Noyo River (see Map OS-3 of the Coastal General Plan).

Special Communities, Neighborhoods, and Recreational and Visitor Serving Uses The project will not impact a special community or neighborhood nor displace any potential recreational or visitor-serving uses.

Adequacy of water supply, sewage disposal, solid waste, and public roadway capacity

The following Coastal General Plan policy requires the City to determine if the project will be served adequately with existing utilities:

Policy PF-1.3: Ensure Adequate Service Capacity for Priority Uses.

- a. New development that increases demand for new services by more than one equivalent dwelling unit (EDU) shall only be permitted in the Coastal Zone if,
 - Adequate services do or will exist to serve the proposed development upon completion of the proposed development, and
 - Adequate services capacity would be retained to accommodate existing, authorized, and probable priority uses upon completion. Such priority uses include, but are not limited to, coastal dependent industrial (including commercial fishing facilities), visitor serving, and recreational uses in commercial, industrial, parks and recreation, and public facilities districts. Probable priority uses are those that do not require an LCP

amendment or zoning variance in the Coastal Zone.

b. Prior to approval of a coastal development permit, the Planning Commission or City Council shall make the finding that these criteria have been met. Such findings shall be based on evidence that adequate service capacity remains to accommodate the existing, authorized, and probable priority uses identified above.

As analyzed and conditioned below, the 49-unit apartment project will be served by existing services. Per the Department of Public Works, the proposed project shall pay required capacity fees as outlines in the special condition below:

Special Condition 15: Payment of Drainage, Water, Sewer, Police Facility and Fire Facility Capacity Fees will be required prior to issuance of the building permit. *Estimated* Fees are shown below:

- a. Water Capacity Fees for 49 units is estimated at \$113,358.56.
- b. Sewer Capacity Fees for 49 units is estimated at \$93,364.60.
- c. Drainage Fee is estimated at \$0.75 per SF of impervious surface. At 50,600 SF of impervious, the fee is estimated to be \$37,987.50.
- d. Police Facilities Fees for approx. 32,305 SF residential space is estimated at \$10,498.80.
- e. Fire Facilities Fees for approx. 32,305 SF residential space is estimated at \$6,531.42.

Actual fees will be determined at the time of building permit submittal and will be based on the fee schedule in effect at the time of submittal.

Special Condition 16: All materials, workmanship, and construction of the utilities shall conform to the City of Fort Bragg Standard Specifications or an approved alternate. All public improvements to drainage conveyance, sewer and water systems shall be dedicated to the City.

WATER SUPPLY

The City's ongoing need for water storage during severe drought conditions has been partially addressed with the construction of the City's Summers Lain Reservoir, which provides an additional 15 million gallons (MG) of raw water storage to help ensure a reliable water supply during the late summer months when flows are low at the City's three water sources.

On a daily basis, the City currently produces about 50 gallons of treated water per resident or 110 gallons per day per single family home. However, residents in apartments utilize less water (80 gallons/unit/day) than single family homes, due to less outdoor watering. The City's Impact Fee Nexus Study (2024) found that apartments utilize 80 gallons per day/unit, and this number has been used in the table to estimate total water demand for this project.

Water Budget Proposed 49-unit Project at 860 Hazelwood

Unit Size	Number of Units	Estimated Residents/ Unit	Total Water Use/ Year (gallons)	Total Water Use/Day (gallons)
1-bedroom	41	1.5	1,197,200	3,280
2-bedroom	8	3	233,600	640
Total	49	85.5	1,430,800	3,920

The 49 new units would serve a maximum of 86 residents, who would use a total of 1.4 million gallons/year. This new project increases water demand by 0.7% for the City's Water Enterprise.

A number of new water systems have recently been added to the City's water system, which significantly exceed the new water demand created by the proposed project.

- 1. Package Desalination Plant. The City has already constructed and currently operates a package desalination system which allows the City to pump brackish water from the Noyo River during high tides and low stream flows, which significantly increases the time periods in which the City can collect water while reducing the negative impact of water withdrawal during extreme drought conditions (low water flow on the river). The desalination system can process up to 144,000 gallons per day in drought conditions, which is quite significant as total water demand in a drought year is about 550,000 gallons per day. With the package desalination plant, the City can serve this project without withdrawing additional water during low flow conditions when the tide is out, which is the only time period with pumping limitations. Instead, the City can withdraw more water during high tides when the water is brackish and when there are no impacts on fish. Additionally, the City can withdraw water during high tides and store it in the raw water pond for future treatment thereby ensuring adequate water availability even when there are multiple extremely low tides in a row during any given time period.
- 2. Water Treatment Plant Upgrade. The City's water treatment system was recently upgraded and has sufficient plant capacity to increase water production by an additional 102% (or double the amount of water currently utilized).
- **3. Water meter conservation project.** This project started in 2021 will be completed in 2025 and result in conservation of 20 million gallons of water per year or 54,795 gallons per day.
- **4.** Raw Water Line Replacement. The City has started construction to replace the raw water line from the unnamed creek on Simpson Lane to the raw water ponds. This project

will be completed in 2025 and is designed to eliminate significant water leaks from the distribution system. This project will eliminate more than 1 MG of water loss/year from the raw water system or about 2,740 gallons per day.

The Table below summarizes the completed and underway water projects and total water availability increases for each project. As illustrated in the table, these projects would result in an additional 201,534 gallons of water available per day, which would more than offset the proposed project's water demand of 3,920 gallons per day. The already completed package desalination plant is sufficient, by itself, to provide 36 times more water than is needed by the proposed development.

Completed Water Availability Projects					
			Annual		
			Water	Daily Water	
Project			(gallons)	(Gallons)	
Package Des	salination P	52,560,000	144,000		
Raw Water L	ine Replace	1,000,000	2,740		
Water Meter	Conservation	on Project (2025)	20,000,000	54,795	
Subtotal			73,560,000	201,534	
Proposed Project Projected Water Use (2026)			(1,430,800)	(3,920)	
Net Availabl	e Water Po	st Project	72,129,200	197,614	

Additionally, the City has started planning and permitting for the following additional projects:

- Water storage project. This new facility, undergoing permitting (EIR), may be built in 2026/27 and would consist of three surface reservoirs with a total of 135-acre feet (60 million gallons) of new water storage, which is sufficient water storage to provide all water needs of the City for four months, without any further water withdrawal from the City's three water sources. This water storage is intended to meet all City water needs in severe drought conditions.
- Offshore desalination wave energy buoy. This pilot project is undergoing permitting and would provide water to the Wastewater Treatment Facility (WWTF). Upon completion, this project will produce half a million gallons of desalinated water/year. The MND has been completed and circulated. Permitting and installation is anticipated in 2025. Once the pilot project is complete the City will evaluate it to determine if this is a good long-term water solution that may be scaled up.
- Recycled Water Project. This project could provide up to 182 million gallons
 of recycled water per year. An RFP has been let to complete a feasibility study
 for this project.

The table below illustrates the net water impact of three proposed projects that are in the feasibility, design or permitting stage.

Planned & In-Permitting Water Projects				
Project	Annual Water (gallons)	Daily Water (Gallons)		
Water Storage Project	60,000,000	164,384		
Water Desalination Bouy	500,000	1,370		
Recycled Water Project	182,000,000	498,630		
Total	242,500,000	664,384		

Water Service. The project is served by a water main that is located on Hazelwood. Public Works staff recommend the following Special Conditions:

Special Condition 17: Prior to the issuance of the building permit, the final utility hookup configuration shall be approved by the Public Works Director or designated staff.

Special Condition 18: The exact location of the Utility hookup configuration in the City right of way shall be approved by the by the Public Works Director or designated staff at the time of review of the encroachment permit application.

Special Condition 19: The water main is located at north side of parcel and shall be extended to serve the property by the applicant. If feasible, the water main shall be looped into the existing water main on N. Harbor Drive through the property located to the south of the proposed project.

Special Condition 20: Connection fees will be assessed if the project utilizes City forces to install water or sewer services. Fees will be based on the size and the distance of the connection and will be charged the rate in effect at the time of the building permit submittal.

Special Condition 21: If the contractor installs the connection to the City water main, the work must be overseen by a certified distribution operator and all work shall be performed in compliance with water main construction standards and guidelines, including providing sufficient notice.

Special Condition 22: An approved backflow device will be required on all service connections. Contact Heath Daniels at (707) 813-8031 for specific backflow information.

Special Condition 23: The Applicant shall provide documentation that water pressures can be achieved or that they have a means (via pressure pump, tank, etc.) for enhancing their system to meet water pressure standards. Documentation may be submitted at the time of the building permit.

WASTEWATER

The City's Wastewater Treatment Plant was significantly updated in 2016 and has sufficient capacity to serve the new development.

Special Condition 24: Prior to issuance of a grading permit or building permit, the developer shall meet the following requirements:

- a. The City would prefer that the connection be made at the existing sewer manhole at the intersection of N Harbor and the alley west of Woodward so that the sewer may flow entirely by gravity to the treatment plant, if gravity flow cannot be achieved by connecting to the existing sewer main in Hazelwood. The exact location of the utility hookup configuration in the City right-of-way shall be approved by the Public Works Director or designated staff at the time of review of the encroachment permit application.
- b. Sewer cleanouts will be required on all laterals per City Standard 309-310.
- c. The new sewer main shall be adequately sized to achieve standards established by the FBMC and reasonably designed to convey wastewater for future development of the parcel. FBMC section 14.28.040 states that the minimum size of a sewer lateral shall be 4 inches in diameter. The minimum slope of a sewer lateral shall be two feet per 100 feet (2% slope). Exceptions will be reviewed and approved at the discretion of the District Manager.
- d. New wastewater laterals shall connect the development to the constructed sewer main, to the satisfaction of the Director of Public Works.
- e. All new wastewater force mains will remain in the ownership of property owner and all maintenance of associated lift stations and force main will remain the owner's responsibility.
- f. Payment of Connection fees and Capacity fees shall be made prior to the issuance of the building permit.

CIRCULATION

Public Works staff determined that a traffic study was not warranted for this project as it would not impact levels of service on highway 1 or Franklin Street. The purpose of a Traffic Study is to determine if new traffic control/safety measures are warranted.

The hazelwood senior project would be served by the following streets and intersections:

- The SR 1 (Main Street) / South Street intersection is a "tee" controlled by a stop sign on the South Street approach. A continuous TWLT lane is present on SR 1. The westbound South Street approach is a single travel lane, and a crosswalk is striped across the South Street approach. Street lights are available on each corner.
- The South Street / Franklin Street intersection is a four-way intersection controlled by

- a stop sign on northbound and southbound Franklin Street approaches. Each approach has a single travel lane. A crosswalk is striped across the north Franklin Street leg, and there is a streetlight on the northeast corner.
- The SR 1 (Main Street) / Cypress Street intersection is a four-way intersection controlled by traffic signal. Each approach has a separate left turn lane with protected left turn phasing. Crosswalks are striped on each leg of the intersection, and pedestrian indications and push buttons are present. Street lights exist on each corner.
- The Cypress Street / Franklin Street intersection is a four-way intersection controlled by an all-way stop. Separate left turn lanes are provided on Cypress Street, but the Franklin Street approaches are single lanes. Crosswalks are striped across each leg of the intersection, and there is a street light on the southeast corner.

Level of Service. "Level of Service" is a qualitative measure of traffic operating conditions whereby a letter grade "A" through "F", corresponding to progressively worsening traffic operating conditions, is assigned to an intersection or roadway segment. Table 2 presents the characteristics associated with each LOS grade. As shown in Table 2, LOS "A", "B" and "C" are considered acceptable to most motorists, while LOS "D" is marginally acceptable. LOS "E" and "F" are associated with severe congestion and delay and are unacceptable to most motorists.

Caltrans now focus on vehicle miles traveled and safety instead of LOS. Caltrans did not require a traffic study for this project and indicated that it would have minimal impacts on highway 1 intersections.

The City's General Plan still requires the City to consider LOS when considering new projects. As noted in the table below, from the Grocery Outlet EIR, these intersections currently function at LOS levels (B, C, and A) much above the Maximum allowable LOS for the intersections as noted in the column named (MIN).

EXISTING INTERSECTION LEVEL OF SERVICE

			WEEKDAY PM PEAK HOUR				SATURDAY PEAK HOUR			
			OBS	ERVED		OBS	SERVED			
				AVERAGE			AVERAGE			
				DELAY			DELAY			
INTERSECTION	CONTROL	MIN	LOS	(SEC/VEH)	MIN	LOS	(SEC/VEH)			
SR 1 - Main Street / Cypress Street	Signal	D	В	14	D^1	В	13			
Cypress Street / Franklin Street	AWS	С	В	12	С	Α	9			
SR 1 – Main Street / South Street										
Southbound left turn	WB Stop	D	В	11	$D^\mathtt{1}$	В	11			
Westbound approach			С	20		С	17			
South Street / Franklin Street										
Westbound left turn	ND/CD		Α	7		Α	7			
Eastbound left turn	NB/SB	С	Α	8	С	Α	7			
Northbound approach	Stop		В	12		В	11			
Southbound approach			В	12		В	11			

The traffic study noted that none of these intersections currently warrant a new level of traffic control (signalization or all stop signs).

Per the Institute of Transportation Engineers (ITE) publication "Trip Generation, 10th Edition" the proposed multifamily project would generate 0.54 vehicle trips/unit during peak travel hours or 26 vehicle trips total for the 49 unit project at peak hours.

Additionally, this residential apartment project would generate less than 200 vehicular trips per day per the ITI Trip Generation Manual, and this is an insufficient traffic load for the project to impact Level of Service at any of the intersections, therefore the project will not exceed current LOS limits per Policy C-1.3 of the Coastal General Plan. And Per Policy C-2.3 a traffic study was not required for this project.

Additionally, the Grocery Outlet EIR found that even with 165 trips per peak hour and over 1,094 to 1,818 trips per day, the grocery outlet would not impact traffic or LOS for any of the intersections. No signalization was warranted by that project. And the LOS did not change for any of the intersection due to this project.

TABLE 3.7-9: EXISTING PLUS GROCERY OUTLET STORE INTERSECTION LOS

			WEE	KDAY PM PEAH	Hour			SA	TURDAY PEAK	Hour	
			E.	XISTING	Ex Plu	IS PROJECT		Ex	ISTING	Ex Plu	s <i>Р</i> појест
INTERSECTION	CONTROL	Min	LOS	AVERAGE DELAY (SEC/VEH)	LOS	AVERAGE DELAY (SEC/VEH)	Min	LOS	AVERAGE DELAY (SEC/VEH)	LOS	AVERAGE DELAY (SEC/VEH)
SR 1 - Main Street / Cypress Street	Signal	D	В	14	В	14	D ¹	В	13	В	13
Cypress Street / Franklin Street	AWS	С	В	12	В	12	С	А	9	В	10
SR 1 – Main Street / South Street											
Southbound left turn	WB Stop	D	В	11	В	12	D^1	В	11	В	12
Westbound approach			С	20	С	20		С	17	С	17
South Street / Franklin Street											
Westbound left turn			Α	7	Α	7		А	7	Α	7
Eastbound left turn	NB/SB Stop	С	Α	8	Α	8	С	Α	7	Α	7
Northbound approach			В	12	В	13		В	11	В	11
Southbound approach			В	12	В	13		В	11	В	11
I .											

Based on a review of this traffic analysis for the Grocery Outlet EIR, Staff determined that a traffic study was not necessary for this project as it could not result in a drop of LOS to D or F from the current LOS of A, B and C for the various intersection turn lanes.

However, a painted crosswalk at the intersection of Hazelwood and South Street would be a good traffic safety measure that would improve pedestrian safety for residents from the project.

Special Condition 25: The applicant shall obtain an encroachment permit from the City of Fort Bragg to paint a crosswalk on South Street at the intersection with Hazelwood, per City Specifications.

Policy C-8.3: Transit Facilities in New Development. Continue to require the provision of bus stops, bus shelters, benches, turnouts, and related facilities in all major new commercial, industrial, residential, and institutional developments.

Special Condition 26: The applicant shall work with MTA to determine if the addition of a transit stop at the property is warranted and feasible. If a transit stop is feasible and desirable the applicant shall install a bus stop on the sidewalk at a location per the request of MTA prior to final of the building permit.

Policy C-9.2: Require Sidewalks. Require a sidewalk on both sides of all collector and arterial streets and on at least one side of local streets as a condition of approval for new development.

The project includes sidewalk improvements to the east side of Hazelwood Street as required.

Improvements. The proposed project will require considerable street and frontage improvements along Hazelwood Street to comply with Section 17.30.090 of the CLUDC, including: installation of sidewalk, curb and gutter along the project frontage on the east side of Hazelwood. Special conditions are recommended below to address this deficiency.

Special Condition 27: The developer shall submit to the City Engineer, for review and approval, improvement drawings for required public improvements. The plans shall be drawn by, and bear the seal of, a licensed Civil Engineer. Street Section Standards for Minor and Collector streets is City Standard No. 204.

Special Condition 28: Prior to the issuance of a Certificate of Occupancy for the project, the following public improvement will be completed by the applicant per the direction of the Director of Public Works and according to City standards:

- a) Frontage improvements will be required the length of Hazelwood Street to the entrance of the furthest driveway and include a hammerhead turnaround or similar fire-department-approved terminus. The project will include improvements of the street section to full width (40'), including sidewalk, curb and gutter on the east side, and a gravel shoulder on the west side.
- b) The developer shall submit to the City Engineer improvement drawings for the required street improvements and sidewalk improvements. The plans shall be drawn by, and bear the seal of, a licensed Civil Engineer.
- c) All frontage improvements (ADA compliant driveway aprons, corner ramps, sidewalk, curb, gutter, conform paving, etc.) shall be designed and constructed according to current City Standards.
- d) An encroachment permit will be required for any work in the public right

of way. Please submit the application at least 2 weeks in advance of the proposed activity to allow sufficient time for processing.

STORMWATER

Storm Water Runoff Pollution Control/Project of Special Water Quality Concern The Coastal General Plan includes a number of storm water policies that are relevant to this project including:

Policy OS-9.2: Minimize Increases in Stormwater Runoff. Development shall be designed and managed to minimize post-project increases in stormwater runoff volume and peak runoff rate, to the extent feasible, to avoid adverse impacts to coastal waters.

The proposed project includes a large bioretention basin to reduce the peak runoff volume and rate to avoid adverse impacts to coastal waters. The project applicant also reduced impervious surfaces and increased pervious areas, at the request of the City as follows:

- The proposed design utilizes a hammerhead turnaround in lieu of a looped drive aisle around the building in order to reduce impervious surface area.
- Perimeter parking bays and the turnarounds are proposed as permeable pavement. Permeable pavement is also proposed at the driveway entrances.
- The number of proposed parking spaces has been reduced to 75 spaces to minimize paving areas.
- The project includes both stormwater bioswales and infiltration planters. The stormwater bioswales direct stormwater from hazelwood across the southern boundary of the property to a level spreader outlet on the southeast corner of the property, which is the existing low point of the property and currently drains water to the Noyo River. The project also includes a set of stormwater infiltration planters that collect and pre-treat stormwater from the buildings and parking lots and pre-treat stormwater prior to it being directed through a set of pipes to a large bioretention basin which also sheets to the southeast corner of the property vis a level spreader outlet.
- Policy OS-9.5. Maintain and Restore Biological Productivity and Water Quality. The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Most of the above policy does not apply to this proposed project. The applicable sections are underlined.

- As designed the project will control and direct runoff into a large (3,575 SF) bioswale which will pre-treat the stormwater and slowly infiltrate the stormwater into the ground water for ground water recharge. The unlined bioretention basin is designed to biofilter and detain runoff. The basin includes 24-inches of gravel storage below the subdrain to aid infiltration.
- Roof drains will outlet at grade in landscaped areas where feasible. These
 areas are not designed as self-retaining areas, as ponding against the
 building is not advisable. The large bioswale will allow for infiltration of
 drainage before it flows off site in an existing depression in the southeast
 corner of the property that currently provides stormwater outflow from the
 site.
- The public drainage from Hazelwood Street will continue to flow onto the property as it does in the existing condition. It will flow through a gently graded vegetated swale located on the southern border of the property to encourage infiltration of the public drainage.
- The project will implement self-retaining areas and permeable pavement throughout the site to maximize infiltration of runoff. Self-retaining planter areas will allow for three inches of ponding below area drains. Permeable pavement will include nine inches of gravel storage below the subdrain. Drainage below the area drains and pavement subdrain will infiltrate.
- Impermeable parking stalls, drive aisles and sidewalks will be directed toward the permeable pavement and self-retaining planter areas.

Policy OS-10.1: Construction-phase Stormwater Runoff Plan. All development that requires a grading permit shall submit a construction-phase erosion, sedimentation, and polluted runoff control plan. This plan shall evaluate potential construction-phase impacts to water quality and coastal waters, and shall specify temporary Best Management Practices (BMPs) that will be implemented to minimize erosion and sedimentation during construction, and prevent contamination of runoff by construction chemicals and materials.

The requirements of this policy are met through Special Condition 33 below.

Policy OS-10.2: Post-Construction Stormwater Runoff Plan. All development that has the potential to adversely affect water quality shall submit a post-construction polluted runoff control plan ("Runoff Mitigation Plan"). This plan shall specify long-term Site Design, Source Control, and, if necessary, Treatment Control BMPs that will be implemented to minimize stormwater pollution and erosive runoff after construction, and shall include the monitoring and maintenance plans for these BMPs.

The requirements of this policy are met through Special Condition 33 below.

Policy OS-10.3: Emphasize Site Design and Source Control BMPs. Long-term post-construction Best Management Practices (BMPs) that protect water quality and control runoff flow shall be incorporated in the project design of development that has the potential to adversely impact water quality in the following order of emphasis:

- A) Site Design BMPs: Any project design feature that reduces the creation or severity of potential pollutant sources, or reduces the alteration of the project site's natural flow regime. Examples include minimizing impervious surfaces, and minimizing grading.
- B) Source Control BMPs: Any schedules of activities, prohibitions of practices, maintenance procedures, managerial practices, or operational practices that aim to prevent stormwater pollution by reducing the potential for contamination at the source of pollution. Examples include covering outdoor storage areas, use of efficient irrigation, and minimizing the use of landscaping chemicals.
- C) Treatment Control BMPs: Any engineered system designed to remove pollutants by simple gravity settling of particulate pollutants, filtration, biological uptake, media adsorption, or any other physical, biological, or chemical process.

The requirements of this policy are achieved through the proposed: A) minimizing impervious surfaces, and B) a large stormwater management infiltration basin. The following optional Special Condition would further protect stormwater.

Special Condition 29: Project operations shall prohibit the use of inorganic landscaping chemicals. No outdoor storage is permissible onsite.

<u>Policy OS-11.1: Use Integrated Management Practices in Site Design</u>. The city shall require, where appropriate and feasible, the use of small-scale integrated management practices (e.g., Low Impact Development techniques) designed to maintain the site's natural hydrology by minimizing impervious surfaces and infiltrating stormwater close to its source (e.g., vegetated swales, permeable pavements, and infiltration of rooftop runoff).

The project uses an Integrated Stormwater Management System which includes a large bioretention basin on the south side of the parcel, which pre-treats and infiltrates storm water from the parking lots and rooftops through a system of storm drain inlets. In large storm events storm water would sheet flow from the bioretention basin south to an outlet that flows into the Noyo River.

Policy OS-11.2: Preserve Functions of Natural Drainage Systems. Development shall be sited and designed to preserve the infiltration, purification, detention, and retention functions of natural drainage systems that exist on the site, where appropriate and feasible. Drainage shall be conveyed from the developed area of the site in a non-erosive manner.

The site maintains the existing drainage patterns to the extent feasible. Site grading will match existing drainage direction with relatively flat slopes on the northern portion of the site and perimeter slope grading to the south and east.

Detention and infiltration features are provided to mitigate increases in peak flow per the project Runoff Mitigation Plan. The northern portion of the site is relatively flat with grades at the south and east sloping more steeply toward the southerly and easterly property lines. The proposed site has been laid out consistently with the existing topography. The main development footprint is proposed on the norther portion of the site. The southern portion and eastern edge of the site will consist of pervious slopes drainage toward to southerly and easterly property lines as in the existing condition.

Policy OS-10.4: Incorporate Treatment Control BMPs if Necessary. If the combination of Site Design and Source Control BMPs is not sufficient to protect water quality and coastal waters consistent with Policy OS-9.3, as determined by the review authority, development shall also incorporate post-construction Treatment Control BMPs. Projects of Special Water Quality Concern (see Policy OS-12.1) are presumed to require Treatment Control BMPs to meet the requirements of OS-9.3. Treatment Control BMPs may include, but are not limited to, those outlined in the City's Storm Water Management program, including biofilters (e.g., vegetated swales or grass filter strips), bioretention, infiltration trenches or basins, retention ponds or constructed wetlands, detention basins, filtration systems, storm drain inserts, wet vaults, or hydrodynamic separator systems.

The proposed project includes the following Treatment Control BMPs: infiltration and retention basin and a vegetative swale.

Policy OS-11.3: Minimize Impervious Surfaces. Development shall minimize the creation of impervious surfaces (including pavement, sidewalks, driveways, patios, parking areas, streets, and roof-tops), especially directly connected impervious areas, where feasible. Redevelopment shall reduce the impervious surface site coverage, where feasible. Directly connected impervious areas include areas covered by a building, impermeable pavement, and/or other impervious surfaces, which drain directly into the storm drain system without first flowing across permeable land areas (e.g., lawns).

The proposed project minimized impervious surfaces by eliminating a loop driveway, eliminating 20 parking spaces, and using pervious paving for parking stalls. The new impervious surfaces will drain into either a bioswale or a retention basin where they will be pretreated prior to sheet flowing through a leveler spreader system and then flowing over the bluff edge through riparian areas to the Noyo River.

Policy OS-11.4: <u>Infiltrate Stormwater Runoff.</u> Development shall maximize on-site infiltration of stormwater runoff, where appropriate and feasible, to preserve natural hydrologic conditions, recharge groundwater, attenuate runoff flow, and minimize transport of pollutants. Alternative management practices shall be substituted where the review authority has determined that infiltration BMPs may result in adverse impacts, including but not limited to where saturated soils may lead to geologic instability, where infiltration may contribute to flooding, or where regulations to protect groundwater may be violated.

This project has been designed to pretreat and infiltrate stormwater from the parking lot and the building into bioswales and an infiltration basin, from which the stormwater overflow would be conveyed to the Noyo River.

Policy OS-11.5: <u>Divert Stormwater Runoff into Permeable Areas</u>. Development that creates new impervious surfaces shall divert stormwater runoff flowing from these surfaces into permeable areas, where appropriate and feasible, to enhance on-site stormwater infiltration capacity.

See above discussions.

Policy OS-11.6: <u>Use Permeable Pavement Materials</u>. To enhance stormwater infiltration capacity, development shall use permeable pavement materials and techniques (e.g., paving blocks, porous asphalt, permeable concrete, and reinforced grass or gravel), where appropriate and feasible. Permeable pavements shall be designed so that stormwater infiltrates into the underlying soil, to enhance groundwater recharge and provide filtration of pollutants. All permeable pavement that is not effective in infiltrating as designed will be replaced with effective stormwater detention and infiltration methods.

See discussion above.

Policy OS-11.9: Provide Storm Drain Inlet Markers. Markers or stenciling shall be required for all storm drain inlets constructed or modified by development, to discourage dumping and other illicit discharges into the storm drain system.

The applicant will need to comply with the Special Condition below:

Special Condition 30: The applicant shall install markers or stenciling for all storm drain inlets as specified by the Department of Public Works.

Policy OS-11.10: Continue Operation and Maintenance of Post-Construction BMPs. Permitees shall be required to continue the operation, inspection, and maintenance of all post-construction BMPs as necessary to ensure their effective operation for the life of the development.

Special Condition 31: The applicant shall undertake annual inspection and maintenance tasks for all on-site BMPs as specified by the civil engineer and/or the Department of Public Works.

This project is categorized as a project of Special Water Quality Concern by the CLUDC, as it has more than 10 dwelling units.

Policy OS-12.1: <u>Developments of Special Water Quality Concern</u>. The categories of development listed below have the potential for greater adverse coastal water quality impacts, due to the development size, type of land use, impervious site coverage, or proximity to coastal waters. A development in one or more of the following categories shall be considered a "Development of Special Water Quality Concern," and shall be subject to additional requirements set forth in Policy OS-12.2 below to protect coastal water quality. Developments of Special Water Quality Concern

include the following:

a) Housing developments of ten or more dwelling units.

As a project of Special Water Quality Concern, the project must comply with the following policies:

Policy OS-12.2: <u>Additional Requirements for Developments of Special Water Quality Concern.</u>
All Developments of Special Water Quality Concern (as identified in Policy OS-12.1, above) shall be subject to the following four additional requirements to protect coastal water quality:

1) Water Quality Management Plan. The applicant for a Development of Special Water Quality Concern shall be required to submit for approval a Water Quality Management Plan (WQMP), prepared by a qualified licensed professional, which supplements the Runoff Mitigation Plan required for all development. The WQMP shall include hydrologic calculations per City standards that estimate increases in pollutant loads and runoff flows resulting from the proposed development, and specify the BMPs that will be implemented to minimize post-construction water quality impacts.

The Department of Public Works has requested the following Special Condition to comply with this section:

Special Condition 32: All proposed development associated with this project shall be compliant with the Fort Bragg Municipal Code (FBMC) sections 17.64 [Stormwater Runoff Pollution Control] Standards for development and section 12.14 [Drainage Facility improvements].

- a) Prior to issuance of the Building Permit the applicant shall submit a final Water Quality Management Plan, SWIPP, and a Runoff Mitigation Plan (RMP) that demonstrates the project meets the post-construction stormwater requirements established by local, state and federal regulations. The City's RMP requirement can be fulfilled by a SWPPP instead. If using a SWPPP to fulfill the RMP, a draft version should be submitted to the City to ensure the project is in compliance prior to filing for a Notice of Intent (NOI) with the state.
- b) Calculations must demonstrate compliance with the hydromodification requirements established by the Municipal Separate Storm Sewer System (MS4) Phase II permit E.12.f and the Mendocino County Low Impact Design Manual (LID Manual). The plan must show all calculations for lot coverage and areas of impervious surfaces including building footprints, pavement, sidewalk, etc. This can be shown on either the site plan for the building permit or incorporated into the coastal

development site plan. Calculations must demonstrate compliance with the hydromodification requirements established by the Municipal Separate Storm Sewer System (MS4) Phase II permit E.12.f and the Mendocino County Low Impact Design Manual (LID Manual).

- i. While the use of permeable pavers is encouraged to reduce runoff volumes, they do not qualify as a selfretaining area as defined by the Mendocino County LID Manual, so DMA's and associated calculations will require revision. The use of additional bioretention facilities is recommended for landscape/vegetated areas.
- ii. The Preliminary SCP notes that shallow groundwater was encountered at 10-13 feet below existing grade, but sampling was not performed in areas proposed for bioretention, and so further investigation is required to ensure adequate separation between infiltrating surface and the water table. Results of that testing should be incorporated into the final SCP.
- Applicant shall provide analysis documenting sufficiency of proposed stormwater facilities or drainage conveyance system to meet requirements established by the City's Land Use Codes.
- d) If upgrades to infrastructure are required, the plans shall be drawn by, and bear the seal of, a licensed Civil Engineer and the improvements shall be completed by the developer and dedicated to the City.
- 2) Selection of Structural Treatment Control BMPs. As set forth in Policy OS-10.4, if the review authority determines that the combination of Site Design and Source Control BMPs is not sufficient to protect water quality and coastal waters as required by Policy OS-9.3, structural Treatment Control BMPs shall also be required. The WQMP for a Development of Special Water Quality Concern shall describe the selection of Treatment Controls BMPs, and applicants shall first consider the BMP, or combination of BMPs, that is most effective at removing the pollutant(s) of concern, or provide a justification if that BMP is determined to be infeasible.
- 3) 85th Percentile Design Standard for Treatment Control BMPs. For post-construction treatment of runoff in Developments of Special Water Quality Concern, Treatment Control BMPs (or suites of BMPs) shall be sized and designed to treat, infiltrate, or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event (with an appropriate safety factor of 2 or greater) for flow-based BMPs.
- 4) <u>Goal for Runoff Reduction</u>. In Developments of Special Water Quality Concern, the post-development peak stormwater runoff discharge rate shall not exceed the

estimated pre-development rate for developments where an increased discharge rate will result in increased potential for downstream erosion or other adverse habitat impacts.

The applicant has prepared a Preliminary Water Quality Management Plan per code section 17.64.045. That plan includes the following key findings:

- a. Storm water runoff has been minimized by incorporation of Low Impact Development (LID) strategies that minimize impermeable areas, maximize permeable areas, and that slow, spread, and sink runoff to recharge groundwater and minimize runoff. Runoff that is expected shall be collected at vegetative swales or bio retention facilities and overflow finally conveyed by a storm drain system approved by the City Engineer.
- b. Treatment Control Best Management Practices have been sized and designed to retain and infiltrate runoff produced by all storms up to and including the 85th percentile (.83" in 24-hours) based on the size of the development.
- c. Peak stormwater flows would decrease from 0.09 CFS to 0.08 CFS past construction in a 2-year 24-hour storm event.

Special Condition 33: An Operations and Maintenance Plan shall be developed for all regulated project components by the State NPDES Phase II MS4. The plan shall include provision(s) demonstrating adequate on-going operations and maintenance.

The following additional stormwater policies will be implemented through Special Conditions 20-34 above.

- Policy OS-14.1: Minimize Polluted Runoff and Pollution from Construction.
- Policy OS-14.2: Minimize Land Disturbance During Construction.
- Policy OS-14.3: Minimize Disturbance of Natural Vegetation.
- Policy OS-14.5: Grading During Rainy Season. Grading is prohibited during the rainy season (from November 1 to March 30), except in response to emergencies, unless the review authority determines that soil conditions at the project site are suitable, and adequate erosion and sedimentation control measures will be in place during all grading operations.

Geologic Hazard. The site is located 150 feet inland from the coastal bluff overlooking Noyo Harbor. A geotechnical study was prepared for the project by Allerion Consulting Group. Key findings of the geotechnical study include the following:

- The on-site soils tested are considered corrosive to reinforced concrete. The presence of high acidity (pH values less than 5.5) indicates the soil (or water) can react with the lime in concrete to form soluble reaction products that can leach out of the concrete, resulting in a more porous and weaker concrete.
- variability. Generally, the uppermost soils consisted of loose to medium dense, moist, brown, Silty SAND (Unified Soil Classification: SM) to depths varying between approximately 5½ to 6 feet below existing ground surface (begs).

Below the uppermost soils to depths varying between 25 to 26 feet begs, the earth materials consisted of interbedded layers of medium dense, moist, light brown to brown with rust staining, Silty SAND (SM)/ SAND with Silt (SP-SM)/ SAND (SP); and stiff, light gray with rust staining, Lean CLAY (CL).

- Groundwater was encountered after drilling at depths varying between approximately 11 and 13 feet below existing ground surface.
- Soil percolation rates were between 0.94 and 1.03 in/hour.

The report concludes that "from a geotechnical standpoint, the site is considered suitable for the proposed construction provided the conclusions and recommendations presented in this report are incorporated into the design and construction of the project.

Special Condition 34: The applicant shall follow the recommendations of the geotechnical report for all design and construction specifications and shall implement all recommendation related to required special inspections, grading and construction activities.

Flood Hazard. According to Federal Emergency Management Agency (FEMA), flood insurance maps the project site is located outside the 500-year flood plain. No flooding concerns are raised relative to the project.

Fire and Life Safety. The Fire Marshal reviewed the project plans and did not issue a statement of concern regarding fire and life safety. Fire Code requirements will be incorporated in the construction plans as necessary during the building permit review by the Fire Marshall. The new building code requires that all buildings have sprinkler systems, a monitored alarm system, and parking and driveway areas navigable by fire trucks and other emergency vehicles.

Special Condition 35: On-site fire protection shall be as installed as approved by the Fire Chief. Final utility configuration shall be approved by the Public Works Director or designated staff. The applicant shall ensure adequate pressure and flow to the subject site to provide fire suppression flows.

Occupancy Noise. The City's Noise Element in the General Plan notes that the existing noise levels in this neighborhood are consistently below 50 decibels. This was confirmed with an onsite noise reading.

Per the Coastal Geneal Plan:

- Residential uses are allowed to have an exterior noise exposure; with less than 60 dB considered preferable while up to 75 dB is conditionally acceptable.
- Noise studies are only required for projects with "noise environments that are conditionally acceptable."

This project is not located in an area that is "conditionally acceptable" nor would it cause noise to neighboring uses that would be "conditionally acceptable" e.g. between 60 and 75 dB, therefore a noise study was not required for this project.

Noise from this senior residential project will consist of typical residential noises such as intermittent noise from vehicle use, lawnmowing, and outdoor socializing, which are typical for residential neighborhoods, and which will blend into the background noise of 50-60 dB. Noise level criteria do not consider single event noises such as ambulances, train horns or helicopters.

Construction Noise. Construction noise is regulated by the City's noise ordinance in the Municipal Code.

"Between the hours of 10:00 p.m. of one (1) day and 7:00 a.m. of the following day, it is unlawful for any person within a residential zone, or within a radius of 500 feet therefrom, to create, cause to be created or maintain sources of noise which cause annoyance or discomfort to a reasonable person of normal sensitiveness in the neighborhood."

The Special Condition below is recommended by the Planning Commission to ensure that construction noises do not impact residences during the evenings.

Special Condition 36: Construction activities shall occur only between the hours of 7:00 am and 7:00 pm.

DESIGN REVIEW

Coastal General Policies relevant to project design include the following:

Policy OS-6.2 <u>Development Review Process</u>: Make energy conservation an important criterion in the development review process.

Policy OS-6.3 <u>Alternative Energy</u>: Encourage the development and use of alternative sources of energy such as wind, solar, and waves to meet Fort Bragg's energy needs.

As proposed, the project will:

- a. Take advantage of passive solar gain for some of the space heating requirements of the project.
- b. Achieve insulation values of R-22 for walls and roof.
- c. Space heating and water heating will be provided by air-source heat pumps.
- d. The project will include PV panels compliance with state energy code.

The combination of these strategies will result in buildings that are energy efficient and maintain minimal utility costs for the residents.

The immediate neighborhood is composed of a mix of multifamily and single-family residential development as illustrated in the photos below:

Image 1: Moura Senior Housing – View from Hazelwood.



Image 2: Moura Senior Housing – View from South Street.



Image 3: Multifamily Housing Project



Image 4: Multifamily Housing Project



Image 5: Backyards of Single-Family Homes on Hazelwood



The Citywide Design Guidelines provide guidance for Design Review. However, State law limits the application of design review criteria for multifamily projects to non-subjective quantitative criteria only. Each relevant quantitative guideline is summarized in the table below, along with a description of how the project conforms to the quantitative guideline and any Special Conditions required for conformance. The qualitative design guidelines have not been used in this evaluation, as required by State law.

Overall, the project has a modern/contemporary architectural style. The building is well-articulated with many windows, gable roofs, and changes in wall plane which provide a typical multifamily apartment look. All units include small decks or patios which add visual interest to the building. The building includes multiple material types and colors to add visual interest.

Table 5: Compliance with Citywide Design Guidelines

Relevant Quantitative Design Guidelines Project Compliance Architectural details and materials shall The project includes the following pedestrian scale architectural details: change in incorporated on the lower part of the building facade to relate to human scale. These materials, windows, change in texture, pedestrian scale elements can include awnings, entrances with awnings. trellises, windows, building base articulation, and changes in materials, textures, and colors. Architectural elements that add visual interest, scale, and character such as projecting balconies, trellises, recessed windows, window and door The project includes balconies, and window detailing, or green garden walls should be and door detailing. incorporated to help articulate facades and blank walls. To divide the building mass into smaller scale components, building faces more than 50 feet long should reduce the perceived mass and bulk The project includes changes in roof or wall by one or more of the following: change of roof or plain and balconies, and a varying roof line. wall plane; projecting or recessed elements, such as trellises, balconies, openings, etc.; varying cornice or rooflines; or other similar means. The project is oriented to the "backyard" Whenever possible. buildinas should picnic tables, BBQs, garden area and open be

configured around courtyards, gathering areas, and open spaces.	space.
 Doors should be visible from the street and windows should allow residents to have "eyes on the street" for natural surveillance. 	 Windows are oriented to the street on Hazelwood Ave. However, there are only two private patio doors visible from Hazelwood. Density Bonus Law Incentive # 2 has been requested to address this inadequacy.
 All building and site design should use passive solar design strategies for space heating and lighting to reduce energy demand to the extent feasible. Buildings shall incorporate passive solar design and include at least one roof plane that is large enough to accommodate photovoltaic (PV) panels to meet the majority (>50%) of the building's energy needs, when feasible. 	 The project design emphasizes passive solar gain with many windows located on the south building facade. The long access of the building points east west to maximize solar exposure on the south elevation of the building.
 Roof forms such as gable, hip or shed roof combinations are strongly encouraged. 	The roof form includes a gable roof.
 Building materials should be durable, require low maintenance, and be of comparable or better quality and image to what is used in the surrounding neighborhood. Frequent changes in building materials should be avoided. Materials such as brick, stone, copper, etc. should be left in their natural colors. Such materials should not appear thin and artificial. Materials should enhance different parts of a building's façade and be consistent with the desired architectural style. a. Where appropriate to the architectural style, materials and textures should vary between the base and body of a building to break up large wall planes and add visual base to the building. b. Heavier materials and darker colors should be used lower on the building elevation to form the building base. 	 Proposed durable exterior finish materials would include cementitious siding (in various forms) and asphalt shingle roofs. Both materials are encouraged by the Design Guidelines. No brick or stone are proposed. The project effectively uses different materials to enhance different parts of the building. Materials at the base and body of the building are different. Materials with darker colors are on the building base.

Color

- No fewer than two colors should be used on any given façade, and three or more colors are preferred. This includes any "natural" colors such as unpainted brick or stone. The three preferred colors should constitute the primary base color, secondary color and minor trim color.
- All building facades include four colors.

Lighting

- Lighting sources shall be hidden unless the sources are an integral part of the design.
 Lighting fixtures should not project above the fascia or roofline of the building.
- Partial or full cutoff lighting is required. Exterior lighting shall be located and designed to avoid shining directly onto nearby residential properties, and shall minimize off-site glare. The latest technical and operational energy conservation concepts should be considered in lighting designs.
- Parking lot lighting fixtures shall be no taller than 16 feet in height and shall cast light downward without allowing glare or light to encroach upon neighboring properties.

- Project lighting is hidden.
- Full cutoff night sky compliant lighting has been specified.
- The proposed lighting fixtures are 16 feet in height.

Fencing

- Fences or walls of more than 100 ft should provide variation in the design – via changes in height, materials, embellishments, step backs, gates, etc. - to break up the length and provide visual interest.
- The project includes a fence of more than 100 feet in length along the North and south parcel boundaries. This is a property line security fence. The Special Condition below is provided to comply with this requirement:

Special Condition 37: The applicant shall provide a step back, embellishment or change in height every 100 feet for all property line fences. This change in design shall be confirmed by the City prior to Occupancy Permit approval.

Open Space

- Open space areas should be sheltered from the noise and traffic of adjacent streets or other incompatible uses. Open space siting should give consideration to prevailing breezes and sun orientation in order to provide a comfortable environment.
- Ideally, at least 50 percent of the open space area should have access to direct sunlight.
- The outdoor common spaces are located on the southern side of the building and are therefore sheltered from coastal winds and oriented to the sun exposure for a comfortable environment.
- All community open space (picnic tables, BBQs and gardens have 100% access to direct sunlight.

Play Areas

- Children's play areas should be visible from as many units as possible and from private open space areas. Direct, convenient access from ground level, private open space to the communal play area is encouraged.
- Outdoor play areas should be located adjacent to laundry rooms, community centers, or similar common facilities. Play areas should not be located near public streets, parking, or entry areas unless physically separated by appropriate walls, fencing, or dense landscaping.
- As a senior project it is not required to include a children's play area. However the picnic areas, community gardens, and pet area are directly accessible from many units.

Site Amenities

- Building numbers and individual unit numbers shall be readily visible, in a consistent location, well lighted at night, and compatible with the overall design of the development.
- Internal circulation signs and visitor parking areas shall also be clearly indicated. A directory that shows the location of buildings and individual dwelling units within the development is encouraged
- The proposed project does not include these mandatory elements. See Special Condition.

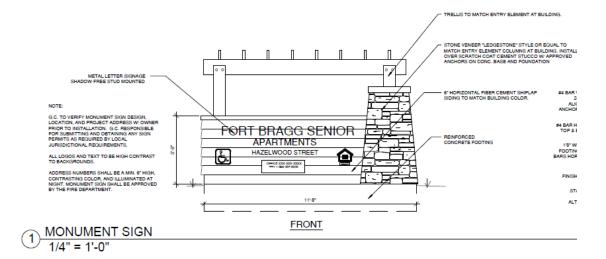
Special Condition 38. The project shall include individual unit numbers that are well lighted and in a consistent location for all units. Visitor Parking shall be clearly marked. A directory shall be installed that shows the locations of all buildings, pathways and unit numbers. These items shall be installed prior to the final of the Building Permit.

The project plans do not provide design details or screening for mechanical equipment. Therefore, a Special Condition has been added to ensure that these components comply with the CLUDC.

Special Condition 39. Prior to the issuance of a Building Permit, the applicant shall submit for the review and approval of the Community Development Director plans for the locations and visual screening of all mechanical equipment proposed to be constructed as part of the project, including but not limited to standpipes, backflow preventers, generators and propane fuel tanks. All equipment shall be visually screened with vegetation, building elements, fencing or wood lattice.

Sign Permit

The applicant has proposed a project sign for the parking lot entrance to the project site on Hazelwood Ave.



The sign complies with the requirements of 17.38.060 as follows:

- The proposed sign complies with the 6-foot height limit.
- The proposed sign is 48 SF (each side) which is below the limit of 100 SF for this development (Table 3-12 of the CLUDC).
- It is an attractive color that matches the design of the project and is made from materials that are included in the apartment project.
- The lighting is modest and appropriate.
- The proposed signage complies with the additional standards of section 17.28.080C freestanding signs.

However, the sign does not comply with the following requirements.

- The sign is located in a traffic visibility area. Therefore, the sign will need to be relocated so that it is not within 20 feet of the intersection of the parking lot drive isle and Hazelwood Street.
- The sign does not include the street address (numbers) as required.

The following special condition is recommended.

Special Condition 40: The sign design shall be modified as follows: 1) The applicant shall resubmit the site plan illustrating the sign located outside of the traffic visibility area; and 2) the address number shall be added to the sign.

ENVIRONMENTAL DETERMINATION

The project is exempt from CEQA review under sections 15332 Infill Development and sections 15192 & 15195 – Infill Housing Development. All Sections are cited below with side-by-side analysis of the project's compliance with the threshold

criteria for each exemption.

§ 15192. Threshold Requirements for Exemptions for Residential Infill Projects. In order to qualify for the exemption, set forth in sections 15195, an infill housing project must meet all of the threshold criteria set forth below.

TORTH DEIOW.
Compliance Analysis
The subject parcel has a General Plan land use designation of High Density Residential, which allows multifamily development with a Use Permit. The project conforms to General Plan policies and zoning regulations. As conditioned the project complies with the City's LCP.
The City adopted an EIR for the General Plan and Land Use and Development Code in 2006. City's LCP was certified by the Coastal Commission in 2008, which is a CEQA equivalent action.
As analyzed in the Staff Report the project site can be served by existing utilities.
The project site does not contain wetlands. The Project Site is covered with ruderal grasslands and a few specimen trees. The project site has limited value for habitat

Section 1900) of Division 2 of the Fish and	and is not known to provide habitat for
Game Code), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code. (4) Does not cause the destruction or	endangered, rare or threatened species.
removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete.	The City does not have an ordinance that protects non-native species from removal.
(E) The site of the project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.	No phase I report was required because the site has no known previous use that would result in contamination. The site is not listed on any DTSC or RWQCB list of facilities or sites requiring remediation or in violation of a cleanup order. The site does not have any known contamination.
(F) The site of the project is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity. In addition, the following steps have been taken in response to the results of this assessment: (1) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements. (2) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.	See above.
(G) The project does not have a significant effect on historical resources pursuant to Section 21084.1 of the Public Resources Code.	As noted in this staff report, an arch survey was completed for this site and no archaeological or historic resources were discovered or identified by the survey. The project will not have any impact on a historical or archaeological resource.

(H) The project site is not subject to wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.	The project is not located in a wildland fire hazard area.
(I) The project site does not have an unusually high risk of fire or explosion from materials stored or used on nearby properties.	The project is surrounded by multifamily and single-family residential uses, none of which pose a risk of fire or explosion.
(j) The project site does not present a risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.	As a vacant field in an urban area, the site does not present a public health risk exposure of any type.
(k) Either the project site is not within a delineated earthquake fault zone or a seismic hazard zone, as determined pursuant to Section 2622 and 2696 of the Public Resources Code respectively, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake or seismic hazard.	The City's LCP contains policies and regulations to mitigate seismic hazards.
(I) Either the project site does not present a landslide hazard, flood plain, flood way, or restriction zone, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.	The project site is not located within a flood zone or any other restrictive zone.
(m) The project site is not located on developed open space.	The site is not designated as or developed as open space.
(n) The project site is not located within the boundaries of a state conservancy.	The site is not located in a state conservancy.
(o) The project has not been divided into smaller projects to qualify for one or more of the exemptions set forth in sections 15193 to 15195.	The project is being evaluated in its entirety.

Section 15195 In-Fill Housing Development Exemption Analysis

CEQA Guideline Section 15195 identifies a categorical exemption for projects characterized as infill housing development. This exemption is intended to promote housing infill development within urbanized areas. The analysis that supports this exemption is in the table below:

Code Section	Compliance Analysis
(a) Except as set forth in subdivision (b), CEQA does not apply to any development project that meets the following criteria:	

(1) The project meets the threshold criteria set forth in section 15192; provided that with respect to the requirement in section 15192(b) regarding community-level environmental review, such review must be certified or adopted within five years of the date that the lead agency deems the application for the project to be complete pursuant to Section 65943 of the Government Code.	See above analysis.
(2) The project meets both of the following size criteria:	
(A) The site of the project is not more than four acres in total area.(B) The project does not include	The project site is 3 acres.
any single level building that exceeds 100,000 square feet.	The building is 50,841 SF
(3) The project meets both of the following requirements regarding location: (A) The project is a residential project on an infill site. (B) The project is within one-half mile of a major transit stop.	The project site is a residential project on an infill site. A major transit stop at the Hospital is located 0.26 miles from the proposed site.
(4) The project meets both of the following requirements regarding number of units: (A) The project does not contain more than 100 residential units. (B) The project promotes higher density infill housing. The lead agency may establish its own criteria for determining whether the project promotes higher density infill housing except in either of the following two circumstances: 1. A project with a density of at least 20 units per acre is conclusively presumed to promote higher density infill housing. 2. A project with a density of at least 10 units per acre and a density greater than the average density of the residential properties within 1,500 feet shall be presumed to promote higher density infill housing unless the preponderance of the evidence demonstrates otherwise.	The project contains 49 units. The project provides high density infill at 16 units per acre.
(5) The project meets the following requirements regarding availability of affordable housing: The project would result in	

housing units being made available to moderate, low or low-income families as set forth in either A or B below:

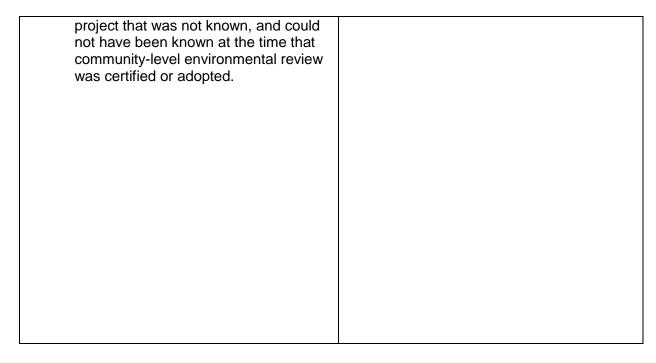
- (A) The project meets one of the following criteria, and the project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units as set forth below at monthly housing costs determined pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code:
 - 1. At least 10 percent of the housing is sold to families of moderate income, or
 - 2. Not less than 10 percent of the housing is rented to families of low income, or
 - 3. Not less than 5 percent of the housing is rented to families of low income.
- (B) If the project does not result in housing units being available as set forth in subdivision (A) above, then the project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to subparagraph (A).
- (b) A project that otherwise meets the criteria set forth in subdivision (a) is not exempt from CEQA if any of the following occur:
 - (1) There is a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances.
 - (2) Substantial changes with respect to the circumstances under which the project is being undertaken that are related to the project have occurred since community-level environmental review was certified or adopted.
 - (3) New information becomes available regarding the circumstances under which the project is being undertaken and that is related to the

The project will provide 100% of units to seniors of low income. (A-2).

There are no unusual circumstances associated with this project.

No substantial changes have occurred.

No new information has come available.



Section 15332 In-Fill Development Exemption Analysis

The City Council can determine that the project to be exempt from CEQA review under **Section 15332 Infill Development**. CEQA Guideline Section 15332 identifies the Class 32 categorical exemption for projects characterized as infill development. This exemption is intended to promote infill development within urbanized areas. The class consists of environmentally benign infill projects that are consistent with local general plan and zoning requirements. This class is not intended to be applied to projects that would result in any significant traffic, noise, air quality, or water quality effects. Such projects must meet Part 1, conditions (a) through (e), described in the analysis below:

Code Section	Compliance Analysis
(a) The project is consistent with the applicable General Plan designation and all applicable General Plan policies as well as with applicable zoning designation and regulations.	The subject parcel has a General Plan land use designation of High Density Residential and is zoned CH, which allows multifamily development with a Use Permit. The project conforms to General Plan policies and zoning regulations, with the approval of the density bonus afforded by compliance with State Density Bonus Law. As conditioned the project complies with the City's LCP.
(b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.	The project site is 2.6 acres. The project site is surrounded on all sides by urban uses.
(c) The project site has no value as habitat for endangered, rare or threatened	The project site does not contain wetlands. The project site is covered with ruderal

species.	grasslands and a few specimen trees. The project site has no value for endangered, rare or threatened species.
(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.	As analyzed and conditioned throughout this report the project would not result in any significant effects on traffic, noise, air quality or water quality.
(e) The site can be adequately served by all required utilities and public services.	As analyzed and conditioned throughout this report the project can be adequately served by all utilities and public services.

Project Consistency with 15300.2 Exceptions

Application of this exemption, as all categorical exemptions, is limited by the factors described in section 15300.2. of CEQA and, these factors have been analyzed in the table below:

15300.2 Exceptions	Analysis of Compliance with Exceptions
(a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies	The project is not located in an area that has been mapped or designated as a location with an environmental resource of hazardous or critical concern by any federal, state, or local agencies.
(b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.	There are no other projects in the area which would have a cumulatively significate impact with the proposed project.
(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.	As analyzed throughout this staff report the proposed project will not have a significant effect on the environment.
(d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially	The project is not located adjacent to or within the view shed of a scenic highway.

designated as a state scenic highway. (e) Hazardous Waste Sites. A categorical No phase I report was required because the exemption shall not be used for a project site has no known previous use that would located on a site which is included on any list result in contamination. The site is not listed compiled pursuant to Section 65962.5 of the on any DTSC or RWQCB list of facilities or Government Code. sites requiring remediation or in violation of a cleanup order. The site does not have any known contamination. Historical Resources. Α As noted earlier in this staff report, an categorical exemption shall not be used for a project which archaeological survey was completed for this may cause a substantial adverse change in site and no archaeological or historic the significance of a historical resource. resources were discovered or identified by the survey. The project will not have any impact on a historical or archaeological resource.

ALTERNATIVE ACTIONS

- 1. Hold a hearing, close the hearing, deliberate without a decision, and revisit the application at the next scheduled meeting for a decision and the addition of any new findings.
- 2. Hold the hearing and continue the hearing to a date certain if there is insufficient time to obtain all input from all interested parties. At the date certain the Commission may then deliberate and make a decision.

ATTACHMENTS

- 1. Resolution of the Fort Bragg City Council Approving Coastal Development Coastal Development Permit 1-25 (CDP 1-25), Design Review 1-25 (DR 1-25), Use Permit 1-25 (UP 1-25) and Sign Permit 2-25 (SP 2-25) for a Proposed 49-Unit Senior Housing Project Located at 860 Hazelwood (APN 018-210-29).
- Resolution of the Fort Bragg Planning Commission Recommending that the City Council Approve Coastal Development Permit 1-25 (CDP 1-25), Design Review 1-25 (DR 1-25), Use Permit 1-25 (UP 1-25) and Sign Permit 2-25 (SP 2-25) for a Proposed 49-Unit Senior Housing Project Located at 860 Hazelwood (APN 018-210-29).
- Staff Report: Hold a Hearing Receive Report and Consider Adopting a Resolution of the Fort Bragg City Council Providing Preliminary Preapproval of Inclusionary Housing Incentives for Proposed Fort Bragg Apartments Project at 860 Hazelwood.
- 4. Project Site Plan, Accessory Structures
- 5. Floor Plans

- 6. Community Center Floor Plan
- 7. Project Elevations
- Project Renderings
 Project Colors & Materials
- 10. Landscaping Plan
- 11. Lighting Plan 12. Civil Plans
- 13. Stormwater Management Report
- 14. Geotechnical Report
- 15. Letters

RESOLUTION NO. --2025

RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING COASTAL DEVELOPMENT PERMIT 1-25 (CDP 1-25), DESIGN REVIEW 1-25 (DR 1-25), USE PERMIT 1-25 (UP 1-25), AND SIGN PERMIT 2-25 (SP 2-25) FOR A PROPOSED 49-UNIT SENIOR HOUSING PROJECT LOCATED AT 860 HAZELWOOD STREET (APN 018-210-29), SUBJECT TO THE FINDINGS AND ALL STANDARD AND SPECIAL CONDITIONS.

WHEREAS, Jacob Soroudi (AMG Associates) ("Applicant") submitted an applicant for: Coastal Development Permit 1-25 (CDP 1-25), Design Review 1-25 (DR 1-25), Use Permit 1-25 (UP 1-25, and Sign Permit 2-25 (SP 2-25) to construct a multifamily apartment project at 860 Hazelwood St.

WHEREAS, 860 Hazelwood St, Fort Bragg, California (Assessor Parcel Number: 018-210-29) is in the Very High Residential (RH) Zone, Coastal Zone and no changes to the site's current zoning designation are proposed under the Project; and

WHEREAS, the Project is subject to the Fort Bragg Coastal General Plan and Coastal Land Use and Development Code (CLUDC); and

WHEREAS, Section 17.32.020 of the CLUDC requires the City Council to provide preliminary approval or disapproval of applicant-requested incentives, modifications, or waivers of development or zoning standards for the development of new multifamily housing units that include inclusionary housing units; and

WHEREAS, the City Council held a public hearing on February 24, 2025, to accept public testimony and provided preliminary conceptual approval of two inclusionary housing incentives for the proposed Project; and

WHEREAS, the Planning Commission held a public meeting on April 30, 2025 to consider the Project, accept public testimony and made a recommendation to City Council to approve the project subject to all standard and special conditions; and

WHEREAS, The City Council held a public meeting on May 12, 2025 to consider the Project, and accept public testimony; and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) Section 15332 (class 32) of the CEQA Guidelines the project is exempt from CEQA as an "In-Fill Development Project" and per Section 15192 as an "Infill Housing Development." and

NOW, THEREFORE, BE IT RESOLVED that the City of Fort Bragg City Council, based on the entirety of the record before it, which includes without limitation, CEQA, Public Resources Code §21000, et seq. and the CEQA Guidelines, 14 California Code of Regulations §15000, et seq.; the Fort Bragg Coastal General Plan; the Fort Bragg Coastal Land Use and Development Code; the Project applications; all site plans, and all reports and public testimony submitted as part of the City Council meeting of May 12, 2025 and City Council deliberations; and any other evidence (within the meaning of Public Resources Code §21080(e) and §21082.2), the City Council of the City of Fort Bragg does hereby approve, per the analysis incorporated herein by reference to the project staff report, dated May 12, 2025, Coastal Development Permit 1-25 (CDP 1-25), Design

Review 1-25 (DR 1-25), Use Permit 1-25 (UP 1-25, and Sign Permit 2-25 (SP 2-25), subject to the findings, standard conditions and special conditions below:

A. General Findings

- 1. The foregoing recitals are true and correct and made a part of this Resolution;
- 2. The documents and other material constituting the record for these proceedings are located at the Community Development Department;
- 3. The proposed project is consistent with the purpose and intent of the zoning district, as well as all other provisions of the Coastal General Plan, Coastal Land Use and Development Code (ILUDC), and the Fort Bragg Municipal Code in general.

NOW, THEREFORE, BE IT RESOLVED that the Fort Bragg City Council makes the following findings and determinations for Coastal Development Permit 1-25 to allow for the construction of a 49-unit senior apartment project proposed for at 860 Hazelwood Street. *per analysis incorporated herein by reference to the project staff report, dated May 12, 2025.*

- 1. Feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment.
- 2. The proposed use is consistent with the purposes of the zone in which the site is located.
- 3. The proposed development is in conformance with the City of Fort Bragg's Coastal General Plan.
- 4. The proposed location of the use and conditions under which it may be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.
- 5. Services, including but not limited to, water supply, sewage disposal, solid waste, and public roadway capacity have been considered and are adequate to serve the proposed development.

NOW, THEREFORE, BE IT RESOLVED that the Fort Bragg City Council makes the following findings and determinations for Use Permit 9-25 to allow for the construction of a 49-unit apartment project proposed for 860 Hazelwood Street. *per analysis incorporated herein by reference to the project staff report, dated May 12, 2025.*

- 1. The proposed use is consistent with the General Plan, any applicable specific plan, and the Local Coastal Program;
- 2. The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Development Code and the Municipal Code:
- 3. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and future land uses in the vicinity;
- 4. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities (e.g., fire protection, police protection, potable water, schools, solid waste collection and disposal, storm

drainage, wastewater collection, treatment, and disposal, etc.), to ensure that the type, density, and intensity of use being proposed would not endanger, jeopardize, or otherwise constitute a hazard to the public interest, health, safety, convenience, or welfare, or be materially injurious to the improvements, persons, property, or uses in the vicinity and zoning district in which the property is located.

NOW, THEREFORE, BE IT RESOLVED that the Fort Bragg City Council makes the following findings and determinations for Design Review Permit 1-25 to allow for the construction of a 49-unit affordable senior apartment project proposed for 860 Hazelwood Street. *per analysis incorporated herein by reference to the project staff report, dated May* 12, 2025.

- Complies with the purpose and requirements of this Section (Design Review in the CLUDC)
- 2. Provides architectural design, building massing, and scale appropriate to and compatible with the site surroundings and the community.
- 3. Provides attractive and desirable site layout and design, including building arrangement, exterior appearance and setbacks, drainage, fences and walls, grading, landscaping, lighting, signs, etc.
- 4. Provides efficient and safe public access, circulation and parking.
- 5. Provides appropriate open space and landscaping, including the use of water efficient landscaping.
- 6. Is consistent with the Coastal General Plan, and applicable specific plan, and the certified Local Coastal Program.
- 7. Complies and is consistent with the City's Design Guidelines.

NOW, THEREFORE, BE IT RESOLVED that the Fort Bragg City Council makes the following findings and determinations for the Density Bonus Law incentives to allow for the construction of a 49-unit affordable senior apartment project proposed for 860 Hazelwood Street. per analysis incorporated herein by reference to the project staff report, dated May 12, 2025.

- 1. The requested incentives are required in order to provide for affordable housing costs as defined in Health and Safety Code Section 50052.5, or for rents for the targeted units to be set in compliance with Government Code Section 65915(c).
- 2. The concession or incentive will not have a specific adverse impact, as defined by Government Code Section 65589.5(d)(2), upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low and moderate income households.
- 3. The City has determined that the development incentives requested will not have any adverse effects on coastal resources.
- 4. The project is not feasible without the incentive.
- 5. The Fort Bragg City Council has identified affordable housing development as a top priority in the City's Strategic Plan and set a goal to develop 200 units of

- housing in Fort Bragg by 2026.
- 6. The Coastal Commission implements the California Coastal Act of 1976, and Section 30604(f) of the Coastal Act requires the Commission to encourage housing opportunities for persons of low or moderate income.
 - "Section 30604 (f) The commission shall encourage housing opportunities for persons of low and moderate income. In reviewing residential development applications for low- and moderate-income housing, as defined in paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code, the issuing agency or the commission, on appeal, may not require measures that reduce residential densities below the density sought by an applicant if the density sought is within the permitted density or range of density established by local zoning plus the additional density permitted under Section 65915 of the Government Code, unless the issuing agency or the commission on appeal makes a finding, based on substantial evidence in the record, that the density sought by the applicant cannot feasibly be accommodated on the site in a manner that is in conformity."
- 7. The State of California has passed regulations to streamline and facilitate the construction of market rate and affordable multifamily developments including regulations that limit the ability of local jurisdictions to deny multifamily housing projects based on subjective criteria and the requirement to provide housing incentives and density bonuses for project that include affordable housing. Statewide housing laws, such as Density Bonus Law, the Housing Accountability Act, and the Housing Crisis Act, apply in the coastal zone in ways that are also consistent with the Coastal Act.
- 8. There are relatively few large parcels in Fort Bragg that support multifamily housing, as identified in the City's vacant parcel inventory. Most vacant parcels that can accommodate multifamily housing have an environmental constraint. This parcel does not have an environmental constraint.

NOW, THEREFORE, BE IT RESOLVED that the Fort Bragg City Council makes the following findings and determinations regarding the Sign Review Permit SP 2-25 for this project per the analysis incorporated herein by reference to the project staff report, dated May 12, 2025:

- The proposed signs do not exceed the standards of Sections 17.38.070 (Zoning District Sign Standards) and 17.38.080 (Standards for Specific Sign Types), and are of the minimum size and height necessary to enable pedestrians and motorists to readily identify the facility or site from a sufficient distance to safely and conveniently access the facility or site;
- That the placement of the sign on the site is appropriate for the height and area of a freestanding or projecting sign;
- 3. That a flush or projecting sign relates to the architectural design of the structure. Signs that cover windows, or that spill over natural boundaries, and/or cover architectural features shall be discouraged;

- 4. The proposed signs do not unreasonably block the sight lines of existing signs on adjacent properties;
- 5. The placement and size of the sign will not impair pedestrian or vehicular safety;
- 6. The design, height, location, and size of the signs are visually complementary and compatible with the scale, and architectural style of the primary structures on the site, any prominent natural features on the site, and structures and prominent natural features on adjacent properties on the same street; and
- 7. The proposed signs are in substantial conformance with the design criteria in Subsection 17.38.060.F (Design criteria for signs).

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Fort Bragg City Council does hereby approve Coastal Development Permit 1-25 (CDP 1-25), Design Review 1-25 (DR 1-25), Use Permit 1-25 (UP 1-25, and Sign Permit 2-25 (SP 2-25) to construct an affordable senior multifamily apartment project at 860 Hazelwood St subject to the following standard and special conditions:

SPECIAL CONDITIONS

- Prior to the issuance of the building permit, the applicant shall submit a revised parking plan with one motorcycle parking space for approval by the Community Development Director. The motorcycle parking spaces can replace a regular parking space. If the applicant chooses to reduce the amount of parking to the minimum required per State Density Bonus Law, the applicant shall resubmit the site plan to the Director of Community Development for approval.
- 2. The trees/bushes between Moura Senior Apartments' driveway and the proposed driveway shall be removed to facilitate visibility between the two driveways. All replacement plantings shall be native plants with a mature height of less than 42 inches.
- 3. The applicant shall install 50 SF of shrubs and grasses at the parking lot entrances from the existing planting list on the landscaping plan. The parking lot entrances shall include enhanced paving (stamped and colored) crosswalk. These items will be installed prior to the issuance of occupancy permit.
- 4. Prior to the issuance of Building Permits, the applicant shall submit a revised landscaping plan for review and approval by the Community Development Director. The revised landscaping plan shall identify native California shrubs and ground covers for the proposed landscaped areas of the project site.
- 5. The applicant shall submit, for approval by the Director of Community Development, an elevation of the proposed trash enclosures which illustrates that they are clad in substantially similar materials/colors as the building.
- 6. The Building Permit Plan Set shall include a site plan that illustrates an additional 710 SF of public open space. This may be achieved either with an expansion of the existing open space facilities or by adding a walking trail to the open space to the south of the building.
- 7. The applicant shall submit elevations for all accessory structures that illustrate finishes and colors that are similar to those of the apartment building for approval by the Community Development Director prior to issuance of the Building Permit.
- 8. Prior to issuance of the Certificate of Occupancy the applicant shall complete and enter into an Inclusionary Housing Regulatory Agreement per all of the

- requirements of section 17.32.080B with the City of Fort Bragg. The regulatory agreement will regulate 48 units as affordable to low income seniors.
- 9. If cultural resources are encountered during construction, work on-site shall be temporarily halted within 50 feet and marked off of the discovered materials, and workers shall avoid altering the materials and their context until a qualified professional archaeologist and tribal monitor has evaluated the situation and provided appropriate recommendations. Project personnel shall not collect or move cultural resources. No social media posting.
- 10. If human remains or burial materials are discovered during project construction, work within 50 feet of the discovery location, and within any nearby area reasonably suspected to overlie human remains, will cease (Public Resources Code, Section 7050.5). The Mendocino County coroner will be contacted. If the coroner determines that the remains are of Native American origin, it is necessary to comply with state laws regarding the disposition of Native American remains (Public Resources Code, Section 5097).
- 11. The applicant shall complete a pre-construction bird survey within and adjacent to any proposed disturbance area within the Project area for nesting raptors and other protected bird species within 14 days prior to disturbance. The nesting survey radius around the proposed disturbance shall be identified prior to the implementation of the protected bird nesting surveys by a California Department of Fish and Wildlife qualified biologist and shall be based on the habitat type, habitat quality, and type of disturbance proposed within or adjacent to nesting habitat, but should be a minimum of 250 feet from any area of disturbance. If any nesting raptors or protected birds are identified during such pre-construction surveys, trees, shrubs or grasslands with active nests should not be removed or disturbed. A no disturbance buffer shall be established around the nesting site to avoid disturbance or destruction of the nest site until after the breeding season or after a qualified wildlife biologist determines that the young have fledged. The extent of these buffers shall be determined by a CDFW qualified wildlife biologist and shall depend on the special-status species present, the level of noise or construction disturbance, line of sight between the nest and the disturbance, ambient levels of noise and other disturbances, and other topographical or artificial barriers. These factors shall be analyzed by a qualified wildlife biologist to make an appropriate decision on buffer distances based on the species and level of disturbance proposed in the vicinity of an active nest.
- 12. The site shall be landscaped with locally native bee-friendly plants and shrubs, such as: Sticky Monkeyflower (Mimulus aurantiacus) and Woolly Bluecurls (Trichostema lanatum). Coffeeberry shrubs (Rhamnus californica), manzanitas (Arctostaphylos sp) and ceanothuses California Poppy (Eschscholzia californica), California Aster (Aster chilensis). The applicant shall provide a revised landscaping plan that includes these plants and shrubs.
- 13. Furthermore, the open field to the south of the development shall only be mowed in summer, when there is fire risk, to provide native bees with habitat in the early spring. If native bees are observed the applicant shall install a native bee hotel.
- 14. The applicant shall not plant or allow any volunteer growth of any species of broom, pampas grass, gorse, or other species of invasive non-native plants listed

- on the California Invasive Plant Council (CALIPC) website on the project site.
- 15. Payment of Drainage, Water, Sewer, Police Facility and Fire Facility Capacity Fees will be required prior to issuance of the building permit. Estimated Fees are shown below:
 - a. Water Capacity Fees for 49 units is estimated at \$113,358.56.
 - b. Sewer Capacity Fees for 49 units is estimated at \$93,364.60.
 - c. Drainage Fee is estimated at \$0.75 per SF of impervious surface. At 50,600 SF of impervious, the fee is estimated to be \$37,987.50.
 - d. Police Facilities Fees for approx. 32,305 SF residential space is estimated at \$10,498.80.
 - e. Fire Facilities Fees for approx. 32,305 SF residential space is estimated at \$6,531.42.
- 16. All materials, workmanship, and construction of the utilities shall conform to the City of Fort Bragg Standard Specifications or an approved alternate. All public improvements to drainage conveyance, sewer and water systems shall be dedicated to the City.
- 17. Prior to the issuance of the building permit, the final utility hookup configuration shall be approved by the Public Works Director or designated staff.
- 18. The exact location of the Utility hookup configuration in the City right of way shall be approved by the by the Public Works Director or designated staff at the time of review of the encroachment permit application.
- 19. The water main is located at north side of parcel and shall be extended to serve the property by the applicant. If feasible, the water main shall be looped into the existing water main on N. Harbor Drive through the property located to the south of the proposed project.
- 20. Connection fees will be assessed if the project utilizes City forces to install water or sewer services. Fees will be based on the size and the distance of the connection and will be charged the rate in effect at the time of the building permit submittal.
- 21. If the contractor installs the connection to the City water main, the work must be overseen by a certified distribution operator and all work shall be performed in compliance with water main construction standards and guidelines, including providing sufficient notice.
- 22. An approved backflow device will be required on all service connections. Contact Heath Daniels at (707) 813-8031 for specific backflow information.
- 23. The Applicant shall provide documentation that water pressures can be achieved or that they have a means (via pressure pump, tank, etc.) for enhancing their system to meet water pressure standards. Documentation may be submitted at the time of the building permit.
- 24. Prior to issuance of a grading permit or building permit, the developer shall meet the following requirements:
 - a. The City would prefer that the connection be made at the existing sewer manhole at the intersection of N Harbor and the alley west of Woodward so that the sewer may flow entirely by gravity to the treatment plant, if gravity flow cannot be achieved by connecting to the existing sewer main in Hazelwood. The exact location of the utility hookup configuration in the City right-of-way

- shall be approved by the Public Works Director or designated staff at the time of review of the encroachment permit application.
- b. Sewer cleanouts will be required on all laterals per City Standard 309-310.
- c. The new sewer main shall be adequately sized to achieve standards established by the FBMC and reasonably designed to convey wastewater for future development of the parcel. FBMC section 14.28.040 states that the minimum size of a sewer lateral shall be 4 inches in diameter. The minimum slope of a sewer lateral shall be two feet per 100 feet (2% slope). Exceptions will be reviewed and approved at the discretion of the District Manager.
- d. New wastewater laterals shall connect the development to the constructed sewer main, to the satisfaction of the Director of Public Works.
- e. All new wastewater force mains will remain in the ownership of property owner and all maintenance of associated lift stations and force main will remain the owner's responsibility.
- f. Payment of Connection fees and Capacity fees shall be made prior to the issuance of the building permit.
- 25. The applicant shall obtain an encroachment permit from the City of Fort Bragg to paint a crosswalk on South Street at the intersection with Hazelwood, per City Specifications.
- 26. The applicant shall work with MTA to determine if the addition of a transit stop at the property is warranted and feasible. If a transit stop is feasible and desirable the applicant shall install a bus stop on the sidewalk at a location per the request of MTA prior to final of the building permit.
- 27. The developer shall submit to the City Engineer, for review and approval, improvement drawings for required public improvements. The plans shall be drawn by, and bear the seal of, a licensed Civil Engineer. Street Section Standards for Minor and Collector streets is City Standard No. 204.
- 28. Prior to the issuance of a Certificate of Occupancy for the project, the following public improvement will be completed by the applicant per the direction of the Director of Public Works and according to City standards:
 - a. Frontage improvements will be required the length of Hazelwood Street to the entrance of the furthest driveway and include a hammerhead turnaround or similar fire-department-approved terminus. The project will include improvements of the street section to full width (40'), including sidewalk, curb and gutter on the east side, and a gravel shoulder on the west side.
 - b. The developer shall submit to the City Engineer improvement drawings for the required street improvements and sidewalk improvements. The plans shall be drawn by, and bear the seal of, a licensed Civil Engineer.
 - c. All frontage improvements (ADA compliant driveway aprons, corner ramps, sidewalk, curb, gutter, conform paving, etc.) shall be designed and constructed according to current City Standards.
 - d. An encroachment permit will be required for any work in the public right of way. Please submit the application at least 2 weeks in advance of the proposed activity to allow sufficient time for processing.
- 29. Project operations shall prohibit the use of inorganic landscaping chemicals. No outdoor storage is permissible onsite.

- 30. The applicant shall install markers or stenciling for all storm drain inlets as specified by the Department of Public Works.
- 31. The applicant shall undertake annual inspection and maintenance tasks for all onsite BMPs as specified by the civil engineer and/or the Department of Public Works.
- 32. All proposed development associated with this project shall be compliant with the Fort Bragg Municipal Code (FBMC) sections 17.64 [Stormwater Runoff Pollution Control] Standards for development and section 12.14 [Drainage Facility improvements].
 - a) Prior to issuance of the Building Permit the applicant shall submit a final Water Quality Management Plan, SWIPP, and a Runoff Mitigation Plan (RMP) that demonstrates the project meets the post-construction stormwater requirements established by local, state and federal regulations. The City's RMP requirement can be fulfilled by a SWPPP instead. If using a SWPPP to fulfill the RMP, a draft version should be submitted to the City to ensure the project is in compliance prior to filing for a Notice of Intent (NOI) with the state.
 - b) Calculations must demonstrate compliance with the hydromodification requirements established by the Municipal Separate Storm Sewer System (MS4) Phase II permit E.12.f and the Mendocino County Low Impact Design Manual (LID Manual). The plan must show all calculations for lot coverage and areas of impervious surfaces including building footprints, pavement, sidewalk, etc. This can be shown on either the site plan for the building permit or incorporated into the coastal development site plan. Calculations must demonstrate compliance with the hydromodification requirements established by the Municipal Separate Storm Sewer System (MS4) Phase II permit E.12.f and the Mendocino County Low Impact Design Manual (LID Manual).
 - i. While the use of permeable pavers is encouraged to reduce runoff volumes, they do not qualify as a self-retaining area as defined by the Mendocino County LID Manual, so DMA's and associated calculations will require revision. The use of additional bioretention facilities is recommended for landscape/vegetated areas.
 - ii. The Preliminary SCP notes that shallow groundwater was encountered at 10-13 feet below existing grade, but sampling was not performed in areas proposed for bioretention, and so further investigation is required to ensure adequate separation between infiltrating surface and the water table. Results of that testing should be incorporated into the final SCP.
 - c) Applicant shall provide analysis documenting sufficiency of proposed stormwater facilities or drainage conveyance system to meet requirements established by the City's Land Use Codes.
 - d) If upgrades to infrastructure are required, the plans shall be drawn by, and bear the seal of, a licensed Civil Engineer and the improvements shall be completed by the developer and dedicated to the City.
- 33. An Operations and Maintenance Plan shall be developed for all regulated project components by the State NPDES Phase II MS4. The plan shall include provision(s)

- demonstrating adequate on-going operations and maintenance.
- 34. The applicant shall follow the recommendations of the geotechnical report for all design and construction specifications and shall implement all recommendation related to required special inspections, grading and construction activities.
- 35. On-site fire protection shall be installed as approved by the Fire Chief. Final utility configuration shall be approved by the Public Works Director or designated staff. The applicant shall ensure adequate pressure and flow to the subject site to provide fire suppression flows.
- 36. Construction activities shall occur only between the hours of 7:00 am and 7:00 pm.
- 37. The applicant shall provide a step back, embellishment or change in height every 100 feet for all property line fences. This change in design shall be confirmed by the City prior to Occupancy Permit approval.
- 38. The project shall include individual unit numbers that are well lighted and in a consistent location for all units. Visitor Parking shall be clearly marked. A directory shall be installed that shows the locations of all buildings, pathways and unit numbers. These items shall be installed prior to the final of the Building Permit.
- 39. Prior to the issuance of a Building Permit, the applicant shall submit for the review and approval of the Community Development Director plans for the locations and visual screening of all mechanical equipment proposed to be constructed as part of the project, including but not limited to standpipes, backflow preventers, generators and propane fuel tanks. All equipment shall be visually screened with vegetation, building elements, fencing or wood lattice.
- 40. The sign design shall be modified as follows: 1) The applicant shall resubmit the site plan illustrating the sign located outside of the traffic visibility area; and 2) the address number shall be added to the sign.

STANDARD CONDITIONS

- 1. This action shall become final on the 11th day following the City Council decision.
- The use and occupancy of the premises shall be established and maintained in conformance with the requirements of this permit and all applicable provisions of the CLUDC.
- 3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and compliance therewith is mandatory, unless an amendment has been approved by the City.
- 4. This permit shall be subject to the securing of all necessary permits for the proposed development from City, County, State, and Federal agencies having jurisdiction. All plans submitted with the required permit applications shall be consistent with this approval. All construction shall be consistent with all Building, Fire, and Health code considerations as well as other applicable agency codes.
- 5. The applicant shall secure all required building permits for the proposed project as required by the Mendocino County Building Department.
- 6. If any person excavating or otherwise disturbing the earth discovers any archaeological site during project construction, the following actions shall be taken:
 1) cease and desist from all further excavation and disturbances within 25 feet of the discovery; 2) notify the Fort Bragg Community Development Department within 24 hours of the discovery; and 3) retain a professional archaeologist to determine appropriate action in consultation with stakeholders such as Native American

groups that have ties to the area.

- 7. This permit shall be subject to revocation or modification upon a finding of any one or more of the following:
 - a. That such permit was obtained or extended by fraud.
 - b. That one or more of the conditions upon which such permit was granted have been violated.
 - c. That the use for which the permit was granted is so conducted as to be detrimental to the public health, welfare or safety, or as to be a nuisance.
 - d. A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more conditions.
- 8. Unless a condition of approval or other provision of the Coastal Land Use and Development Code establishes a different time limit, any permit or approval not exercised within 24 months of approval shall expire and become void, except where an extension of time is approved in compliance with CLUDC Subsection 17.76.070(B).

NOW, THEREFORE, BE IT FURTHER RESOLVED that this Resolution shall become effective immediately upon its passage and adoption.

The above and foregoing Resolution	on was introduced by,
seconded by, and passed and a	dopted at a regular meeting of the City
Council of the City of Fort Bragg held on th	
vote:	
AYES:	
NOES:	
ABSENT:	
ABSTAIN:	
RECUSE:	
	Jason Godeke, Mayor
ATTEST:	
Diane Paoli	
City Clerk	

RESOLUTION NO. PC -2025

RESOLUTION OF THE FORT BRAGG PLANNING COMMISSION RECOMMENDING THAT THE CITY COUNCIL APPROVE COASTAL DEVELOPMENT PERMIT 1-25 (CDP 1-25), DESIGN REVIEW 1-25 (DR 1-25), USE PERMIT 1-25 (UP 1-25), AND SIGN PERMIT 2-2025 FOR A PROPOSED 49-UNIT SENIOR HOUSING PROJECT LOCATED AT 860 HAZELWOOD STREET (APN 018-210-29), SUBJECT TO THE FINDINGS AND ALL STANDARD AND SPECIAL CONDITIONS.

WHEREAS, Jacob Soroudi (AMG Associates) ("Applicant") submitted an applicant for: Coastal Development Permit 1-25 (CDP 1-25), Design Review 1-25 (DR 1-25), Use Permit 1-25 (UP 1-25, and Sign Permit 2-25 (SP 2-25) to construct a multifamily apartment project at 860 Hazelwood St.

WHEREAS, 860 Hazelwood St, Fort Bragg, California (Assessor Parcel Number: 018-210-29) is in the Very High Residential (RH) Zone, Coastal Zone and no changes to the site's current zoning designation are proposed under the Project; and

WHEREAS, the Project is subject to the Fort Bragg Coastal General Plan and Coastal Land Use and Development Code (CLUDC); and

WHEREAS, Section 17.32.020 of the CLUDC requires the City Council to provide preliminary approval or disapproval of applicant-requested incentives, modifications, or waivers of development or zoning standards for the development of new multifamily housing units that include inclusionary housing units; and

WHEREAS, the City Council held a public hearing on February 24, 2025, to accept public testimony and provided preliminary conceptual approval of two inclusionary housing incentives for the proposed Project; and

WHEREAS, the Planning Commission held a public meeting on April 16, 2025 to consider the Project, accept public testimony and consider making a recommendation to City Council; and

WHEREAS, the City Council will have the final approval authority over the inclusionary housing incentives awarded for this project and therefore will have authority overall all project entitlements; and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) Section 15332 (class 32) of the CEQA Guidelines the project is exempt from CEQA as an "In-Fill Development Project" and per Section 15192 as an "Infill Housing Development," and

NOW, THEREFORE, BE IT RESOLVED that the City of Fort Bragg Planning Commission, based on the entirety of the record before it, which includes without limitation, CEQA, Public Resources Code §21000, et seq. and the CEQA Guidelines, 14 California Code of Regulations §15000, et seq.; the Fort Bragg Coastal General Plan; the Fort Bragg Coastal Land Use and Development Code; the Project applications; all site plans, and all reports and public testimony submitted as part of the Planning Commission meeting of April 16, 2025 and Planning Commission deliberations; and any other evidence (within the meaning of Public Resources Code §21080(e) and §21082.2), the Planning Commission of the City of Fort Bragg hereby recommend, *per the analysis*

incorporated herein by reference to the project staff report, dated April 16, 2025, that the City Council approve Coastal Development Permit 1-25 (CDP 1-25), Design Review 1-25 (DR 1-25), Use Permit 1-25 (UP 1-25, and Sign Permit 2-25 (SP 2-25), subject to the findings, standard conditions and special conditions below:

A. General Findings

- 1. The foregoing recitals are true and correct and made a part of this Resolution;
- 2. The documents and other material constituting the record for these proceedings are located at the Community Development Department;
- 3. The proposed project is consistent with the purpose and intent of the zoning district, as well as all other provisions of the Coastal General Plan, Coastal Land Use and Development Code (ILUDC), and the Fort Bragg Municipal Code in general.

NOW, THEREFORE, BE IT RESOLVED that the Fort Bragg Planning Commission makes the following findings and determinations for Coastal Development Permit 1-25 to allow for the construction of a 49-unit senior apartment project proposed for at 860 Hazelwood Street. *per analysis incorporated herein by reference to the project staff report, dated April 16, 2025.*

- 1. Feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment.
- 2. The proposed use is consistent with the purposes of the zone in which the site is located.
- 3. The proposed development is in conformance with the City of Fort Bragg's Coastal General Plan.
- 4. The proposed location of the use and conditions under which it may be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.
- 5. Services, including but not limited to, water supply, sewage disposal, solid waste, and public roadway capacity have been considered and are adequate to serve the proposed development.

NOW, THEREFORE, BE IT RESOLVED that the Fort Bragg Planning Commission makes the following findings and determinations for Use Permit 9-25 to allow for the construction of a 49-unit apartment project proposed for 860 Hazelwood Street. *per analysis incorporated herein by reference to the project staff report, dated April 16, 2025.*

- 1. The proposed use is consistent with the General Plan, any applicable specific plan, and the Local Coastal Program;
- 2. The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Development Code and the Municipal Code;

- 3. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and future land uses in the vicinity;
- 4. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities (e.g., fire protection, police protection, potable water, schools, solid waste collection and disposal, storm drainage, wastewater collection, treatment, and disposal, etc.), to ensure that the type, density, and intensity of use being proposed would not endanger, jeopardize, or otherwise constitute a hazard to the public interest, health, safety, convenience, or welfare, or be materially injurious to the improvements, persons, property, or uses in the vicinity and zoning district in which the property is located.

NOW, THEREFORE, BE IT RESOLVED that the Fort Bragg Planning Commission makes the following findings and determinations for Design Review Permit 1-25 to allow for the construction of a 49-unit affordable senior apartment project proposed for 860 Hazelwood Street. *per analysis incorporated herein by reference to the project staff report, dated April 16, 2025.*

- 1. Complies with the purpose and requirements of this Section (Design Review in the CLUDC)
- 2. Provides architectural design, building massing, and scale appropriate to and compatible with the site surroundings and the community.
- 3. Provides attractive and desirable site layout and design, including building arrangement, exterior appearance and setbacks, drainage, fences and walls, grading, landscaping, lighting, signs, etc.
- 4. Provides efficient and safe public access, circulation and parking.
- 5. Provides appropriate open space and landscaping, including the use of water efficient landscaping.
- 6. Is consistent with the Coastal General Plan, and applicable specific plan, and the certified Local Coastal Program.
- 7. Complies and is consistent with the City's Design Guidelines.

NOW, THEREFORE, BE IT RESOLVED that the Fort Bragg Planning Commission makes the following findings and determinations for the Density Bonus Law incentives to allow for the construction of a 49-unit affordable senior apartment project proposed for 860 Hazelwood Street. *per analysis incorporated herein by reference to the project staff report, dated April 16, 2025.*

- 1. The requested incentives are required in order to provide for affordable housing costs as defined in Health and Safety Code Section 50052.5, or for rents for the targeted units to be set in compliance with Government Code Section 65915(c).
- 2. The concession or incentive will not have a specific adverse impact, as defined by Government Code Section 65589.5(d)(2), upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources and for which there is no feasible method to

- satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low and moderate income households.
- 3. The City has determined that the development incentives requested will not have any adverse effects on coastal resources.
- 4. The project is not feasible without the incentive.
- 5. The Fort Bragg City Council has identified affordable housing development as a top priority in the City's Strategic Plan and set a goal to develop 200 units of housing in Fort Bragg by 2026.
- 6. The Coastal Commission implements the California Coastal Act of 1976, and Section 30604(f) of the Coastal Act requires the Commission to encourage housing opportunities for persons of low or moderate income.
 - "Section 30604 (f) The commission shall encourage housing opportunities for persons of low and moderate income. In reviewing residential development applications for low- and moderate-income housing, as defined in paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code, the issuing agency or the commission, on appeal, may not require measures that reduce residential densities below the density sought by an applicant if the density sought is within the permitted density or range of density established by local zoning plus the additional density permitted under Section 65915 of the Government Code, unless the issuing agency or the commission on appeal makes a finding, based on substantial evidence in the record, that the density sought by the applicant cannot feasibly be accommodated on the site in a manner that is in conformity."
- 7. The State of California has passed regulations to streamline and facilitate the construction of market rate and affordable multifamily developments including regulations that limit the ability of local jurisdictions to deny multifamily housing projects based on subjective criteria and the requirement to provide housing incentives and density bonuses for project that include affordable housing. Statewide housing laws, such as Density Bonus Law, the Housing Accountability Act, and the Housing Crisis Act, apply in the coastal zone in ways that are also consistent with the Coastal Act.
- 8. There are relatively few large parcels in Fort Bragg that support multifamily housing, as identified in the City's vacant parcel inventory. Most vacant parcels that can accommodate multifamily housing have an environmental constraint. This parcel does not have an environmental constraint.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Fort Bragg Planning Commission makes the following findings and determinations regarding the Sign Review Permit SP 2-25 for this project *per the analysis incorporated herein by reference to the project staff report, dated April 16, 2025:*

 The proposed signs do not exceed the standards of Sections 17.38.070 (Zoning District Sign Standards) and 17.38.080 (Standards for Specific Sign Types), and are of the minimum size and height necessary to enable pedestrians and

- motorists to readily identify the facility or site from a sufficient distance to safely and conveniently access the facility or site;
- 2. That the placement of the sign on the site is appropriate for the height and area of a freestanding or projecting sign;
- 3. That a flush or projecting sign relates to the architectural design of the structure. Signs that cover windows, or that spill over natural boundaries, and/or cover architectural features shall be discouraged;
- The proposed signs do not unreasonably block the sight lines of existing signs on adjacent properties;
- 5. The placement and size of the sign will not impair pedestrian or vehicular safety;
- 6. The design, height, location, and size of the signs are visually complementary and compatible with the scale, and architectural style of the primary structures on the site, any prominent natural features on the site, and structures and prominent natural features on adjacent properties on the same street; and
- 7. The proposed signs are in substantial conformance with the design criteria in Subsection 17.38.060.F (Design criteria for signs).

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Fort Bragg Planning Commission does hereby recommend that the City Council approve Coastal Development Permit 1-25 (CDP 1-25), Design Review 1-25 (DR 1-25), Use Permit 1-25 (UP 1-25, and Sign Permit X-25 (SP X-25) to construct an affordable senior multifamily apartment project at 860 Hazelwood St subject to the following standard and special conditions:

SPECIAL CONDITIONS

- Prior to the issuance of the building permit, the applicant shall submit a revised parking plan with one motorcycle parking space for approval by the Community Development Director. The motorcycle parking spaces can replace a regular parking space.
- 2. The trees/bushes between Moura Senior Apartments' driveway and the proposed driveway shall be removed to facilitate visibility between the two driveways. All replacement plantings shall be native plants with a mature height of less than 42 inches.
- 3. The applicant shall install 50 SF of shrubs and grasses at the parking lot entrances from the existing planting list on the landscaping plan. The parking lot entrances shall include enhanced paving (stamped and colored) crosswalk. These items will be installed prior to the issuance of occupancy permit.
- 4. Prior to the issuance of Building Permits, the applicant shall submit a revised landscaping plan for review and approval by the Community Development Director. The revised landscaping plan shall identify native California shrubs and ground covers for the proposed landscaped areas of the project site.
- 5. The applicant shall submit, for approval by the Director of Community Development, an elevation of the proposed trash enclosures which illustrates that they are clad in substantially similar materials/colors as the building.
- 6. The Building Permit Plan Set shall include a site plan that illustrates an additional 710 SF of public open space. This may be achieved either with an expansion of the existing open space facilities or by adding a walking trail to the open space to

- the south of the building.
- 7. The applicant shall submit elevations for all accessory structures that illustrate finishes and colors that are similar to those of the apartment building for approval by the Community Development Director prior to issuance of the Building Permit.
- 8. Prior to issuance of the Certificate of Occupancy the applicant shall complete and enter into an Inclusionary Housing Regulatory Agreement per all of the requirements of section 17.32.080B with the City of Fort Bragg. The regulatory agreement will regulate 48 units as affordable to low income seniors.
- 9. If cultural resources are encountered during construction, work on-site shall be temporarily halted within 50 feet and marked off of the discovered materials, and workers shall avoid altering the materials and their context until a qualified professional archaeologist and tribal monitor has evaluated the situation and provided appropriate recommendations. Project personnel shall not collect or move cultural resources. No social media posting.
- 10. If human remains or burial materials are discovered during project construction, work within 50 feet of the discovery location, and within any nearby area reasonably suspected to overlie human remains, will cease (Public Resources Code, Section 7050.5). The Mendocino County coroner will be contacted. If the coroner determines that the remains are of Native American origin, it is necessary to comply with state laws regarding the disposition of Native American remains (Public Resources Code, Section 5097).
- 11. The applicant shall complete a pre-construction bird survey within and adjacent to any proposed disturbance area within the Project area for nesting raptors and other protected bird species within 14 days prior to disturbance. The nesting survey radius around the proposed disturbance shall be identified prior to the implementation of the protected bird nesting surveys by a California Department of Fish and Wildlife qualified biologist and shall be based on the habitat type, habitat quality, and type of disturbance proposed within or adjacent to nesting habitat, but should be a minimum of 250 feet from any area of disturbance. If any nesting raptors or protected birds are identified during such pre-construction surveys, trees, shrubs or grasslands with active nests should not be removed or disturbed. A no disturbance buffer shall be established around the nesting site to avoid disturbance or destruction of the nest site until after the breeding season or after a qualified wildlife biologist determines that the young have fledged. The extent of these buffers shall be determined by a CDFW qualified wildlife biologist and shall depend on the special-status species present, the level of noise or construction disturbance, line of sight between the nest and the disturbance, ambient levels of noise and other disturbances, and other topographical or artificial barriers. These factors shall be analyzed by a qualified wildlife biologist to make an appropriate decision on buffer distances based on the species and level of disturbance proposed in the vicinity of an active nest.
- 12. The site shall be landscaped with locally native bee-friendly plants and shrubs, such as: Sticky Monkeyflower (Mimulus aurantiacus) and Woolly Bluecurls (Trichostema lanatum). Coffeeberryshrubs (Rhamnus californica), manzanitas (Arctostaphylos sp) and ceanothuses California Poppy (Eschscholzia californica), California Aster (Aster chilensis). The applicant shall provide a revised

- landscaping plan that includes these plants and shrubs.
- 13. Furthermore, the open field to the south of the development shall only be mowed in summer, when there is fire risk, to provide native bees with habitat in the early spring. If native bees are observed the applicant shall install a native bee hotel.
- 14. The applicant shall resubmit the site plan illustrating the removal of the easternmost six stalls in the parking lot on the southwest side of the building in order to retain the pine tree on the south side of the building.
- 15. The applicant shall not plant or allow any volunteer growth of any species of broom, pampas grass, gorse, or other species of invasive non-native plants listed on the California Invasive Plant Council (CALIPC) website on the project site.
- 16. Payment of Drainage, Water, Sewer, Police Facility and Fire Facility Capacity Fees will be required prior to issuance of the building permit. Estimated Fees are shown below:
 - a. Water Capacity Fees for 49 units is estimated at \$113,358.56.
 - b. Sewer Capacity Fees for 49 units is estimated at \$93,364.60.
 - c. Drainage Fee is estimated at \$0.75 per SF of impervious surface. At 50,600 SF of impervious, the fee is estimated to be \$37,987.50.
 - d. Police Facilities Fees for approx. 32,305 SF residential space is estimated at \$10,498.80.
 - e. Fire Facilities Fees for approx. 32,305 SF residential space is estimated at \$6,531.42.
- 17. All materials, workmanship, and construction of the utilities shall conform to the City of Fort Bragg Standard Specifications or an approved alternate. All public improvements to drainage conveyance, sewer and water systems shall be dedicated to the City.
- 18. Prior to the issuance of the building permit, the final utility hookup configuration shall be approved by the Public Works Director or designated staff.
- 19. The exact location of the Utility hookup configuration in the City right of way shall be approved by the by the Public Works Director or designated staff at the time of review of the encroachment permit application.
- 20. The water main is located at north side of parcel and shall be extended to serve the property by the applicant. If feasible, the water main shall be looped into the existing water main on N. Harbor Drive through the property located to the south of the proposed project.
- 21. Connection fees will be assessed if the project utilizes City forces to install water or sewer services. Fees will be based on the size and the distance of the connection and will be charged the rate in effect at the time of the building permit submittal.
- 22. If the contractor installs the connection to the City water main, the work must be overseen by a certified distribution operator and all work shall be performed in compliance with water main construction standards and guidelines, including providing sufficient notice.
- 23. An approved backflow device will be required on all service connections. Contact Heath Daniels at (707) 813-8031 for specific backflow information.
- 24. The Applicant shall provide documentation that water pressures can be achieved or that they have a means (via pressure pump, tank, etc.) for enhancing their

- system to meet water pressure standards. Documentation may be submitted at the time of the building permit.
- 25. Prior to issuance of a grading permit or building permit, the developer shall meet the following requirements:
 - a. The City would prefer that the connection be made at the existing sewer manhole at the intersection of N Harbor and the alley west of Woodward so that the sewer may flow entirely by gravity to the treatment plant, if gravity flow cannot be achieved by connecting to the existing sewer main in Hazelwood. The exact location of the utility hookup configuration in the City right-of-way shall be approved by the Public Works Director or designated staff at the time of review of the encroachment permit application.
 - b. Sewer cleanouts will be required on all laterals per City Standard 309-310.
 - c. The new sewer main shall be adequately sized to achieve standards established by the FBMC and reasonably designed to convey wastewater for future development of the parcel. FBMC section 14.28.040 states that the minimum size of a sewer lateral shall be 4 inches in diameter. The minimum slope of a sewer lateral shall be two feet per 100 feet (2% slope). Exceptions will be reviewed and approved at the discretion of the District Manager.
 - d. New wastewater laterals shall connect the development to the constructed sewer main, to the satisfaction of the Director of Public Works.
 - e. All new wastewater force mains will remain in the ownership of property owner and all maintenance of associated lift stations and force main will remain the owner's responsibility.
 - f. Connection fees are due prior to issuance of building permit. Prior to the issuance of the occupancy, the developer shall pay all Capacity Fees.
- 26. The applicant shall obtain an encroachment permit from the City of Fort Bragg to paint a cross walk on the South side of South Street at the intersection with Hazelwood, per City Specifications.
- 27. The applicant shall work with MTA to determine if the addition of a transit stop at the property is warranted and feasible. If a transit stop is feasible and desirable the applicant shall install a bus stop on the sidewalk at a location per the request of MTA prior to final of the building permit.
- 28. The developer shall submit to the City Engineer, for review and approval, improvement drawings for required public improvements. The plans shall be drawn by, and bear the seal of, a licensed Civil Engineer. Street Section Standards for Minor and Collector streets is City Standard No. 204.
- 29. Prior to the issuance of a Certificate of Occupancy for the project, the following public improvement will be completed by the applicant per the direction of the Director of Public Works and according to City standards:
 - a. Frontage improvements will be required the length of Hazelwood Street to the entrance of the furthest driveway and include a hammerhead turnaround or similar fire-department-approved terminus. The project will include improvements of the street section to full width (40'), including sidewalk, curb and gutter on the east side, and a gravel shoulder on the west side.
 - b. The developer shall submit to the City Engineer improvement drawings for

- the required street improvements and sidewalk improvements. The plans shall be drawn by, and bear the seal of, a licensed Civil Engineer.
- c. All frontage improvements (ADA compliant driveway aprons, corner ramps, sidewalk, curb, gutter, conform paving, etc.) shall be designed and constructed according to current City Standards.
- d. An encroachment permit will be required for any work in the public right of way. Please submit the application at least 2 weeks in advance of the proposed activity to allow sufficient time for processing.
- 30. Project operations shall prohibit the use of inorganic landscaping chemicals. No outdoor storage is permissible onsite.
- 31. The applicant shall install markers or stenciling for all storm drain inlets as specified by the Department of Public Works.
- 32. The applicant shall undertake annual inspection and maintenance tasks for all on-site BMPs as specified by the civil engineer and/or the Department of Public Works.
- 33. All proposed development associated with this project shall be compliant with the Fort Bragg Municipal Code (FBMC) sections 17.64 [Stormwater Runoff Pollution Control] Standards for development and section 12.14 [Drainage Facility improvements].
 - a) Prior to issuance of the Building Permit the applicant shall submit a final Water Quality Management Plan, SWIPP, and a Runoff Mitigation Plan (RMP) that demonstrates the project meets the post-construction stormwater requirements established by local, state and federal regulations. The City's RMP requirement can be fulfilled by a SWPPP instead. If using a SWPPP to fulfill the RMP, a draft version should be submitted to the City to ensure the project is in compliance prior to filing for a Notice of Intent (NOI) with the state.
 - b) Calculations must demonstrate compliance with the hydromodification requirements established by the Municipal Separate Storm Sewer System (MS4) Phase II permit E.12.f and the Mendocino County Low Impact Design Manual (LID Manual). The plan must show all calculations for lot coverage and areas of impervious surfaces including building footprints, pavement, sidewalk, etc. This can be shown on either the site plan for the building permit or incorporated into the coastal development site plan. Calculations must demonstrate compliance with the hydromodification requirements established by the Municipal Separate Storm Sewer System (MS4) Phase II permit E.12.f and the Mendocino County Low Impact Design Manual (LID Manual).
 - i. While the use of permeable pavers is encouraged to reduce runoff volumes, they do not qualify as a self-retaining area as defined by the Mendocino County LID Manual, so DMA's and associated calculations will require revision. The use of additional bioretention facilities is recommended for landscape/vegetated areas.
 - ii. The Preliminary SCP notes that shallow groundwater was encountered at 10-13 feet below existing grade, but sampling was not performed in areas proposed for bioretention, and so further

investigation is required to ensure adequate separation between infiltrating surface and the water table. Results of that testing should be incorporated into the final SCP.

- c) Applicant shall provide analysis documenting sufficiency of proposed stormwater facilities or drainage conveyance system to meet requirements established by the City's Land Use Codes.
- d) If upgrades to infrastructure are required, the plans shall be drawn by, and bear the seal of, a licensed Civil Engineer and the improvements shall be completed by the developer and dedicated to the City.
- 34. An Operations and Maintenance Plan shall be developed for all regulated project components by the State NPDES Phase II MS4. The plan shall include provision(s) demonstrating adequate on-going operations and maintenance.
- 35. On-site fire protection shall be installed as approved by the Fire Chief. Final utility configuration shall be approved by the Public Works Director or designated staff. The applicant shall ensure adequate pressure and flow to the subject site to provide fire suppression flows.
- 36. The applicant shall follow the recommendations of the geotechnical report for all design and construction specifications and shall implement all recommendation related to required special inspections, grading and construction activities.
- 37. The applicant shall provide a step back, embellishment or change in height every 100 feet for all property line fences. This change in design shall be confirmed by the City prior to Occupancy Permit approval.
- 38. The project shall include individual unit numbers that are well lighted and in a consistent location for all units. Visitor Parking shall be clearly marked. A directory shall be installed that shows the locations of all buildings, pathways and unit numbers. These items shall be installed prior to the final of the Building Permit.
- 39. Prior to the issuance of a Building Permit, the applicant shall submit for the review and approval of the Community Development Director plans for the locations and visual screening of all mechanical equipment proposed to be constructed as part of the project, including but not limited to standpipes, backflow preventers, generators and propane fuel tanks. All equipment shall be visually screened with vegetation, building elements, fencing or wood lattice.
- 40. The sign design shall be modified as follows: 1) the stone veneer shall be removed from the sign design and replaced with a wood post/trellis element to match the other side of the sign; 1) The applicant shall resubmit the site plan illustrating the sign located outside of the traffic visibility area; and 2) the address number shall be added to the sign.
- 41. Construction activities shall occur only between the hours of 7:00 am and 7:00 pm.
- 42. The site plan shall be resubmitted to the Director of Community Development for approval, if the applicant choses to reduce the amount of parking to the minimum required per State Density Bonus Law.

STANDARD CONDITIONS

- 1. This action shall become final on the 11th day following the City Council decision.
- 2. The use and occupancy of the premises shall be established and maintained in conformance with the requirements of this permit and all applicable provisions of

the CLUDC.

- 3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and compliance therewith is mandatory, unless an amendment has been approved by the City.
- 4. This permit shall be subject to the securing of all necessary permits for the proposed development from City, County, State, and Federal agencies having jurisdiction. All plans submitted with the required permit applications shall be consistent with this approval. All construction shall be consistent with all Building, Fire, and Health code considerations as well as other applicable agency codes.
- 5. The applicant shall secure all required building permits for the proposed project as required by the Mendocino County Building Department.
- 6. If any person excavating or otherwise disturbing the earth discovers any archaeological site during project construction, the following actions shall be taken: 1) cease and desist from all further excavation and disturbances within 25 feet of the discovery; 2) notify the Fort Bragg Community Development Department within 24 hours of the discovery; and 3) retain a professional archaeologist to determine appropriate action in consultation with stakeholders such as Native American groups that have ties to the area.
- 7. This permit shall be subject to revocation or modification upon a finding of any one or more of the following:
 - a. That such permit was obtained or extended by fraud.
 - b. That one or more of the conditions upon which such permit was granted have been violated.
 - c. That the use for which the permit was granted is so conducted as to be detrimental to the public health, welfare or safety, or as to be a nuisance.
 - d. A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more conditions.
- 8. Unless a condition of approval or other provision of the Coastal Land Use and Development Code establishes a different time limit, any permit or approval not exercised within 24 months of approval shall expire and become void, except where an extension of time is approved in compliance with CLUDC Subsection 17.76.070(B).

NOW, THEREFORE, BE IT FURTHER RESOLVED that this Resolution shall become effective immediately upon its passage and adoption.

The above and foregoing Resolution was introduced by, seconded by, and passed and adopted at a regular meeting of the Planning Commission of the City of Fort Bragg held on the 16 th day of April 2025 by the following vote:
AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

ATTEST:	David Jensen, Chair			
Maria Flynn Office Assistant				



CITY COUNCIL STAFF REPORT

TO: City Council DATE: February 24, 2025

DEPARTMENT: Community Development Department

PREPARED BY: Marie Jones, Marie Jones Consulting

PRESENTER: Marie Jones, Marie Jones Consulting

AGENDA TITLE: Hold a Hearing Receive Report and Consider Adopting a Resolution of the Fort Bragg City Council Providing Preliminary Preapproval of Inclusionary Housing Incentives for Proposed Affordable Senior Apartment Project at 860 Hazelwood.

RECOMMENDATION

Adopt a Resolution of the Fort Bragg City Council Providing Preliminary Preapproval of Inclusionary Housing Incentives for Affordable Senior Apartment Project Proposed for 860 Hazelwood.

BACKGROUND

On January 3, 2025 the City received an application for a 49-unit affordable senior housing project proposed for 860 Hazelwood for which the applicant has requested two incentives and a small density bonus in compliance with state law.

DISCUSSION AND ANALYSIS

The inclusionary housing ordinance implements the Housing Element of the General Plan, by offering incentives for the development of housing that is affordable to low- and moderate-income households. Per the Coastal Land Use and Development Code (CLUDC), section 17.32.040 developments of greater than 7 units "must construct 15 percent of all new dwelling units in a residential development as affordable units."

Additionally, in recognition that the inclusionary housing requirement reduces the profitability and therefore the feasibility of a project the ordinance includes a mechanism by which the City Council can "pre-approve" planning incentives prior to submittal of the final permit application and consideration of the project by the Planning Commission and City Council, see CLUDC section 17.32.070 below:

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17.32.070 - Inclusionary Housing Incentives

- A. Process for describing incentives. A residential development that complies with the inclusionary housing requirements in Subsection 17.32.040.A. (Number of units required), through the actual construction of inclusionary units, shall be entitled to the following procedures and incentives.
- 1. Voluntary conceptual preliminary approval of incentives.
- a. Before the submittal of any formal application for a General Plan amendment, rezoning, Coastal Development Permit, Use Permit, Tentative Map, or other permit or entitlement describing and specifying the location, number, size, and type of the housing development, the developer may submit a letter of request for incentives identifying any requests for density bonus, incentives, modifications, or waivers of development or zoning standards necessary to make construction feasible for the proposed development, including the inclusionary units. The Council shall review the preliminary development proposal and the letter of request for incentives within 90 days of submittal at a public hearing and indicate conceptual preliminary approval or disapproval of the proposed development and request for incentives, modifications, or waivers of development or zoning standards.
- b. Preliminary approval or disapproval shall not bind the Council, but rather shall be subject to the discretion of the Council to modify its preliminary recommendations based upon a full review of all pertinent project information, including any CEQA analysis, presented at the public hearing on the subject application.
- c. The provisions of this Section do not replace, supersede or modify the independent requirement for a CDP approved pursuant to the otherwise applicable policies and standards of the certified LCP.

State law requires the City to grant at least three incentives per Government Code section 659159(d)(2)(c) as the project is proposed at 100% affordable to low-income seniors.

(C) Three incentives or concessions for projects that include at least 24 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a development in which the units are for sale.

The applicant has requested the following two incentives (Attachment 1):

- 1. "Height: Pursuant to Table 2-5 in the Code, the Project may have a maximum height of 35 feet, which it currently exceeds by 7'8". The entire 3rd story of the development would need to be removed in order for the Project to abide by this development standard, therefore making its removal necessary for the Project's financial feasibility.
- 2. Parking: Pursuant to Table 3-7 in the Code, the Project must provide 2 parking stalls per unit plus guest parking at a rate of 1 stall per 3 units. This would place the mandatory minimum parking count at 114 stalls. As designed, the Project can only accommodate 75 parking spaces. This is above the minimum parking count as outlined in California Government Code (p)(I)(A) and (p)(I)(B)."

Additionally, according to State Law, the applicant may request a density bonus of 80% based on the level of affordability (100%) of the project. However, the applicant has requested a 9% density bonus to construct the project at 16.39 units/acre instead of the 15 units/acre required in the zoning district.

FISCAL IMPACT

This approval will not have a significant fiscal impact.

ENVIRONMENTAL ANALYSIS

The addition of affordable apartments in Fort Bragg will reduce overall emissions as the City is small and compact and locating residence within the City will result in fewer vehicle miles traveled than new development within the county. Moreover, the consideration and approval of preliminary incentives has been reviewed with respect to the applicability of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA"). City staff has determined that the proposed approval of preliminary incentives amendments does not have the potential for creating a significant effect on the environment and is therefore exempt from further review under CEQA pursuant to State CEQA Guidelines Section 15060(c)(3) because it is not a project as defined by the CEQA Guidelines Section 15378. Adoption of the Resolution does not bind the Council which under the Inclusionary housing ordinance, retains the authority to modify the pre-approval when upon a full review of the pertinent information. These incentives will be subject to review under CEQA and the specific impacts of such projects will be analyzed under CEQA at time of project review and approval of the development project before the Planning Commission and when the Planning Commission recommendation is presented to the Council.

STRATEGIC PLAN/COUNCIL PRIORITIES/GENERAL PLAN CONSISTENCY

The granting of planning incentives and a density bonus for affordable housing is consistent with state law, Program H-2.4.1 of the City's Housing Element and Chapter 17.32 of the Coastal Land Use and Development Code. If approved the project would help implement the City's Strategic Plan housing goal of 200 new housing units by 2026.

COMMUNITY OUTREACH

This project has not been the subject of community outreach. Community outreach is not feasible prior to a fully noticed public hearing for current planning projects.

COMMITTEE REVIEW AND RECOMMENDATIONS

The Planning Commission will hold a Public Hearing on this project in March and forward a recommendation for the project permits to the City Council soon thereafter.

ALTERNATIVES

The City, under the State's density bonus law, can only deny the requested incentives if the City can prove with substantial evidence that the incentives are not required for a financially and physically feasible project. The following facts of the project don't seem to allow for this flexibility.

- This site requires a large stormwater infiltration basin, and it is not feasible to both accommodate the infiltration basin and the minimum density of the site with existing height limits.
- The applicant must at least achieve minimum density at the site to be eligible for Tax

- Credit financing. Without the requested height change the project is not financially feasible as it would not achieve minimum densities and would not be eligible for tax credit financing.
- Likewise, the site is not large enough to accommodate all the required parking, the units and the stormwater infiltration basin, nor is the required parking consistent with parking usage for senior apartments.
- Finally, as noted in the applicant's letter, the small addition in height is required to accommodate the elevator shaft which is required by law for senior ADA access.

IMPLEMENTATION/TIMEFRAMES

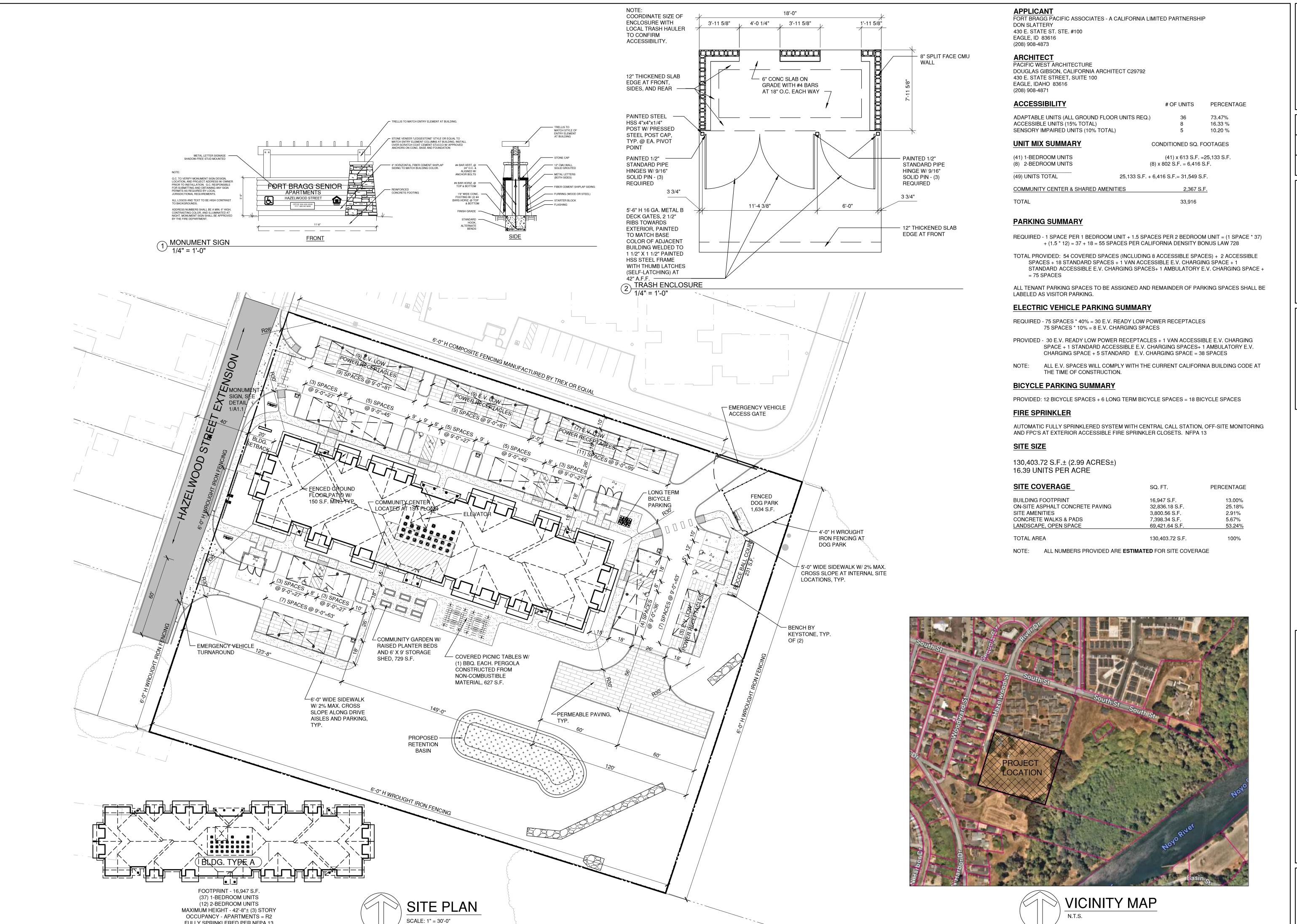
The applicant has submitted final project designs, and their application will be brought forward to the Planning Commission and City Council for consideration in March 2025.

ATTACHMENTS

- 1. Letter Request for Incentives
- Resolution of the Fort Bragg City Council Providing Preliminary Preapproval of Affordable Housing Incentives and Density Bonus for a Proposed Senior Apartments Project at 860 Hazelwood.
- 3. Public Hearing Notice

NOTIFICATION

'Notify Me' Housing List Applicant- AMG & Associates, LLC Agent- Jacob Soroudi Property Owner- Angelina F. Moura



FULLY SPRINKLERED PER NFPA 13 CONSTRUCTION TYPE: VA

REVISIONS

4/4/25

AMG24-04

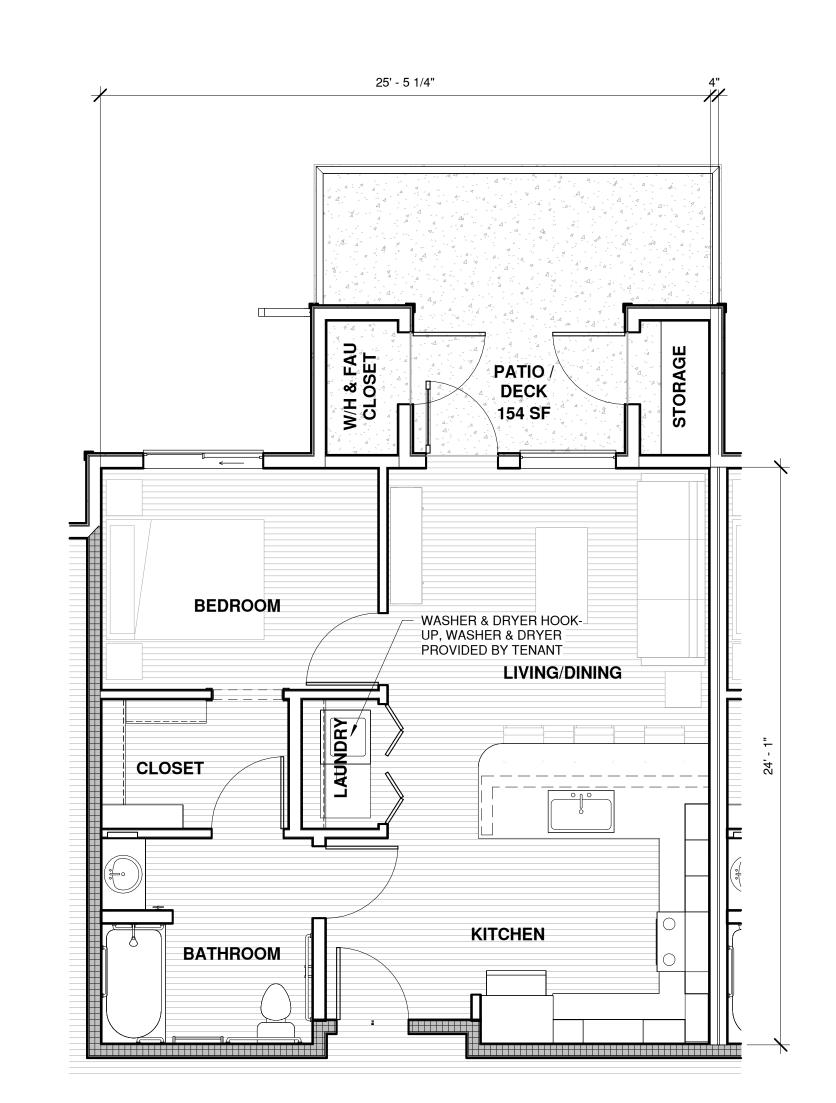
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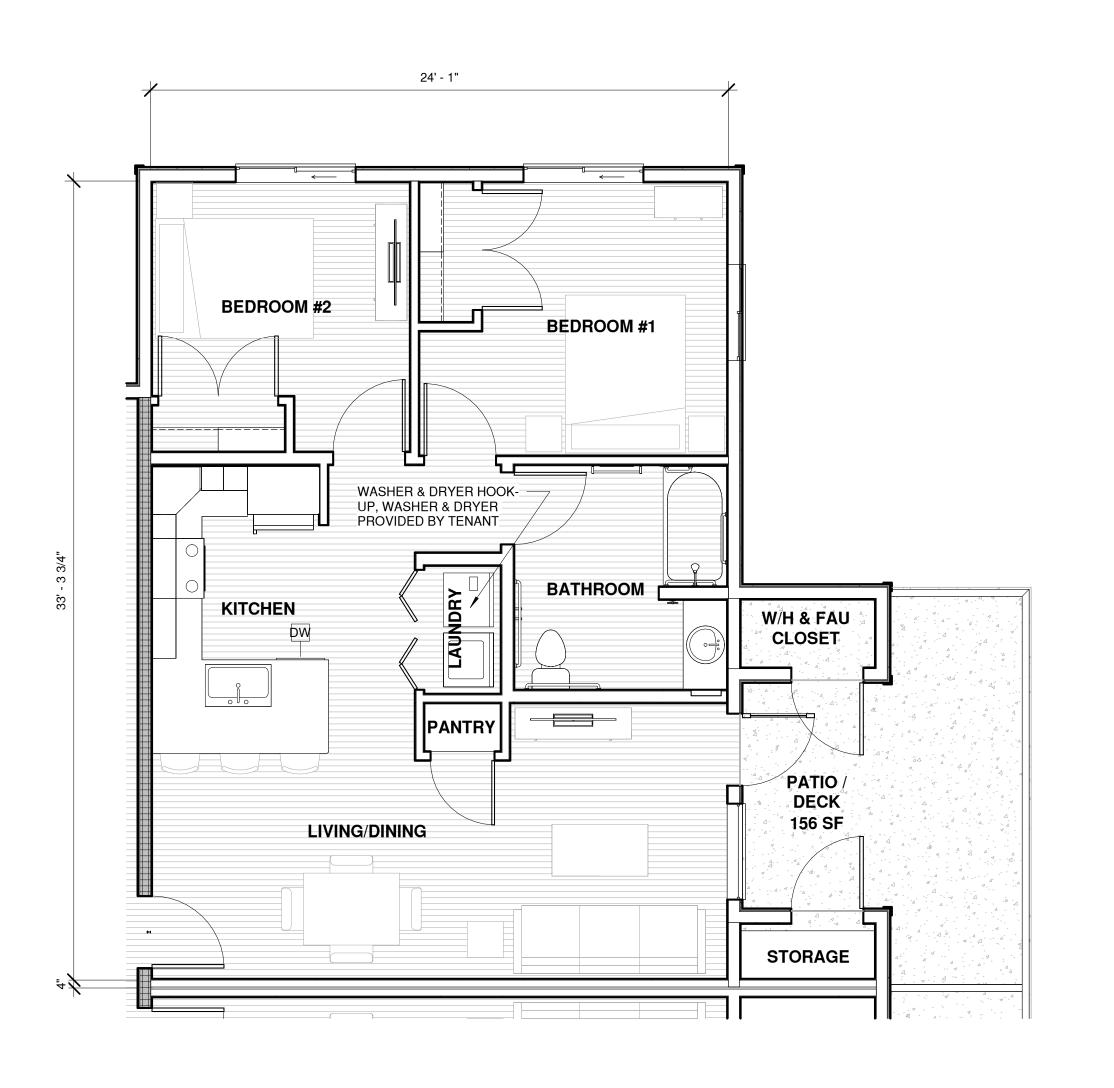
SCHEMATIC

A1.1

1-BEDROOM UNIT PLAN, TYP. - 613 S.F. 1/4" = 1'-0"









REVISIONS

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PROJECT#

AMG24-04

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ZELWOOD STREET
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SCHEMATIC

A2.1 TYPICAL UNIT PLANS

FORT BRAGG SENIOR APARTMENTS

4/4/25

PROJECT#

AMG24-04

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ALASKA - ARIZONA - CALIFORNIA - COLORADO -IANA - MONTANA - NEW MEXICO - NEVADA - NOR SOUTH DAKOTA - U.S.V.I. - UTAH - WASHINGT HAZELWOOD STREET
SET / NOT FOR CONSTRUCTION FORT BRAGG SENIOR **APARTMENTS**

SCHEMATIC A4.0A OVERALL 1ST FLOOR PLAN

(13(14) B BD A4.2 3 A4.3B 2 E E 3 4 6 5 1 2 A4.3C 8 9 10 13 14 7 [44.22] 11(12) 1) OVERALL 1ST FLOOR PLAN 1/16" = 1'-0"

4/4/25 PROJECT# AMG24-04

Pacific West Architecture

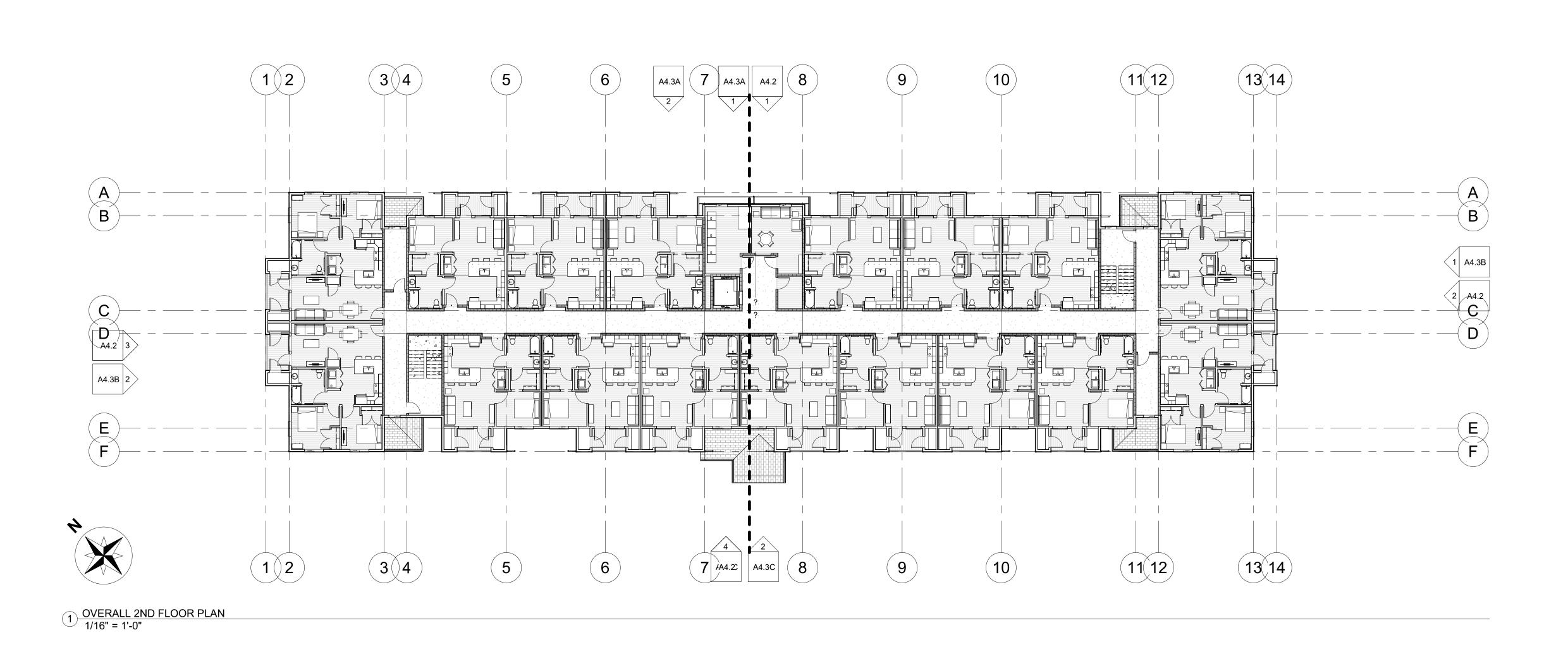
430 E. STATE STREET, § EAGLE, IDAHO 83616 (208) 461-0022 fax (208) 461-3267

SCHEMATIC SET / NOT FOR CONSTRUCTION

ALASKA - ARIZONA - CALIFORNIA - COLORA IANA - MONTANA - NEW MEXICO - NEVADA - I SOUTH DAKOTA - U.S.V.I. - UTAH - WASHII

FORT BRAGG SENIOR APARTMENTS

A4.0B



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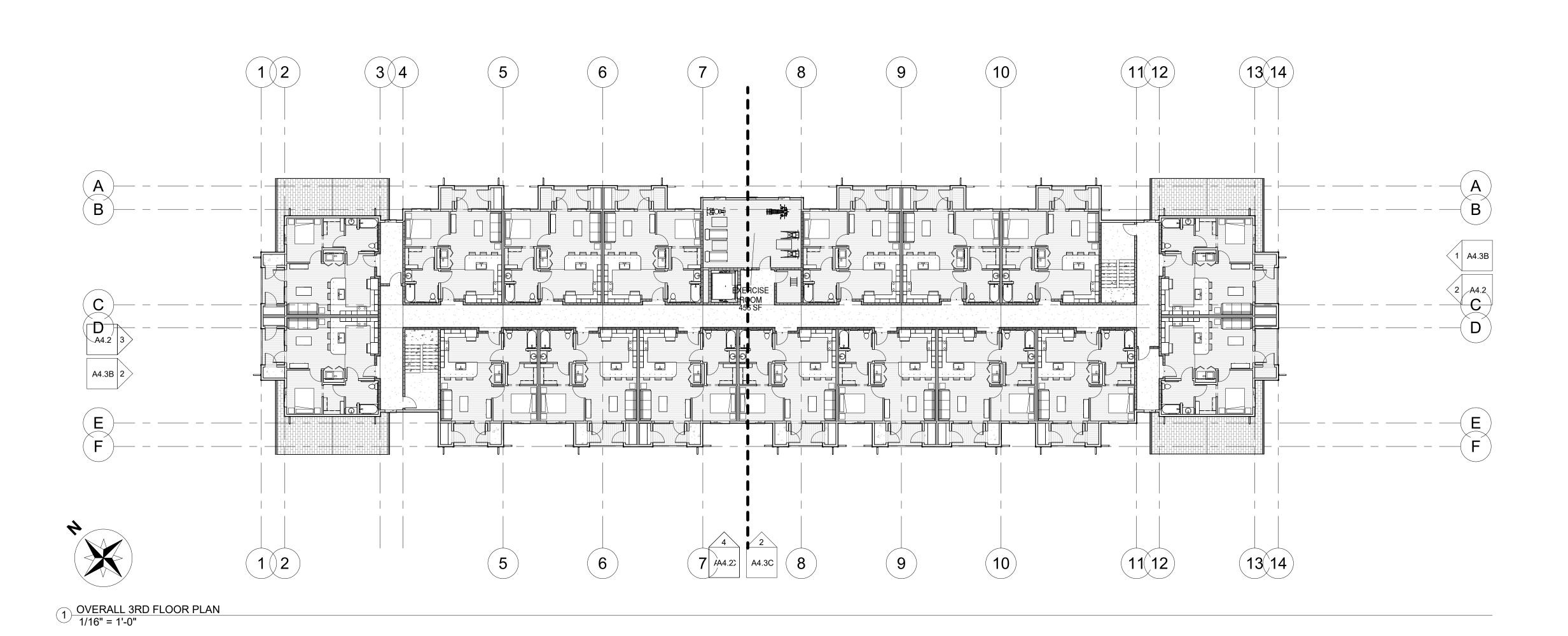
FORT BRAGG SENIOR

APARTMENTS

APARTMENTS

HAZELWOOD STREET

SCHEMATIC SET / NOT FOR CONSTRUCTION







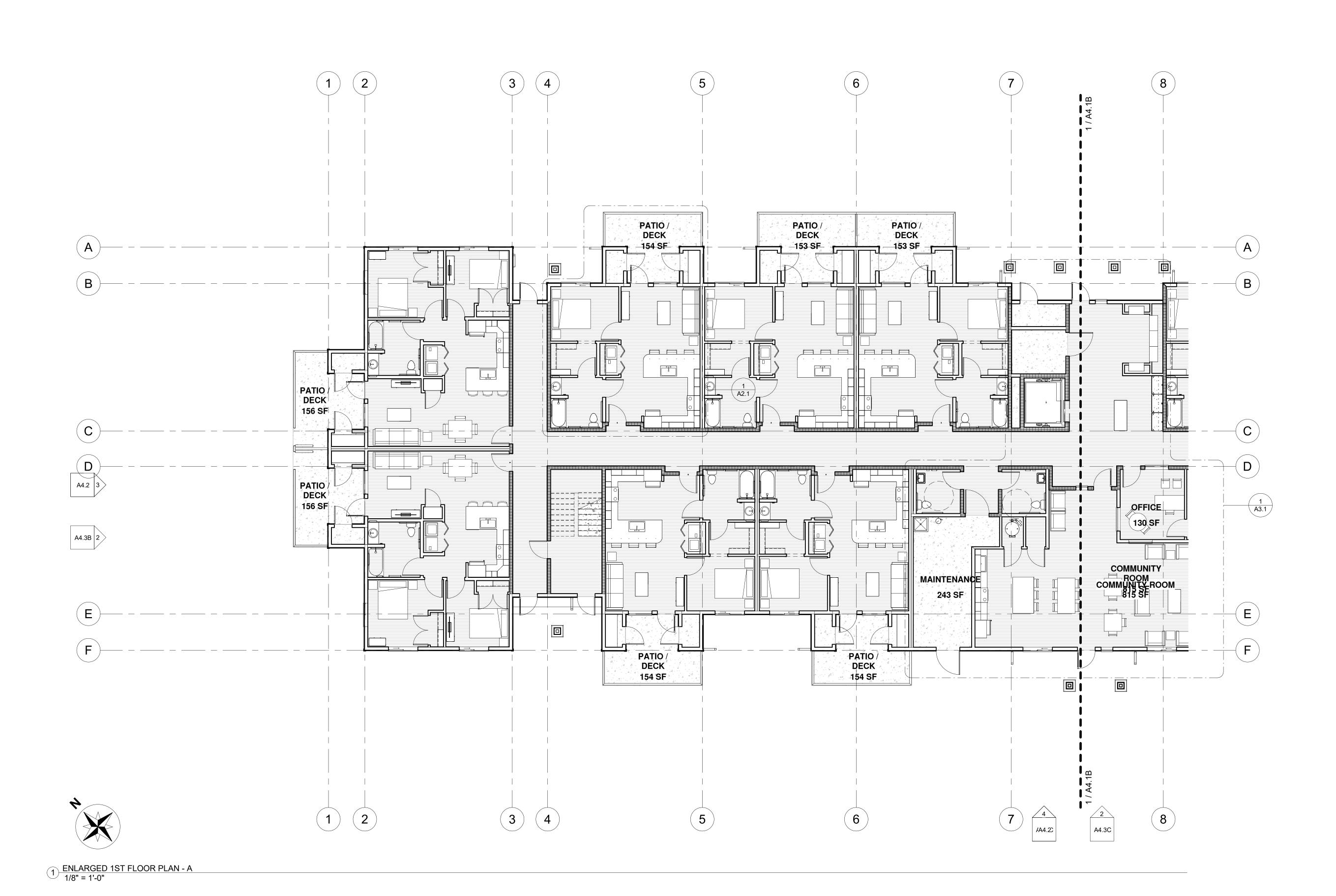
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ZELWOOD STREET
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BRAGG SENIOR PARTMENTS

A4.1A SCHEMATIC 6





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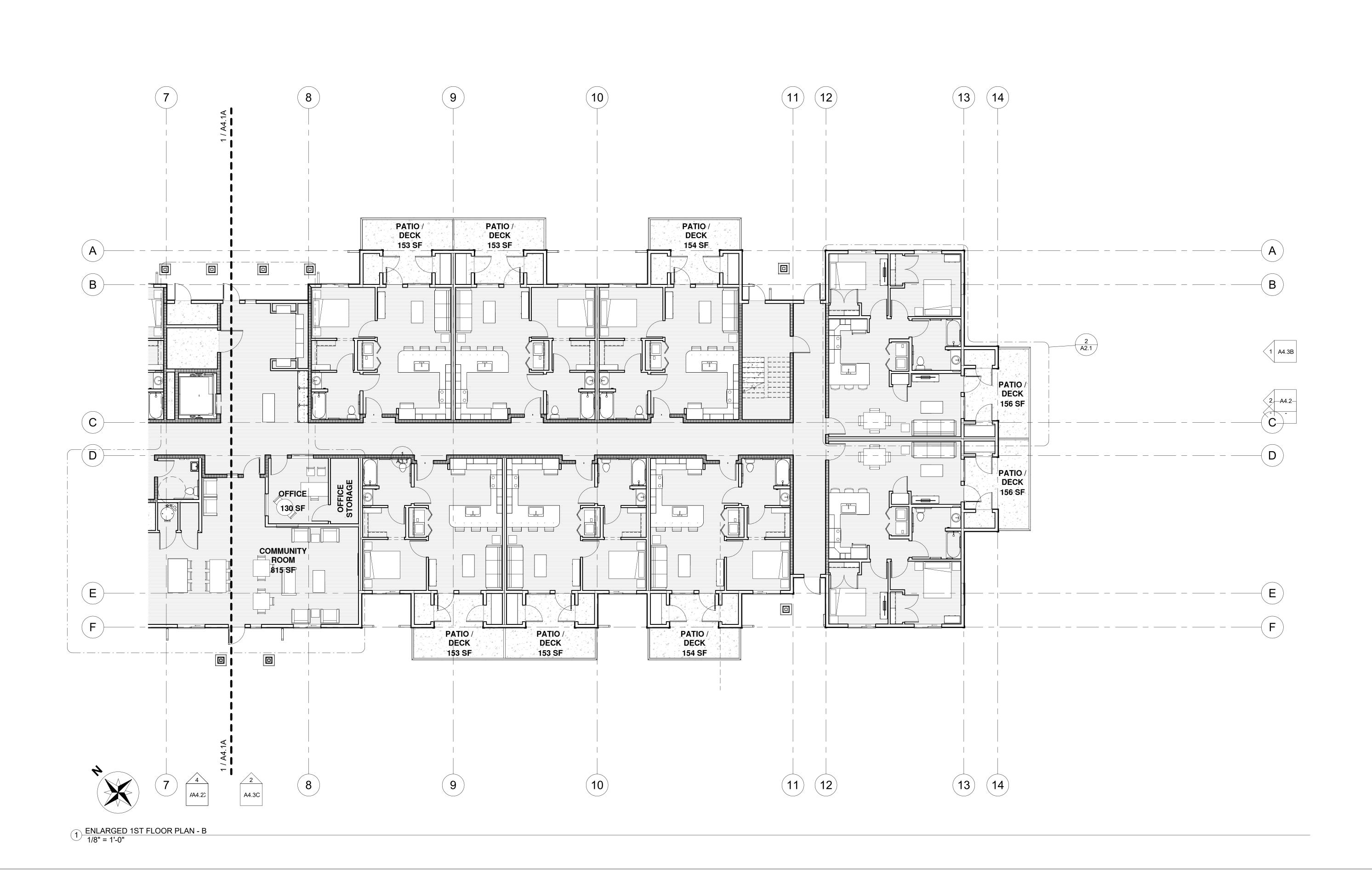
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BRAGG SENIOR
PARTMENTS

FORT

A4.1B



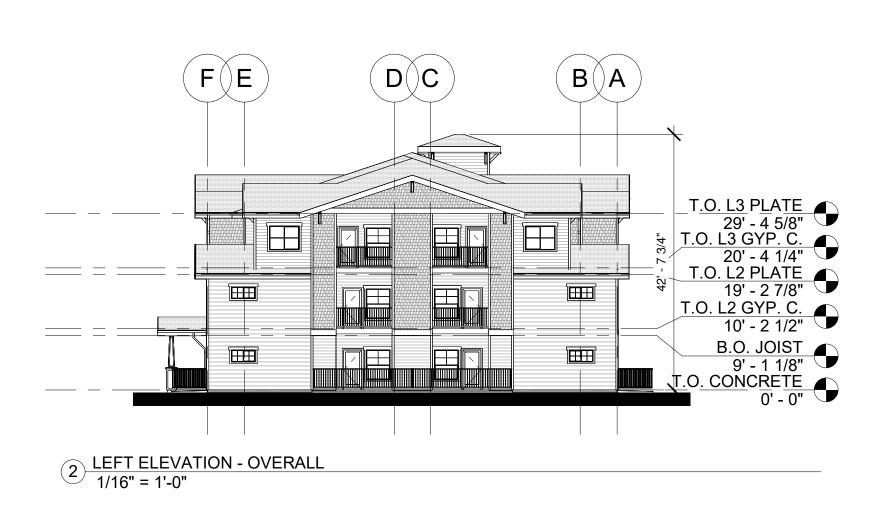


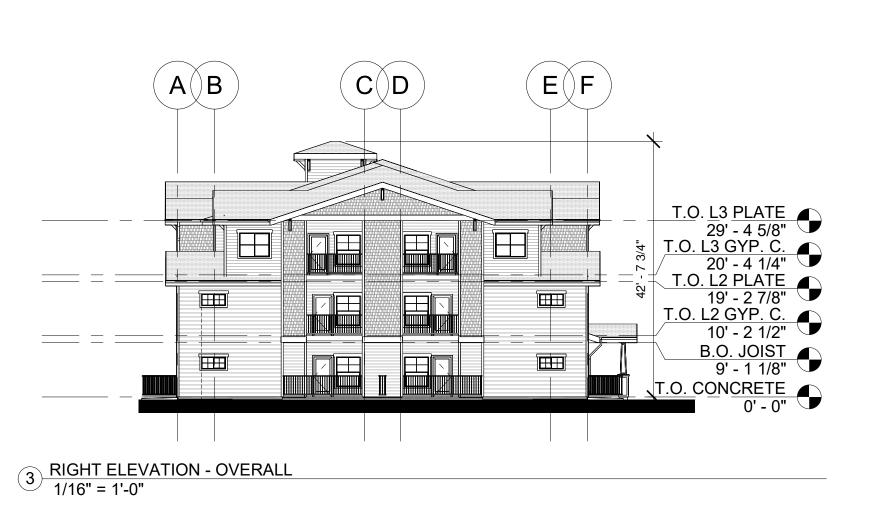
SET / NOT FOR CONSTRUCTION

SCHEMATIC

_ 14









4 REAR ELEVATION - OVERALL 1/16" = 1'-0"

A4.2

FORT

SELWOOD STREET
SET / NOT FOR CONSTRUCTION BRAGG SENIOR PARTMENTS SCHEMATIC

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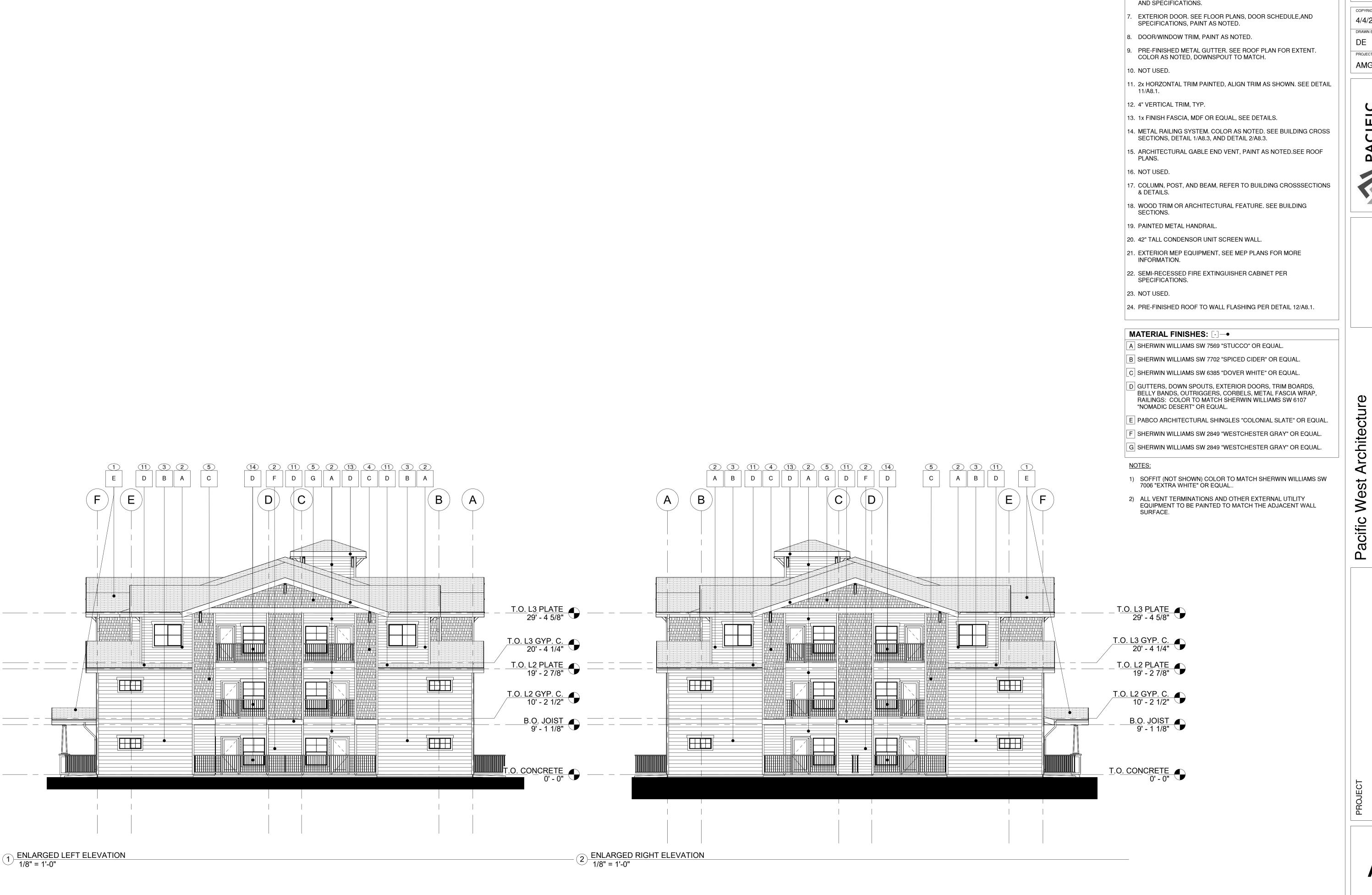
CONSTRUCTION

BRAGG SENIOR PARTMENTS

/ NOT FOR

SET

A4.3A



REVISIONS

KEY NOTES (-) -

2. PAINTED HORIZONTAL CEMENTITIOUS SIDING WITH 6" REVEAL OR

3. PAINTED HORIZONTAL CEMENTITIOUS SIDING WITH 8" REVEAL OR

5. PAINTED CEMENTITIOUS SHAKE SIDING OR APPROVED EQUAL.

WHITE VINYL WINDOWS. SEE FLOOR PLANS, WINDOW SCHEDULE,

1. 20 YEAR TYPE 'A' COMPOSITE SHINGLE, TYP.

APPROVED EQUAL.

APPROVED EQUAL.

4. NOT USED.

COPYRIGHT DATE 4/4/25

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SENIOR: NTS

/ NOT FOR CONSTRUCTION

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BRAGG PARTME

A4.3B



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PROJECT # AMG24-04

CONSTRUCTION

SENIOR: BRAGG -

A4.3C

4/4/25

AMG24-04



1 AERIAL VIEW FROM HAZELWOOD EXTENSION N.T.S.



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SCHEMATIC SET / NOT FOR CONSTRUCTION

A5.1C

FORT BRAGG SENIOR APARTMENTS

COLOR RENDERINGS

4/4/25

AMG24-04

1 NORTH BUILDING ELEVATION AT MAIN ENTRY N.T.S.



2 NORTHEAST BUILDING ELEVATION N.T.S.

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ZELWOOD STREET
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SCHEMATIC

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A5.1A

COLOR RENDERINGS

4/4/25

PROJECT #

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1 SOUTHEAST BUILDING ELEVATION N.T.S.



2 SOUTH BUILDING ELEVATION AT COMMON AMENITIES N.T.S.

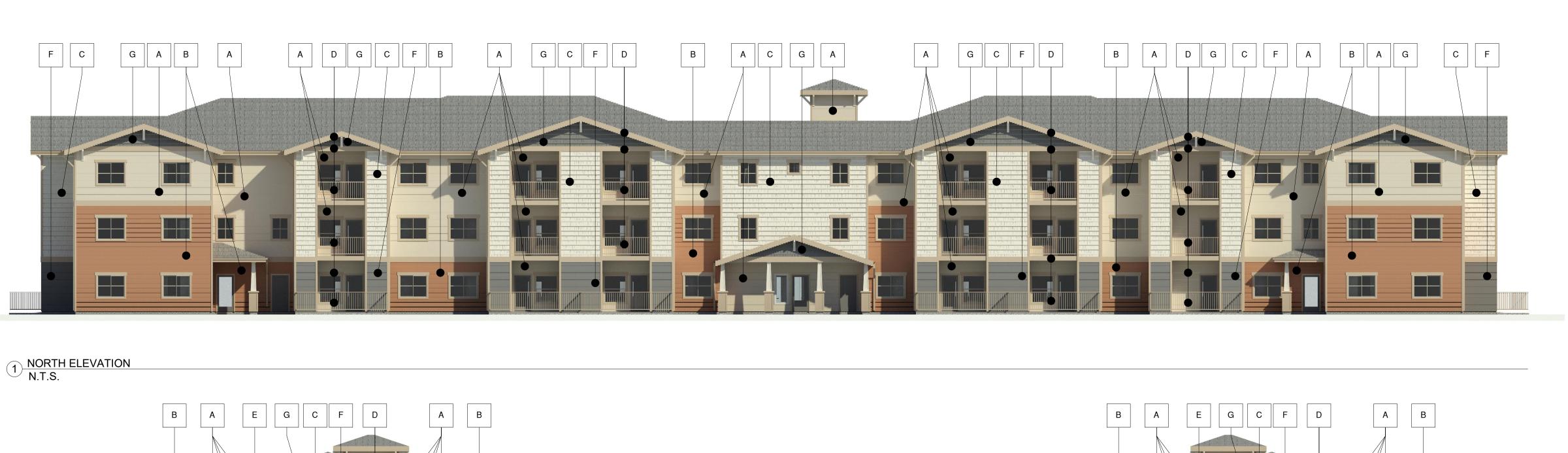
Pacific West Architecture

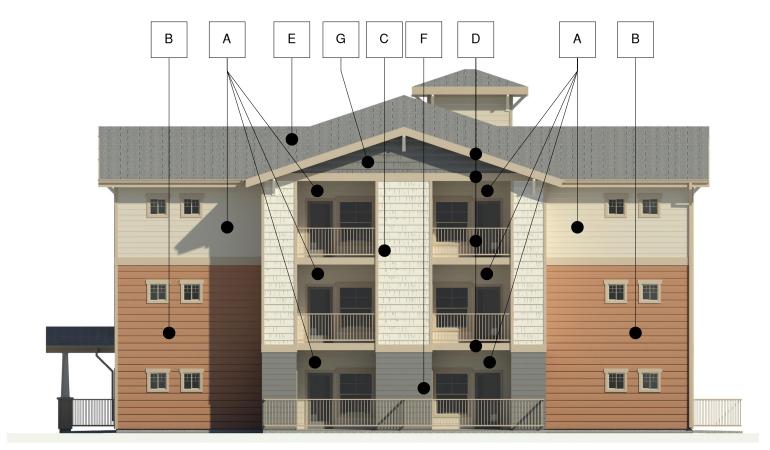
ZELWOOD STREET
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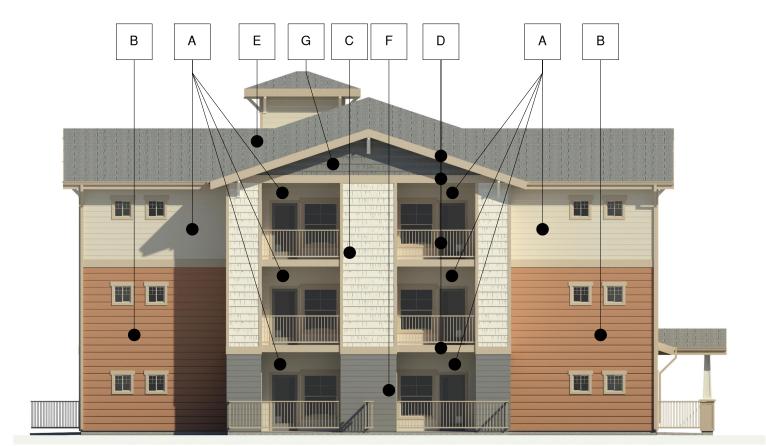
FORT BRAGG SENIOR APARTMENTS

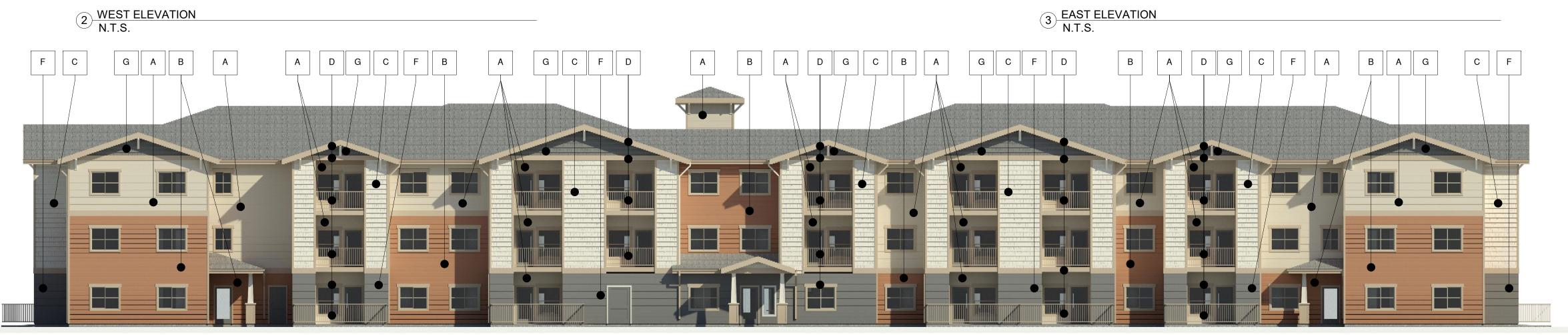
SCHEMATIC

A5.1B COLOR RENDERINGS

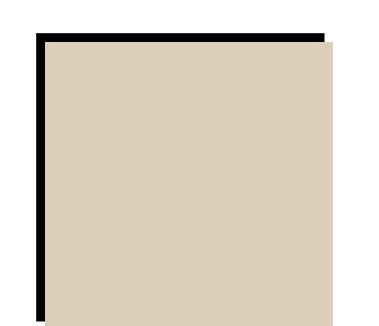








4 SOUTH ELEVATION N.T.S.



A CEMENTITIOUS SIDING -6" REVEAL

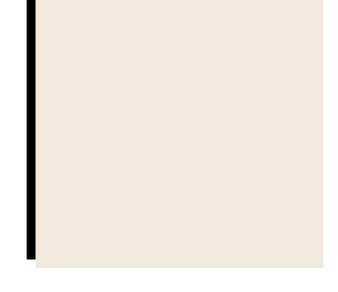
COLOR TO MATCH "STUCCO" SHERWIN WILLIAMS SW 7569 OR EQUAL



B CEMENTITIOUS SIDING -8" REVEAL

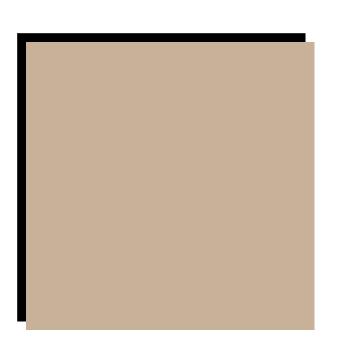
OR EQUAL

COLOR TO MATCH "SPICED CIDER" SHERWIN WILLIAMS SW 7702



C CEMENTITIOUS SHAKE **SIDING** COLOR TO MATCH "DOVER WHITE" SHERWIN WILLIAMS SW 6385

OR EQUAL

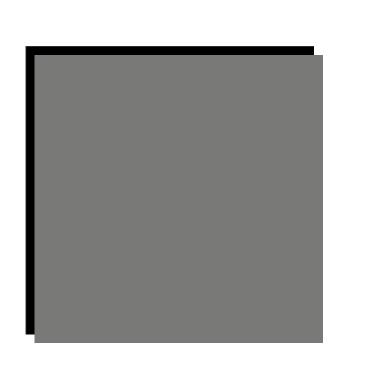


OR EQUAL

D FASCIA, TRIM, RAILINGS, GUTTERS, & DOWNSPOUTS COLOR TO MATCH "NOMADIC DESERT" SHERWIN WILLIAMS SW 6107



"COLONIAL SLATE" PABCO ARCHITECTURAL SHINGLES OR EQUAL



F CEMENTITIOUS SIDING -6" REVEAL COLOR TO MATCH "WESTCHESTER GRAY" SHERWIN WILLIAMS SW 2849

OR EQUAL

OR EQUAL



G CEMENTITIOUS SHAKE <u>SIDING</u> COLOR TO MATCH "WESTCHESTER GRAY" SHERWIN WILLIAMS SW 2849

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PACIFIC WEST ARCHITECTURE

Pacific West Architecture

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ORT BRAGG SENIOR APARTMENTS

SCHEMATIC

COLOR / MATERIAL BOARD



WHITE AND/OR RED FIR TREE BARK. THE MATERIAL SHALL BE EQUAL TO

THAT REFERRED TO AS WALK ON BARK' IN THE TRADE.

REVISIONS

12/18/24

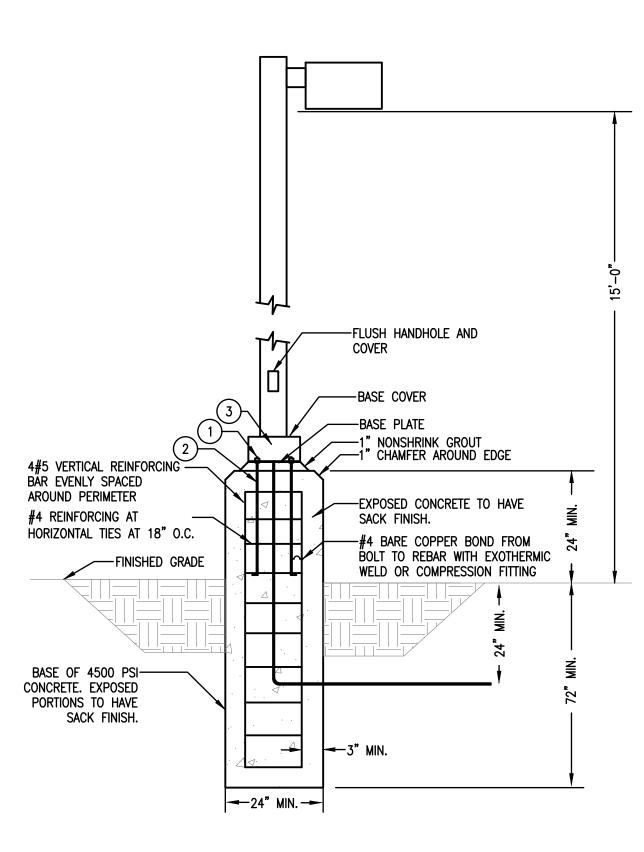
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LANDSCAPE MASTER PLAN

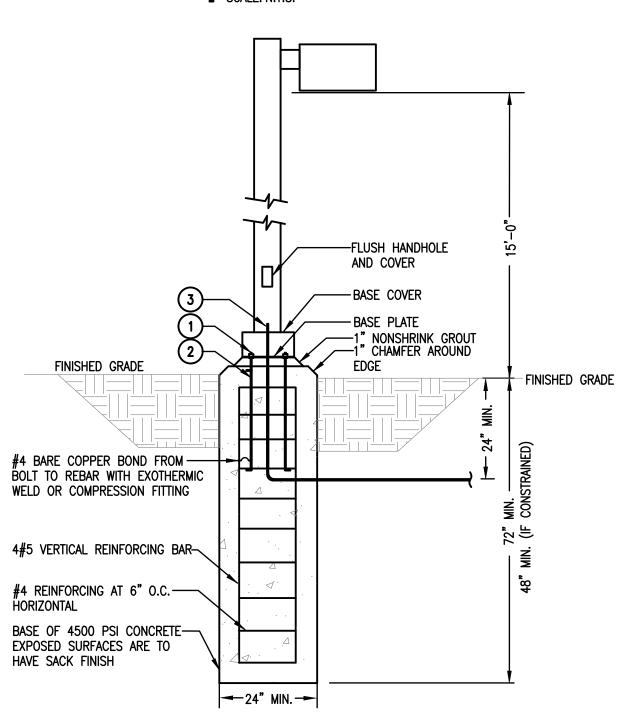
Boise, Idaho 83717 thp@idlainc.net (208) 906-1300



POLE BASE DETAIL KEYED NOTES:

- 1. PROVIDE GALVANIZED LOCKNUTS AND LOCKWASHERS.
- 2. PROVIDE ANCHOR BOLTS TO MATCH PATTERN AS PROVIDED BY MANUFACTURER.
- 3. STUB 3/4"C-6" ABOVE POLE BASE.

1 POLE BASE DETAIL SCALE: N.T.S.



POLE BASE DETAIL GENERAL NOTES:

1. WHERE CONCRETE SLAB OR PAVING IS IN DIRECT CONTACT WITH POLE BASE, THE BASE IS CONSTRAINED AND THE FOOTING EMBED MAY BE REDUCED AS NOTED.

POLE BASE DETAIL KEYED NOTES:

- 1. PROVIDE GALVANIZED LOCKNUTS AND LOCKWASHERS.
- 2. PROVIDE ANCHOR BOLTS TO MATCH PATTERN AS PROVIDED BY MANUFACTURER.
- 3. STUB 3/4"C-6" ABOVE POLE BASE.





0	SCALE: 1" = 30'-0"
NORTH	

LUMINAIRE SCHEDULE									
TAG	MA NUFA CTURER	CATA LOG NUMBER	EM OPTION	LAMPS	WATTS	VOLTS	MOUNTING	DESCRIPTION	
CR	LITHONIA	DSXSC LED 10C 700 30K T5R MVOLT		LED	26	120	CANOPY	CARPORT LIGHT FIXTURE	
CW	LITHONIA	DSXSC LED 10C 700 30K T5W MVOLT		LED	26	120	CANOPY	CARPORT LIGHT FIXTURE	
M1	ECOSENSE	L50/E/48/10/40/90/9X59/MNT-L-LBKT		LED	12	120	SIGN	MONUMENT SIGN	
P2	LITHONIA	DSX0 LED P1 30K 80CRI T2M		LED	33.2	120	POLE	POLE MOUNTED A REALLIGHT	
P3	LITHONIA	DSX0 LED P1 30K 80CRI T3M		LED	33.2	120	POLE	POLE MOUNTED A REALLIGHT	
РЗН	LITHONIA	DSX0 LED P1 30K 80CRI T3M HS		LED	33.2	120	POLE	POLE MOUNTED A REALIGHT	
P4	LITHONIA	DSX0 LED P1 30K 80CRI T4M		LED	33.2	120	POLE	POLE MOUNTED A REALLIGHT	
P4H	LITHONIA	DSX0 LED P1 30K 70CRI T4M HS		LED	33.2	120	POLE	POLE MOUNTED A REALLIGHT	
P5	LITHONIA	DSX0 LED P1 30K 80CRI T5M		LED	33.2	120	POLE	POLE MOUNTED A REALLIGHT	
WP2	LITHONIA	WDGE2 LED P1 30K 80CRI T2M		LED	11.2	120	WALL	WALL MOUNTED AREA LIGHT	
WP3	LITHONIA	WDGE2 LED P1 30K 80CRI T3M		LED	11.2	120	WALL	WALL MOUNTED AREA LIGHT	
WP4	LITHONIA	WDGE2 LED P1 30K 80CRI T4M		LED	11.2	120	WALL	WALL MOUNTED AREA LIGHT	
WS1	LITHONIA	WPX0 LED ALO-3 30K MVOLT		LED	9	120	WALL	SLIM WALL SCONCE	

Design is based upon named manufacturer. Alternates approved upon review.

Contractor shall provide and coordinate all fixture mounting accessories.

Refer to lighting plans for quantity of fixtures.
Provide Lithonia SSS pole sized per site electrical details.

GENERAL SITE NOTES:

- CONTRACTOR SHALL CONTACT UNDERGROUND UTILITY LOCATING SERVICE PRIOR TO EXCAVATION FOR ELECTRICAL WORK.
- CONTRACTOR IS RESPONSIBLE FOR COORDINATION WITH ALL OTHER SITE DISCIPLINES INCLUDING BUT NOT LIMITED TO TRADES ASSOCIATED WITH WATER, SEWER, AND GAS INSTALLATIONS.
- ROUTE ALL EXTERIOR LIGHTING THROUGH A LIGHTING CONTACTOR. PROVIDE PHOTO—CELL ON ROOF AND ELECTRO—MECHANICAL 7—DAY TIME CLOCK ADJACENT TO CONTACTOR CABINET.
- 4. REFER TO SHEET E1.01 FOR LIGHT FIXTURE SPECIFICATIONS.

SITE KEY NOTES:

#

- 1. APPROXIMATE LOCATION OF BUILDING ELECTRICAL GEAR.
- 2. APPROXIMATE LOCATION OF LOW VOLTAGE EQUIPMENT 'BCP/TTB'.
- 3. MONUMENT SIGN LIGHTING. FIXTURE TO BE AIMED DOWN AND ILLUMINATE ONLY THE SIGN
- 4. REFER TO SITE POLE DETAIL 1 ON THIS SHEET FOR LIGHT POLES LOCATED IN VEHICLE IMPACT ZONES.
- 5. REFER TO SITE POLE DETAIL 2 ON THIS SHEET FOR LIGHT POLES LOCATED IN LANDSCAPE
- 6. FIXTURE MOUNTED TO BOTTOM SIDE OF CARPORT DECK.

12/18/24

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ARCHITECTURE
ARCHITECTURE
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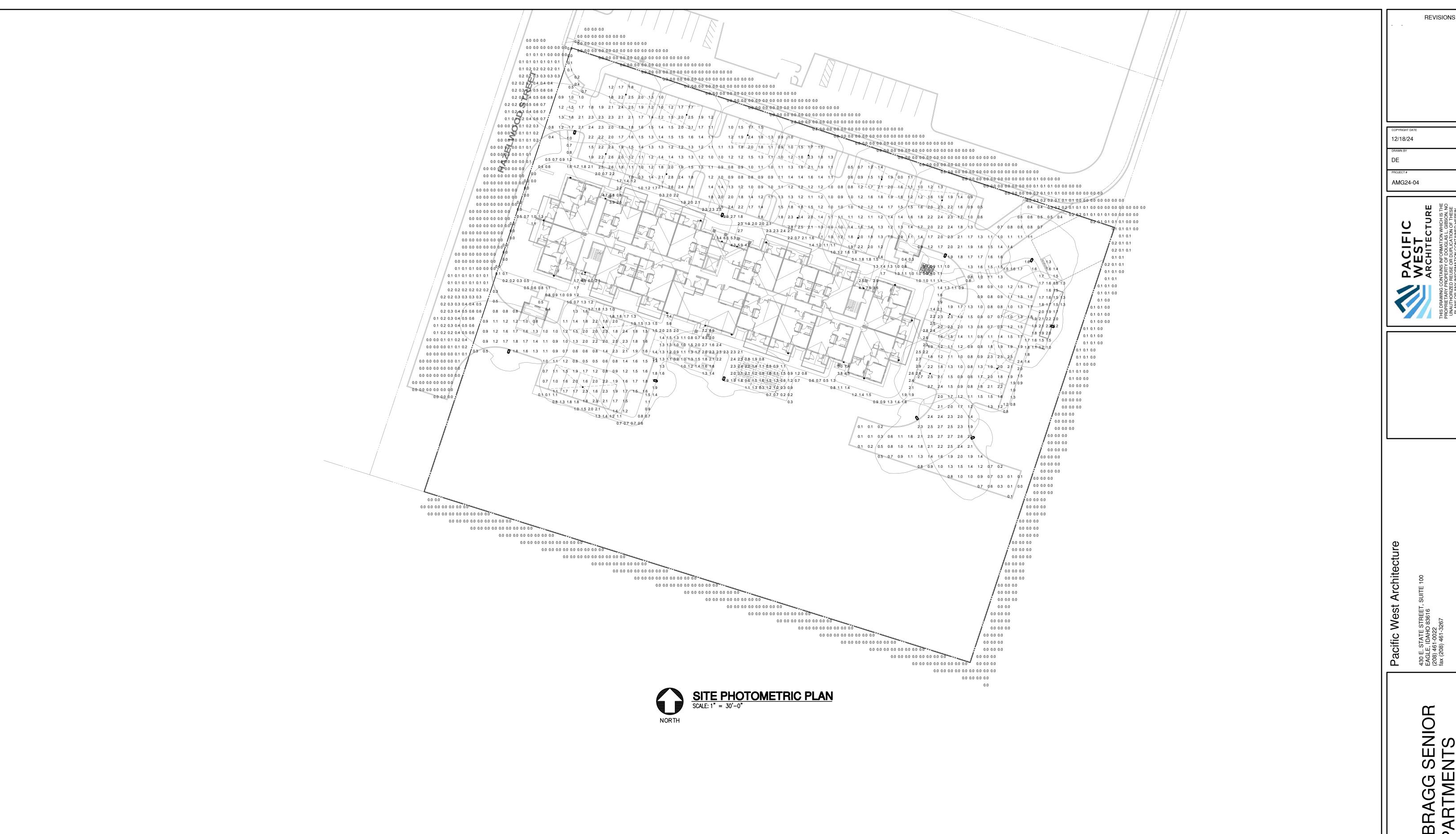
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EAGLE, IDAHO 83616 (208) 461-0022 fax (208) 461-3267

AT BRAGG SENIOR APARTMENTS

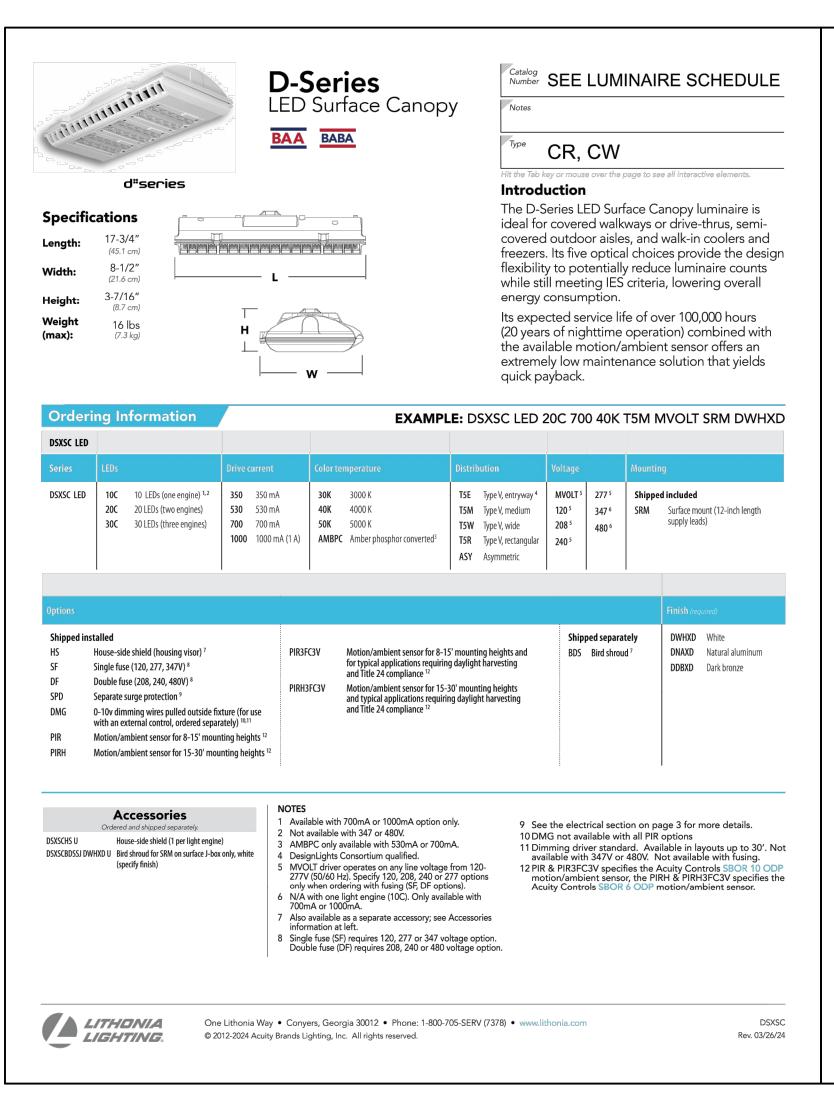
HAZELWOOD STREET

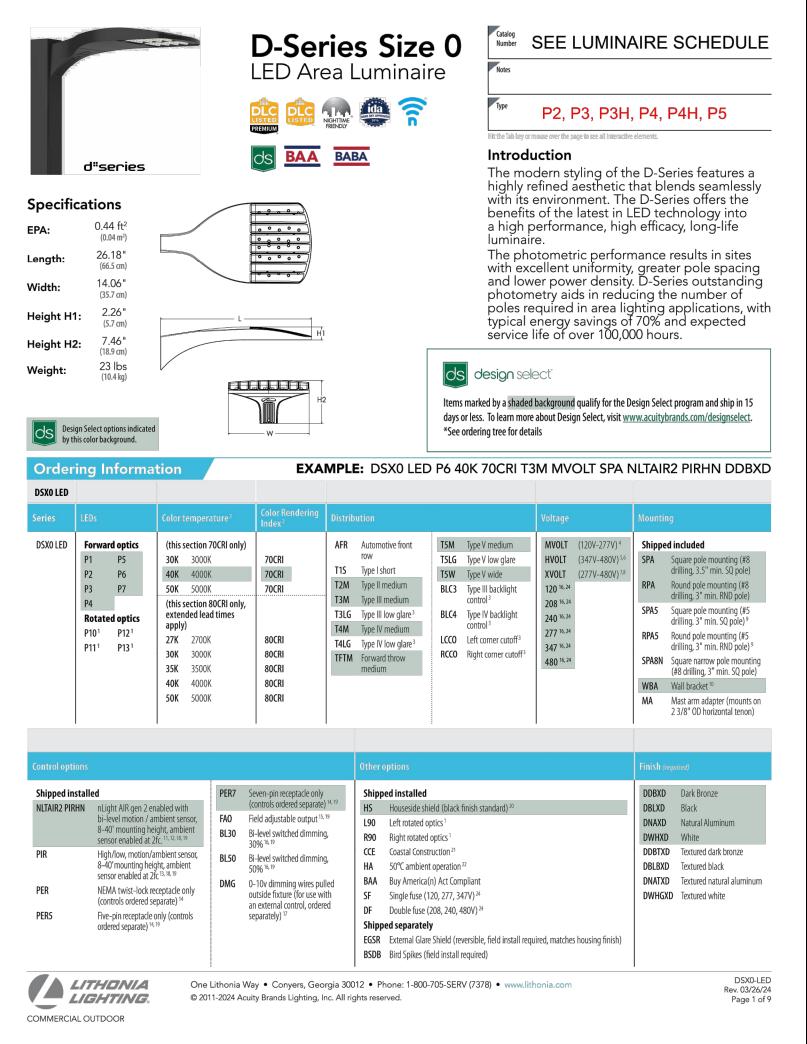
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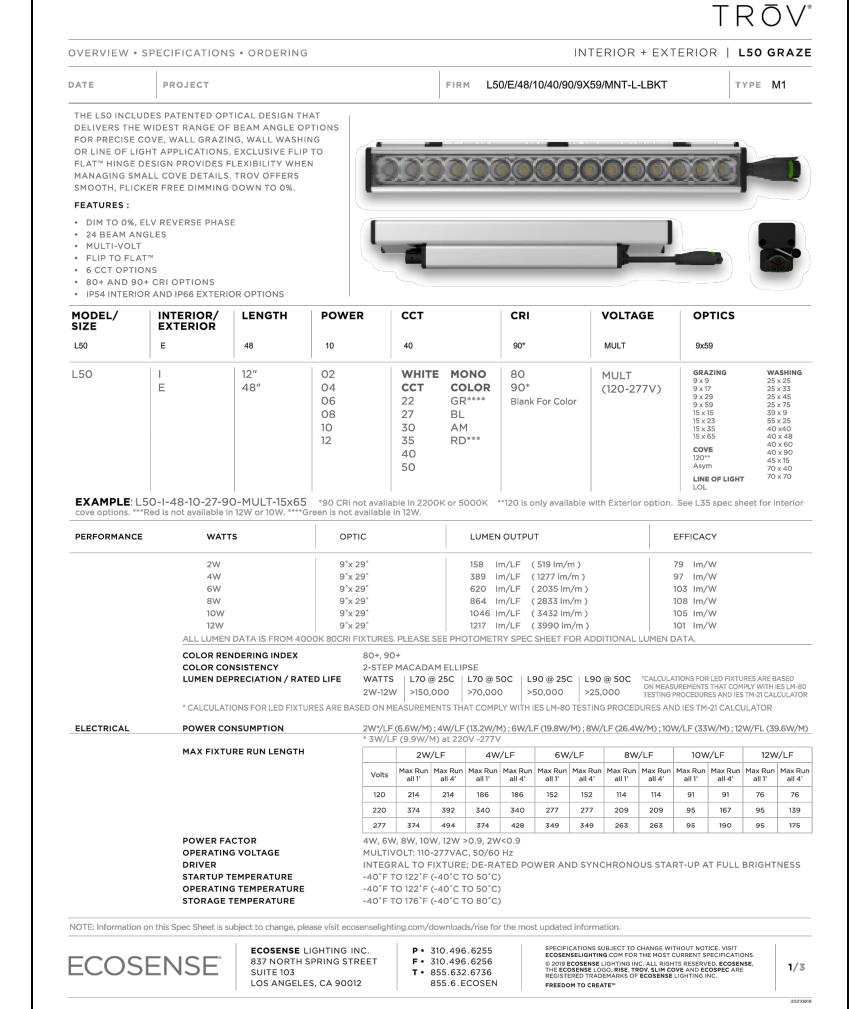
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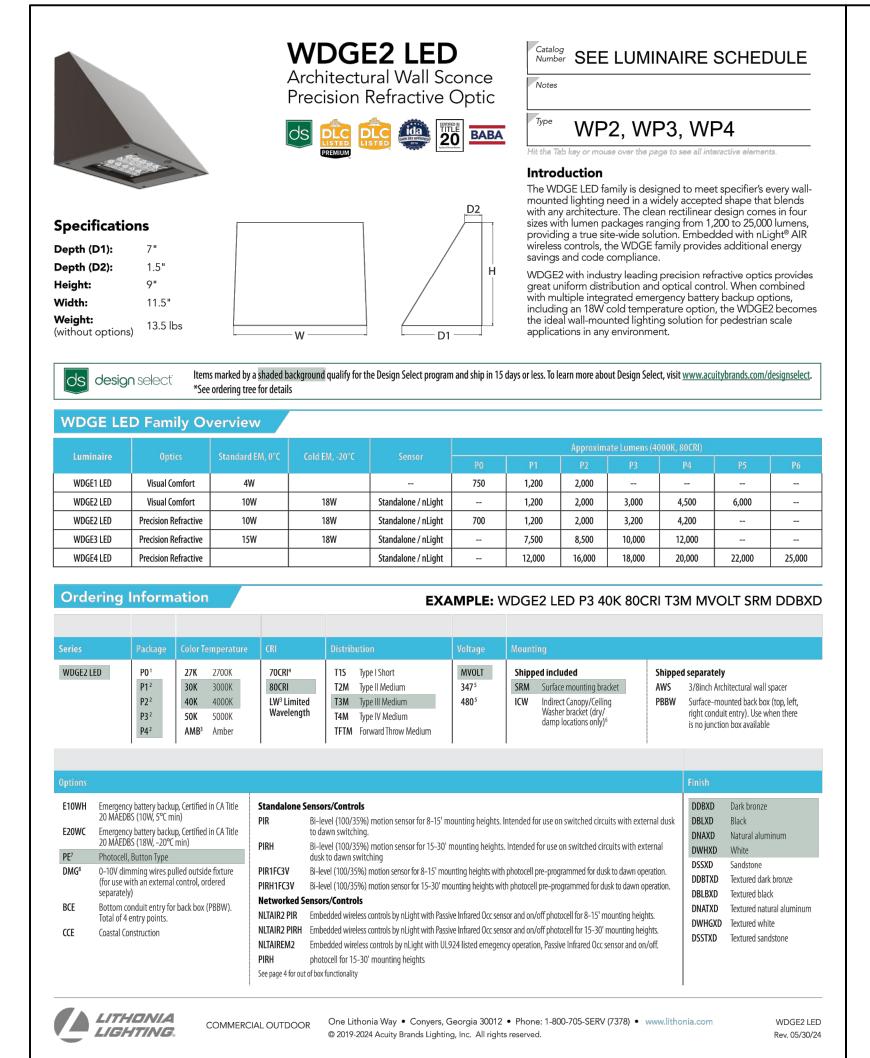
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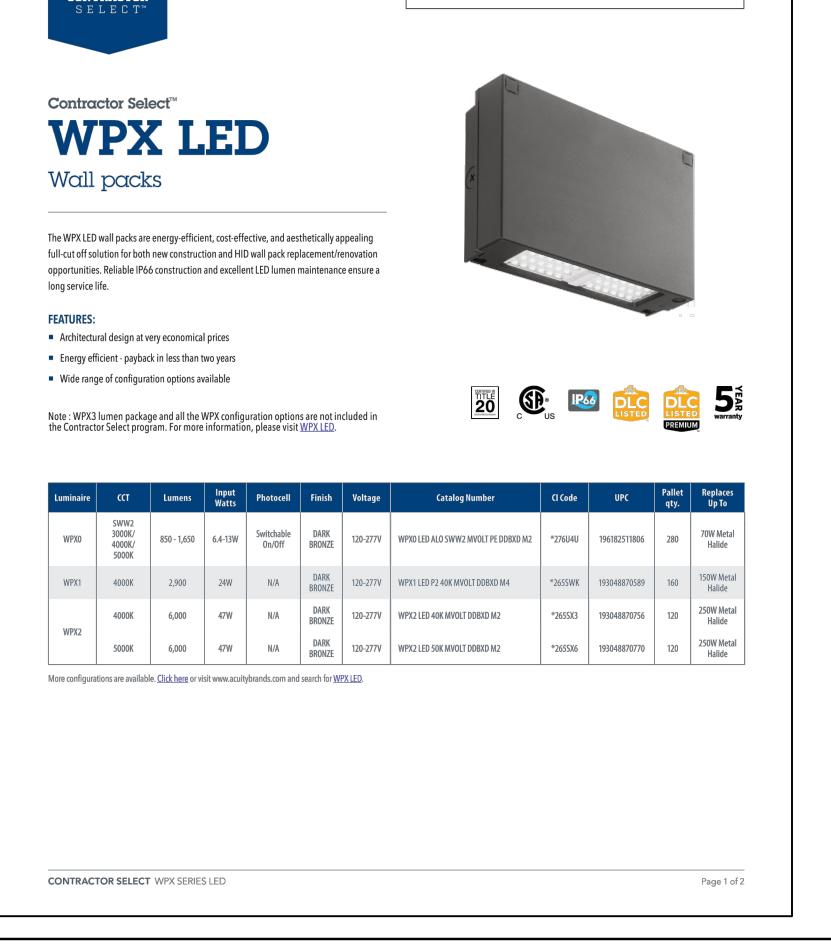




LITHONIA LIGHTING.

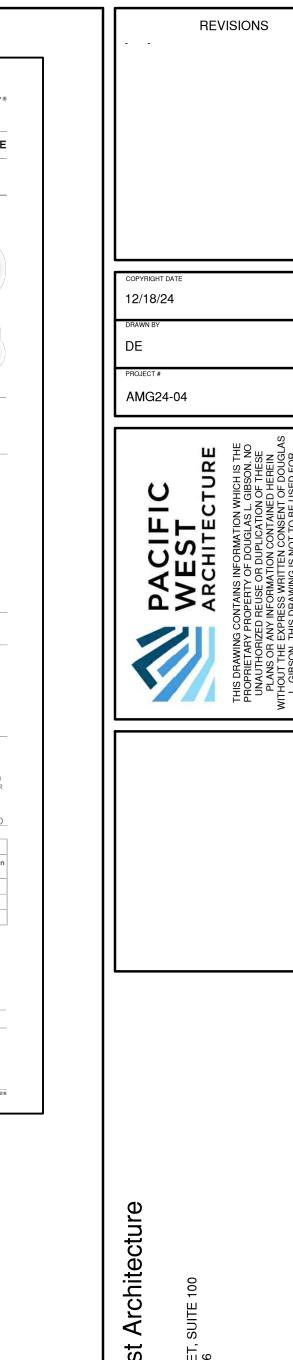






Number WPX0 LED ALO-3 30K MVOLT

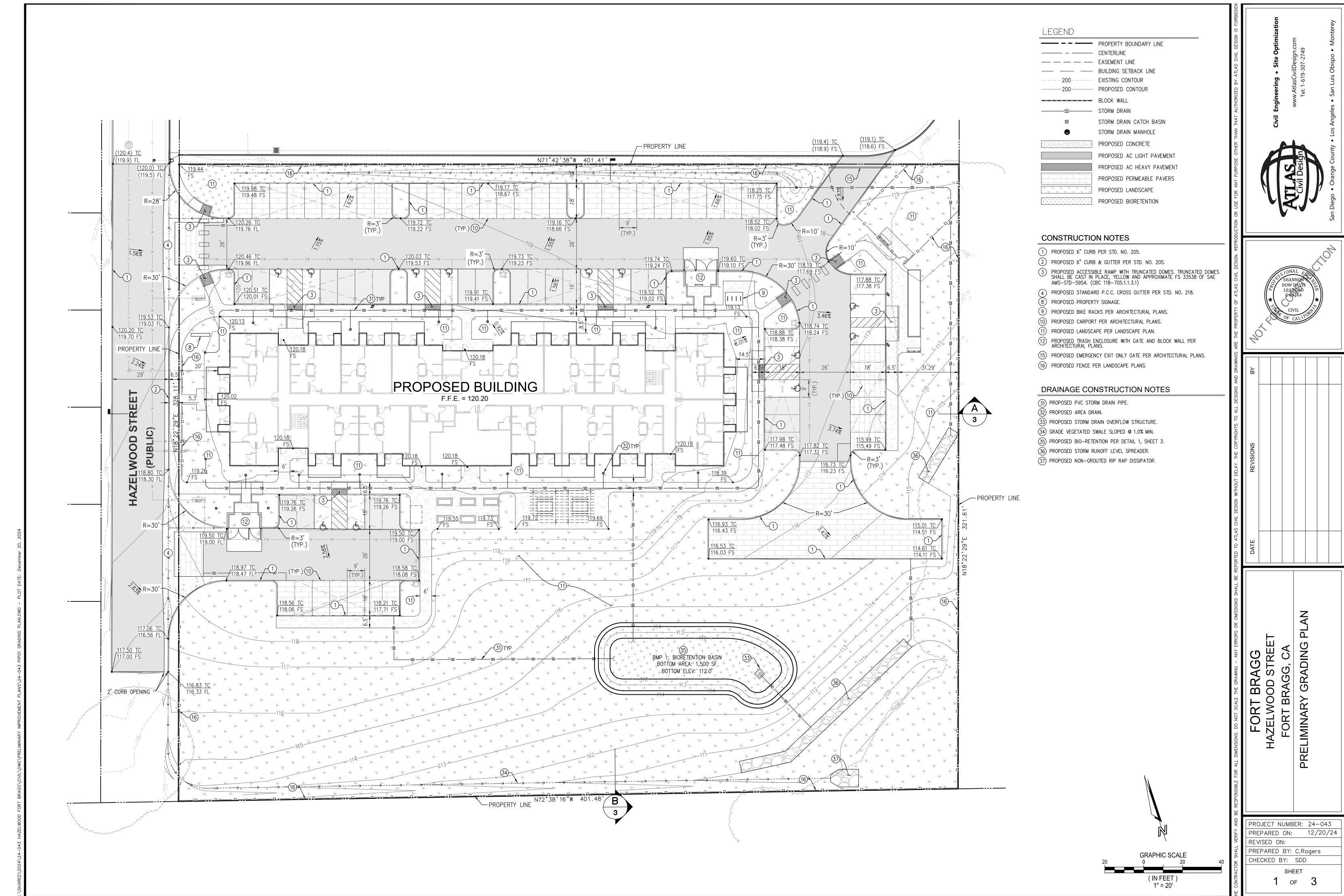
WS1

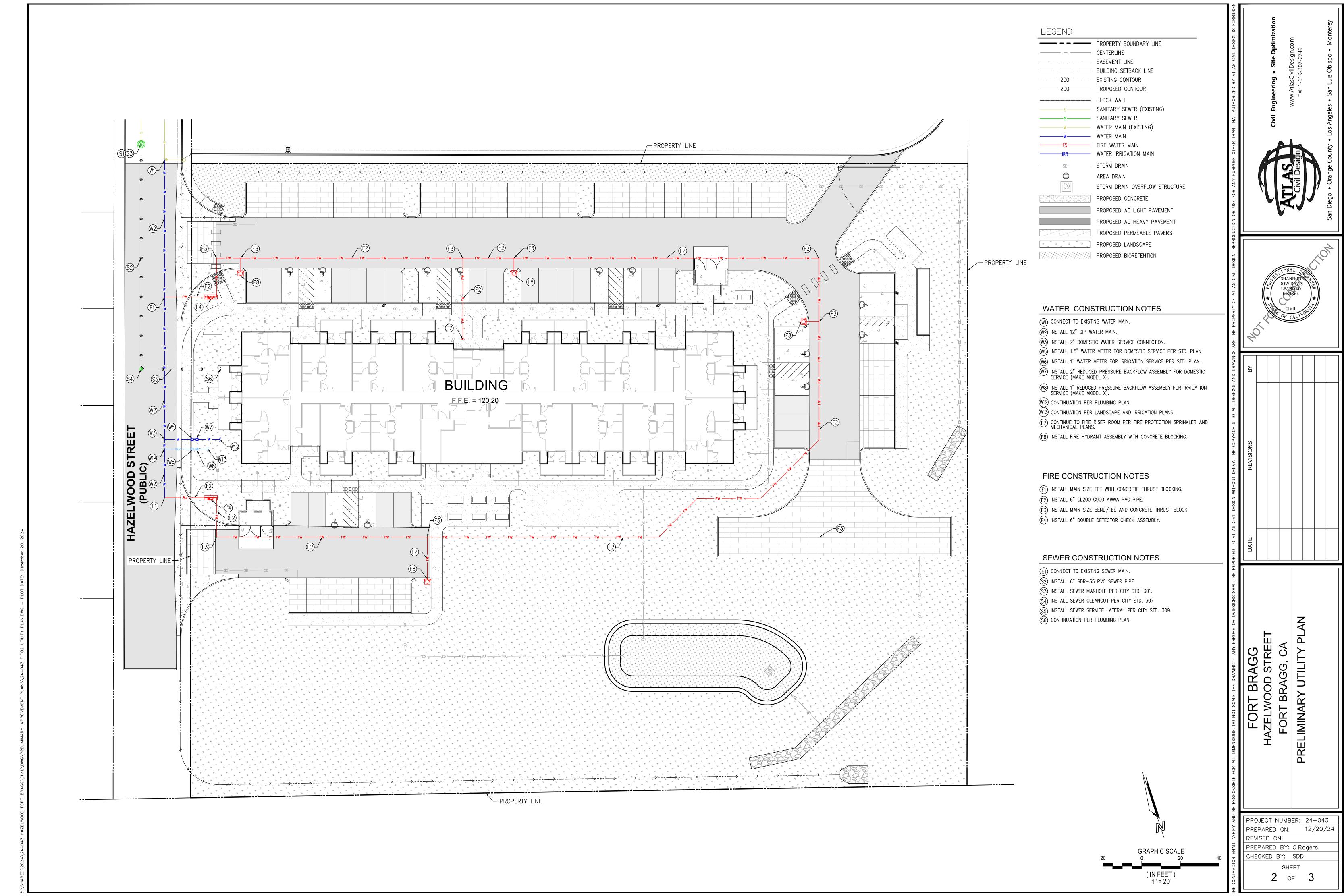


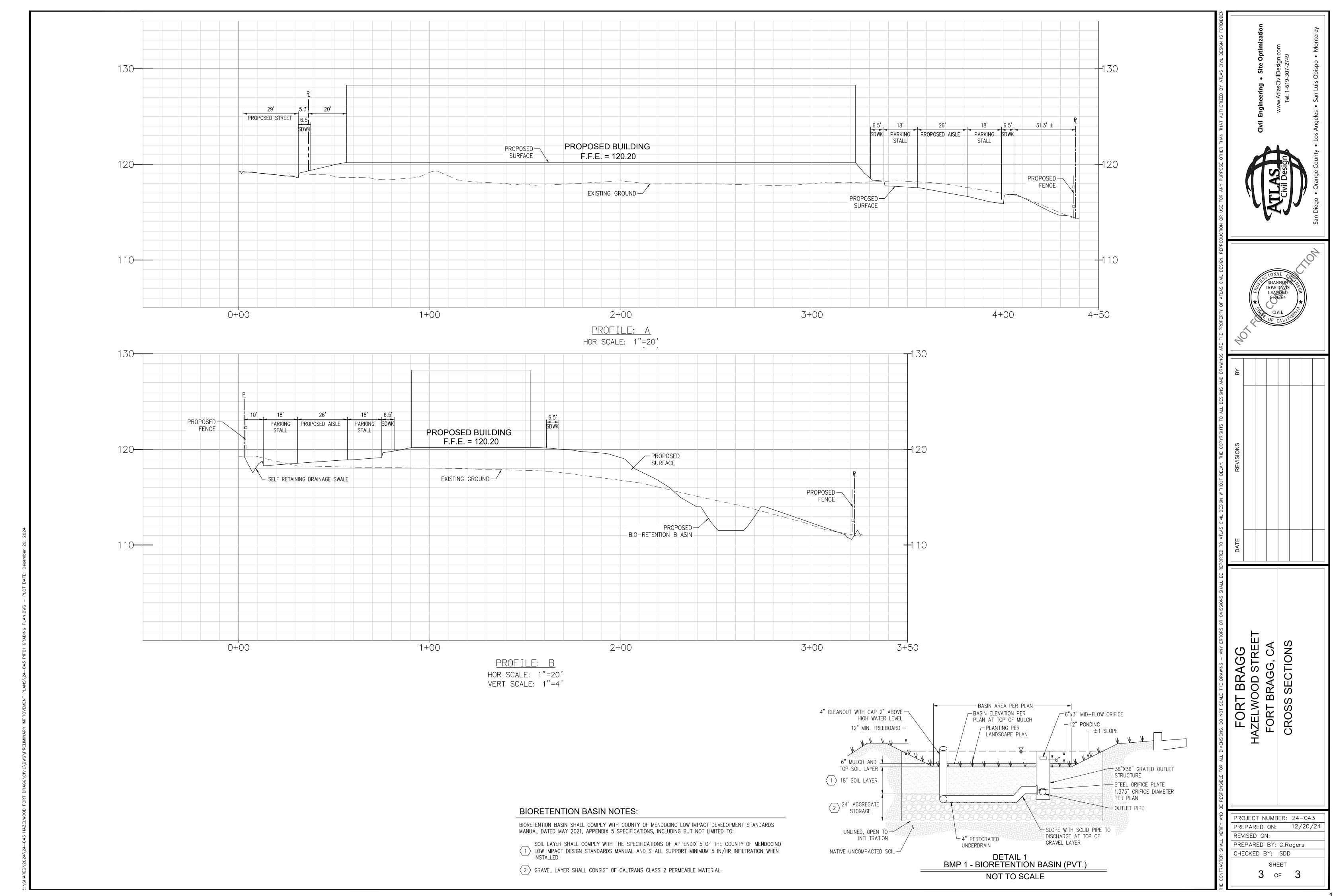
ENIOR ITS S GG ME **BRA**(

E1.02

CONSTRUCTION







Preliminary Water Quality Management Plan Supplemental Narrative

For

FORT BRAGG SENIOR APARTMENTS

860 HAZELWOOD STREET FORT BRAGG, CA APN: 018-210-29-00

Prepared for:

The Pacific Companies

430 E. State Street, Suite 100 Eagle, ID 83616

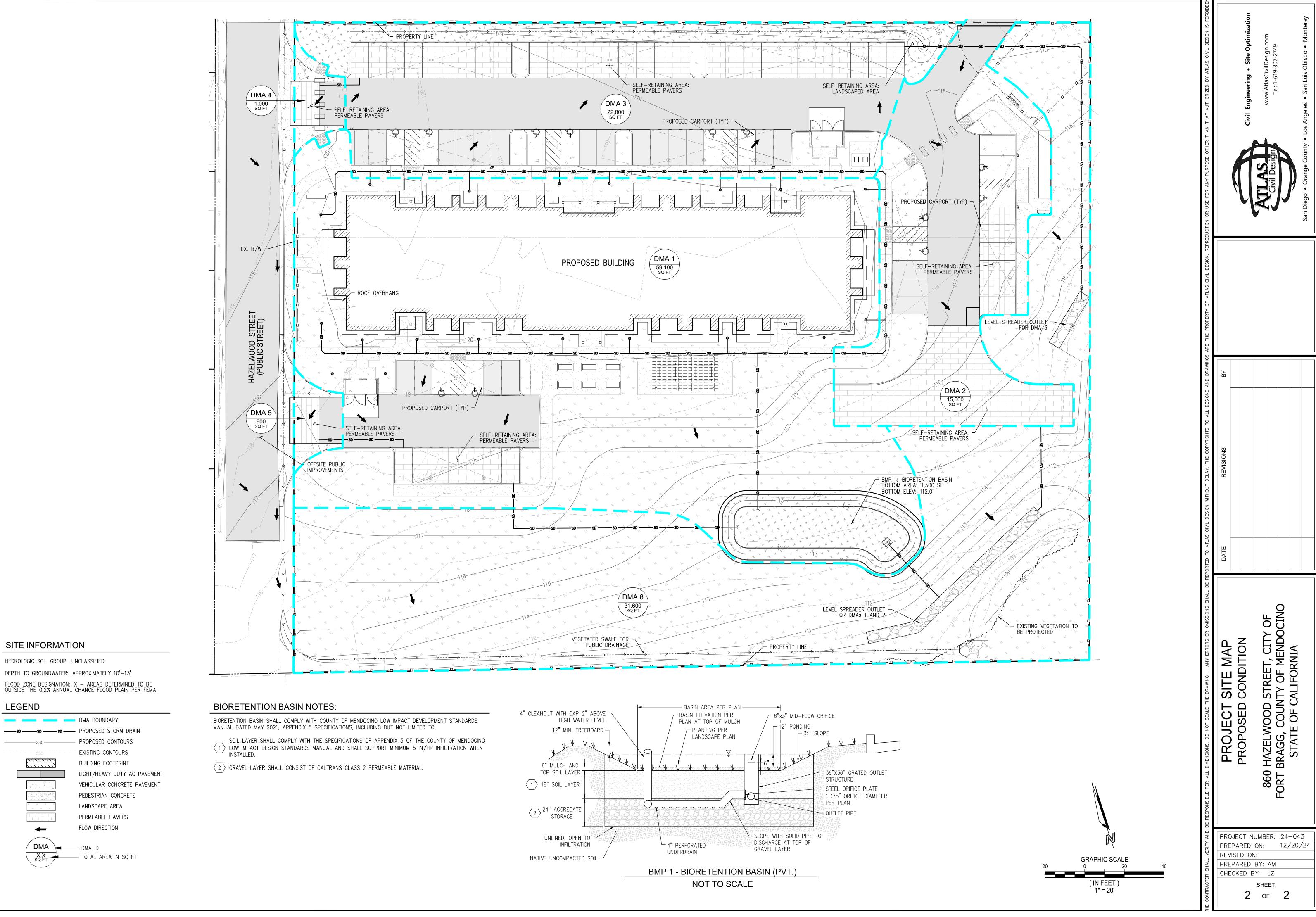
Prepared by:



Prepared: December 2024

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\ /	CONCLUSION	_



SITE INFORMATION

LEGEND

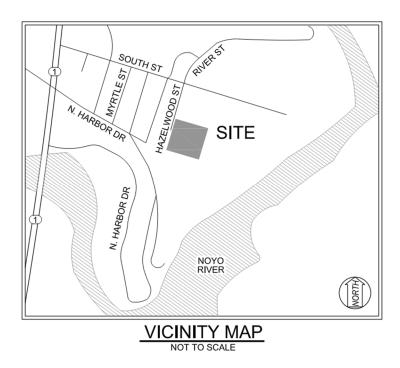
I. PROJECT SUMMARY

Purpose

This narrative accompanies the Stormwater Control Plan for the Fort Bragg Senior Apartments project, prepared on the template per the County of Mendocino Low Impact Development Standards Manual, dated May 2021. The purpose is to provide additional information to demonstrate compliance with applicable stormwater requirements as set forth in the Phase II Small MS4 General Permit, WQ Order No. 2013-0001-DWQ, NPDES No. CAS000004, and its subsequent amendments. The City of Fort Bragg utilizes the County of Mendocino Low Impact Development Standards Manual to ensure compliance with MS4 requirements.

Project Description

The project is located at 860 Hazelwood Street in the City of Fort Bragg within Mendocino County in the State of California. The 2.99-acre site is bounded by an undeveloped public road to the west, a multifamily housing complex to the north, and vacant lots to the east and south. See the Vicinity Map below.



The project proposes an affordable, senior housing development, consisting of one multifamily housing building with associated parking, hardscape, and landscape improvements.

II. EXISTING CONDITIONS

Existing Condition Overview

The existing project site consists of one single-family structure at the northwest corner with primarily vegetated groundcover on the remainder of the property. The northwest corner of the site, adjacent to the structure, drains toward Hazelwood Street, which is unpaved fronting the site. The northern portion of the site east and south of the structure slopes at approximately 2% southeast. The southern and eastern portions of the site drain at 5% to 10% toward the southern and eastern property lines.

The site receives no significant offsite run-on from the properties to the north, east, and south. Hazelwood Street, a public street to the west of the property, is unpaved and contains no drainage infrastructure. In the existing condition, drainage from the right-of-way flows onto the subject property, draining southeast across the property.

Site soils are considered silty fine sand according to the geotechnical report. Groundwater was encountered approximately 10 to 13 feet below existing grade. See the Project Site Map in Attachment 1 for a depiction of the existing conditions and Attachment 6 for the project-specific geotechnical report.

Opportunities

The area of the site is relatively large compared with the footprint needed to support the proposed development. This allows the proposed design to maintain a large area of pervious landscaping. It also provides the space needed for self-retaining areas and bioretention.

The tested infiltration rates onsite appear to support a moderate level of infiltration, allowing retention of some drainage onsite.

Constraints

No public storm drain infrastructure exists in the near vicinity of the site. Existing drainage runs toward private properties. In order to not exacerbate the cross-lot drainage and because there is no public storm drain to tie into, water must be retained onsite to the extent feasible. Infiltration rates are moderate, but not high, so a large infiltration footprint must be maintained in order to retain drainage within appropriate drawdown times.

Groundwater was encountered 10 to 13 feet below existing grade in the geotechnical investigation borings; however, the borings were not taken in the location of the bioretention basin. Further investigation will be required to determine the groundwater level at the location of the bioretention basin and to ensure adequate separation between the infiltrating surface and water table can be met.

The site receives runon of public drainage from Hazelwood Street, which must continue to pass through the site in the proposed design.

III. Proposed Conditions

Proposed site improvements shall consist of one multifamily housing building, surface parking and associated drive aisles, landscaping, pedestrian hardscape, and outdoor recreation areas.

Project Layout Optimization

The project layout has been optimized per the following low impact design principles.

Minimize Impervious Surfaces

The proposed design utilizes a hammerhead turnaround in lieu of a looped drive aisle around the building in order to reduce impervious surface area. Perimeter parking bays and the turnaround are proposed as permeable pavement. Permeable pavement is also proposed at the driveway entrances. Proposed parking counts have been reduced to the extent feasible in order to minimize paving areas.

Preserve Vegetation

The project borders private lots to the south and east, both of which contain dense areas of trees. The trees within the subject property at the southeast corner of the site will be protected.

Utilize and Conform to Site-Specific Topography

The northern portion of the site is relatively flat with grades at the south and east sloping more steeply toward the southerly and easterly property lines. The proposed site has been laid out consistently with the existing topography. The main development footprint is proposed on the norther portion of the site. The southern portion and eastern edge of the site will consist of pervious slopes drainage toward to southerly and easterly property lines as in the existing condition.

Replicate the Site's Natural Drainage Patterns

The site maintains the existing drainage patterns to the extent feasible. Site grading will match existing drainage direction with relatively flat slopes on the northern portion of the site and perimeter slope grading to the south and east. Detention and infiltration features are provided to mitigate increases in peak flow per the project Runoff Mitigation Plan.

Detain and Retain Runoff Throughout the Site

The overall site limits the ratio of impervious to pervious area to less than 2:1. The project will implement self-retaining landscaped areas and self-retaining permeable pavement throughout the site to maximize infiltration of runoff. Self-retaining planter areas will allow for three inches of ponding below area drains. Permeable pavement will include nine inches of gravel storage below the subdrain. Drainage below the area drains and pavement subdrain will infiltrate.

Impermeable parking stalls, drive aisles and sidewalks will be directed toward the permeable pavement and self-retaining planter areas.

The site will include an unlined bioretention basin, designed to biofilter, detain, and infiltrate runoff. The basin includes 24-inches of gravel storage below the subdrain. Storage below the subdrain will infiltrate.

Roof drains will outlet at grade in landscaped areas where feasible. These areas are not designed as self-retaining areas, as ponding against the building is not advisable. The planter areas will allow for some infiltration of the roof drainage before drainage reaches the area drains.

The public drainage from Hazelwood Street will continue to flow onto the property as it does in the existing condition. It will flow through a gently graded vegetated swale to encourage infiltration of the public drainage.

Site Design Measures

The Phase II MS4 Permit and the Mendocino LID prioritize site design measures with the goal of retaining the 85th percentile, 24-hour storm event to the extent feasible. The manual prioritizes the creation of self-retaining areas, designed to retain a minimum of 3-inches of water with a maximum ratio of tributary impervious area to pervious self-retaining area of 2:1. According to the manual:

"In Mendocino County the 85th percentile, 24-hour storm event is equivalent to approximately one inch. When using a 2:1 impervious to pervious ratio for the calculation of the self-retaining area, the area must be able to retain the first 2-inches of stormwater runoff from the impervious areas and the first inch that falls on the self-retaining area itself. This is why the self-retaining area should be depressed in order to achieve this 3-inch retention requirement."

The manual requires that projects reduce runoff by draining impervious areas to pervious self-retaining areas. If the 2:1 maximum ratio of impervious to pervious area cannot be met, a treatment control BMP must be implemented, with bioretention being the priority.

The proposed project implements site design measures throughout the site. Permeable pavement has been proposed within the perimeter parking bays and the hammerhead turnaround. The permeable pavement is considered to be self-retaining as it will have greater than 3-inches of gravel storage below the subdrain. Self-retaining landscaped areas throughout the site have been proposed.

Where self-retaining areas cannot completely retain the runoff based on the exceedance of the 2:1 impervious to self-retaining area ratio, bioretention has been implemented. The bioretention facility was sized as 4-percent of the tributary area after the application of runoff factors based on surface type.

Self-retaining and bioretention areas are depicted on the Project Site Map in Attachment 1. Calculations are provided in Attachment 3.

Drainage Management Areas

The site has been delineated into six drainage management areas (DMAs) as described below. DMAs were delineated based on the area flowing to each site design feature.

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DMA 1 - Area Draining to a Bioretention Facility

DMA 1 encompasses the multifamily building with surrounding landscaped areas, as well as the drive aisle and parking area south of the building. Roof drainage outlets at grade where possible and is captured in landscape swales surrounding the building. Runoff will enter the private storm drain system through area drains. Runoff from the drive aisles, parking stalls, and carport roofs will surface flow onto the permeable pavement in the south parking bay. Runoff below the paver subdrain will infiltrate. When the paver section is full, runoff will enter the subdrain.

As the DMA exceeds the 2:1 ratio of impervious to self-retaining area, bioretention has been provided. Runoff from the paver subdrain and area drains will be piped to a bioretention basin referred to as BMP 1. BMP 1 serves to treat, infiltrate, and detain runoff. Drainage within the bioretention basin will infiltrate below the subdrain. As the water level reaches the subdrain, runoff will exit through an orifice at the subdrain connection to the outlet structure. As the water level rises above the graded bottom of basin, runoff will enter a mid-flow orifice in the outlet structure. In an overflow condition, runoff would enter the grated inlet at the top of the outlet structure. From the outlet structure, drainage is piped to a level spreader outlet at the southeastern corner of the site. The level spreader will dissipate energy, and drainage will spill over evenly toward the property line at the southeastern corner of the site. Drainage leaving the level spreader will travel through existing vegetation to be preserved onsite before leaving the site in the same direction as drainage in the existing condition.

<u>DMA 2 – Area Draining to Self-Retaining Area / Self-Retaining Area</u>

DMA 2 includes the sidewalk, drive aisle, carports and parking east of the building. Drainage surface flows onto the permeable pavement in the parking and hammerhead turnaround. Drainage below the paver subdrain infiltrates. When the paver section is full, runoff will exit through the subdrain. The subdrain will be piped to the level spreader at the southeast corner of the property. DMA 2 has been designed with an impervious to pervious self-retaining area ratio of less than 2:1; therefore, site design requirements have been met.

DMA 3 – Area Draining to Self-Retaining Area / Self-Retaining Area

DMA 3 includes the sidewalk, drive aisle, carports and parking north of the building. Drainage surface flows onto the permeable pavement in the parking as well as into a self-retaining landscaped area designed to allow minimum 3-inches of ponding. Drainage below the subdrain of the pavers and below the raised area drains of the self-retaining area will infiltrate. When the water level reaches the subdrain of the pavers and the area drains in the self-retaining area, drainage will enter the private storm drain, from where it will be piped to a level spreader along the eastern edge of the property. This mimics existing conditions, in which the northeast corner of the site drains toward the eastern property line. DMA 3 has been designed with an impervious to pervious self-retaining area ratio of less than 2:1; therefore, site design requirements have been met.

DMAs 4 and 5 – Area Draining to Self-Retaining Area / Self-Retaining Area

DMAs 4 and 5 consist of the two driveway entrances to the site that will flow offsite into Hazelwood Street. Permeable pavement will be installed within the driveway entrances in order to intercept the drainage to the extent feasible. Drainage below the subdrain will infiltrate. When the water level reaches the subdrain, drainage will be piped toward the eastern property line for DMA 4 and toward BMP 1 for DMA 5. DMAs 4 and 5 have been designed with an impervious to pervious self-retaining area ratio of less than 2:1; therefore, site design requirements have been met.

DMA 6 - Self-Treating Area

DMA 6 includes the pervious graded area surrounding the site that is not tributary to the proposed drainage infrastructure. This area will be planted and does not require treatment or detention as it contains no impervious area and will match the existing conditions. Runoff that is not intercepted in the soil and vegetation will flow toward the south and eastern property lines as in the existing condition.

Offsite

The project proposes the development of a portion of public Hazelwood Street with asphalt pavement, curb, gutter, and sidewalk. The street will be sloped east as in the existing condition. It will be intercepted in the gutter and directed to a proposed vegetated swale. The swale will flow from the public right-of-way onto the subject property and flow along the southerly property line. The swale will allow for the interception of drainage in the soil as infiltration and vegetation as evapotranspiration. Drainage that is not intercepted will flow toward the southeast corner of the site and exit the property as in the existing condition. Treatment of public, offsite drainage has not been tabulated in this analysis.

IV. HYDROMODIFICATION MITIGATION

Overview

According to Section E.12.f of the Phase II MS4 Permit, regulated projects within the California Coastal Ranges shall implement hydromodification management measures, by demonstrating that post-project runoff shall not exceed estimated pre-project runoff for the 2-year, 24-hour storm. The LID Manual notes that if a project has been designed with the 2:1 impervious to self-retaining area ratio for the entire site and that the site supports infiltration of greater than 1 inch per hour, the hydromodification mitigation requirement has been met.

The LID Manual does not provide guidance for how to meet the requirement if the project infiltrates at less than 1 inch per hour or does not meet the required ratio of impervious to self-retaining area for the entire site. The proposed project does not support infiltration of 1 inch per hour with a factor of safety applied to the tested rate and does not comply with the 2:1 ratio for the entire site; therefore, the project has performed hydrology and hydraulic routing calculations for the 2-year, 24-hour storm event to demonstrate compliance.

Hydromodification Mitigation Calculations

In order to demonstrate that the proposed 2-year, 24-hour peak runoff does not exceed that of the existing condition, detention in the permeable pavement and bioretention must be taken into account. Detention analysis requires time distribution of rainfall over a particular storm duration; therefore, the National Resources Conservation Services (NRCS), formerly Soil Conversation Service (SCS), hydrologic procedure was followed.

Calculations described below were performed in Autodesk's Storm Sanitary Analysis program (SSA). SSA input and output can be found in Attachment 4.

NRCS Type IA, 24-hour storm distribution was selected based on the geographic region. Distribution IA is appropriate for the northern California coast per NRCS Technical Release 55, Figure B-2. The storm distribution was applied to the 2-year, 24-hour precipitation depth per NOAA Atlas 14. See reference material in Attachment 5.

Each DMA was modeled as a subbasin in SSA based on area, time of concentration, and curve number. Time of concentration was based on NRCS TR-55 method with calculations occurring directly in SSA. Time of concentration was calculated for the existing condition and for proposed DMA 6, which contains only pervious area. The remaining DMAs were modeled with the minimum time of concentration of five minutes, as they are relatively small with relatively high impervious area.

Composite curve numbers were calculated directly in SSA based on the input impervious and pervious areas for each DMA. Impervious areas were modeled with a curve number of 98, and pervious areas with a curve number of 58. The pervious curve number is from TR-55, Table 2-2c, from the value for meadow with soil type B. This ground cover matches the existing state. Although the NRCS does not list a hydrologic soil group, type B is the most consistent with the soil description and tested infiltration rates.

The existing condition was modeled by running the 2-year, 24-hour storm through the existing subbasin with the above parameters. The model results in a peak flow at the overall discharge point.

For the proposed condition, detention in the permeable pavement and bioretention basin needed to be modeled. The bioretention basin was modeled for DMA 1, and the permeable pavement was modeled for DMAs 2 through 5. The bioretention parameters are per the detail shown on the Project Site Map in Attachment 1. The pavement sections were assumed to have 9-inches of gravel below the subdrain.

The bioretention basin and each paver area were added as a storage node in SSA. A staged storage curve was added representing the depth to volume values for each storage node. Staged storage calculations considered 0.4 porosity for the gravel layers and 0.2 porosity for the basin soil layer.

Infiltration from the basin and paver sections was modeled. The design infiltration rate was calculated by applying a factor of safety of 3 to the tested infiltration rate per the geotechnical report. The design infiltration rate was multiplied by the bottom area of the basin and pavers to obtain an infiltration flow rate for each area. The infiltration flow rate was applied to each storage node based on its bottom area.

Subdrains for the basin and pavers were modeled as orifices in SSA. The paver sections were each modeled with a 4-inch subdrain. The orifice size of the bioretention basin was iterated until the peak 2-year, 24-hour flow rate did not exceed that of the existing condition. The result was an orifice of 1.375-

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inches in diameter. A mid-flow orifice was added on the outlet structure above the graded basin bottom for detention of larger storm events per the project Runoff Mitigation Plan. The water level remains below the mid-flow orifice in the 2-year, 24-hour storm event.

The basin and pavers were modeled with overflow structures; however, the sizing resulted in water levels that never reached the overflow for any storage node. For the basin, the grated overflow was modeled as a weir at the grate elevation. For the pavers, the overflow was modeled as a long weir to reflect surface flow leaving the paver area in an overflow condition.

The 2-year, 24-hour storm event was run through the proposed subbasins with runoff then being routed through the storage nodes, orifices, and to the overall outfall. The model results in a peak flow and total at the overall discharge point after considering detention and infiltration in the basin and pavers.

The table below summarizes the results of the hydrologic and hydraulic analysis:

2-Year, 24-Hour Runoff

DMA	Peak Flow (CFS)
Existing	0.09
1	0.06
2	0
3	0
4	0
5	0
6	0.02
Total Proposed	0.08

The analysis shows that the project detention features are sufficient to reduce the proposed peak flow leaving the site in the 2-year, 24-hour storm event to less than that of the existing condition. Therefore, hydromodification mitigation requirements have been met.

V. CONCLUSION

The proposed project has been designed to address site design requirements of the Phase II MS4 Permit as enforced within the Mendocino County LID Manual through the use of self-retaining landscaped areas, permeable pavement, and a bioretention basin. Hydrologic and hydraulic analysis shows that these features are sufficient for compliance with the hydromodification mitigation requirement with the inclusion of a 1.375-inch orifice on the bioretention basin subdrain.

ATTACHMENT 3

Water Quality Calculations



Fort Bragg Senior Apartments - DMA Summary

	DMA Area Summary					Site Design Measures									
DMA	Impervious Area (SF)	Impervious Area (AC)	Pervious Area (SF)	Pervious Area (AC)	Total Area (SF)	Total Area (AC)	Paver Area (SF)	Paver Area (AC)	SRA Landscape (SF)	SRA Landscape (AC)	Total SRA (SF)	Total SRA (AC)	Ratio Impervious to SRA	LID Req. met?	Bioretention Area (SF)
1	28200	0.65	30900	0.71	59100	1.36	1100	0.03	0	0.00	1100	0.03	25.6	No	1500
2	8100	0.19	6900	0.16	15000	0.34	4600	0.11	0	0.00	4600	0.11	1.8	Yes	0
3	13100	0.30	9700	0.22	22800	0.52	4700	0.11	4100	0.09	8800	0.20	1.5	Yes	0
4	650	0.01	350	0.01	1000	0.02	350	0.01	0	0.00	350	0.01	1.9	Yes	0
5	550	0.01	350	0.01	900	0.02	350	0.01	0	0.00	350	0.01	1.6	Yes	0
6	0	0.00	31600	0.73	31600	0.73	0	0.00	0	0.00	0	0.00	N/A	Yes	0
Total	50600	1.16	79800	1.83	130400	2.99	11100	0.25	4100	0.09	15200	0.35			
Existing	2300	0.05	0	0.00	130400	2.99									



Table 2. Area Calculations of Self-retaining Areas Used to Treat Impervious Areas

1	2
DMA Name	Area (sq. ft.)
1 (Self-retaining)	1,100
2 (Self-retaining)	4,600
3 (Self-retaining)	8,800
4 (Self-retaining)	350
5 (Self-retaining)	350

Table 3. Runoff Factor (surface type)

Roofs and Paving	1.0
Landscaped Area	0.1
Bricks or solid pavers- grouted	1.0
Bricks or solid Pavers-on sand base	0.5
Pervious Concrete Asphalt	0.1
Turfblock or gravel	0.1
Open or Porous pavers	0.1

Tables 4-6 below should be used to quantify the amount of runoff that is reduced by using site design measures. Using the tables in chronological order will calculate the minimum size for your bioretention facility in order to meet the MS4 permit requirements. Several iterations may be need to size facilities according to the site design.

Table 4. Area draining to self-retaining areas

1	2	3	4	5	6
DMA Name	DMA Area (sq. ft.)	Type of Surface	Surface with Runoff Factor	Area of Self-retaining Area Receiving the Runoff	Ratio
(must correspond to	(5 5/4 /	(Runoff Factor		(sq. ft.)	Col. 4 : Col. 5
area on the site map and on Table 1)	(Table 1)	Table 3)	Column 2 X Column 3	(Table 2, Col. 2)	Not to exceed 2:1 ratio (if number exceeds 2:1 use table 5 - 6 to reduce tributary area and recalculate or go directly to Table 7)
Example	700	Roof (1.0)	700	100	7:1 (must use site design measures, bioretention or both)
1 (Impervious)	28,200	Roof, paving (1.0)	28,200	1,100	25.6:1
2 (Impervious)	8,100	Paving (1.0)	8,100	4,600	1.8:1
3 (Impervious)	13,100	Paving (1.0)	13,100	8,800	1.5:1
4 (Impervious)	650	Paving (1.0)	650	350	1.9:1
64 ₽5 (Impervious)	550	Paving (1.0)	550	350	1.6:1



Table 5. Tree Planting and Preservation (if not planting trees, go to Table 6)

1		2	4	F	,
I	2	3	4	5	6
DMA Name	DMA sq. ft.	Deciduous	Evergreen	Total Tree Credit	New DMA Area
(must correspond to area on the site	(from Table	(Input 100 for each	(Input 200 for each	(Col. 3 + Col. 4)	Col. 2 – Col. 5
map)	4. Col. 6)	deciduous tree)	evergreen tree)	(COI. 3 + COI. 4)	Coi. 2 – Coi. 3
				(DMA runoff reduction)	(for use in Table 6 - 8)
					500 (new DMA size that must
Example	700		200	200	be treated with methods
					below Table 6-7)

Table 6. Rain Barrels and Cisterns (if not using site design measures, go to Table 8)

1	2	3	4	5	6
DMA Name	New DMA sq. ft.	Number	Runoff Reduction from using a standard 55 gallon Rain Barrel = 88 sq. ft.	Col. 3 X Col. 4	New DMA Area
(must correspond to area on the site map)	(Table 5, Col. 7 or, if no trees used, value from Table 4, Col. 2)	Rarrels	Use the following if size is other than the standard (for every gallon of storage, approx. 1.6 sq. ft. of reduction is achieved)	(DMA runoff reduction)	Col. 2 - Col. 5
Example 500		1	88	88	412 (go to Table 7 to recalculate Ratio)



Table 7. New Tabulation of areas draining to self-retaining area after use of site design measures (must achieve a 2:1 ratio; if not achievable, use table 8 to calculate the size of bioretention required)

1	1	2	4
	2	3	4
DMA Name	New Square footage of	Area of Self-retaining Area	Ratio
	DMA	Receiving the Runoff	
(must correspond to area on the			Column 2 : Column 3
site map)	(Col 6, Table 4,5,6)	(Table 2, Col. 2)	Not to exceed 2:1
			4.12:1(still exceeds 2:1 go back, add more trees, rain
Example	412 (Table 6)	100	barrels, or use bioretention – example uses
			bioretention, Table 8)
1 (Impervious)	28,200	1,100	25.6:1

Table 8. Tabulation of areas draining to Bioretention Facility

1	2	3	5	6		
DMA Name	DMA sq. ft.	Runoff Factor	DMA Area	Standard Sizing	Minimum facility size	If site does not allow for the minimum size, recalculate DMA using additional
(must	(Table 1, Col 2	Table 6	Col. 2 x Col.	Factor	Col. 5 X Col. 6	Site Design Measures to further reduce
correspond to	or new DMA sq. ft.		3			the tributary size
area on the site	Table 7, Col. 2)	(skip if coming				
map)		from Table 1)				
		1 (already				
Example	300	calculated in	300	0.04	12 sq. ft.	(proposed facility size on site plans)
		steps above,				(proposed raciiiry size orr sire plaris)



		for this example)				
1	28,200 Impervious 30,900 Pervious	1 0.1	28,200 SF 3,090 SF	0.04	1,128 SF 124 SF 1,252 SF Total	1,500 SF provided. Minimum size achieved.
				0.04		
				0.04		
				0.04		

Table 9. Runoff Factors

Roofs and Paving	1.0
Landscaped Area	0.1
Bricks or solid pavers- grouted	1.0
Bricks or solid Pavers-on sand base	0.5
Pervious Concrete Asphalt	0.1
Turfblock or gravel	0.1
Open or Porous pavers	0.1

G. Operation and Maintenance in Perpetuity

Indicate whether an Operation and Maintenance Plan is accompanying this document (Appendix 9).							
Yes	□No						
H. Stormwater Control	Plan						
A Stormwater Control Plan is required for all Regulated Projects. This worksheet is designed to be the SCP if all requested descriptions and site plans have been attached. This document will be used by the plan checker to confirm that adequate stormwater control measures are being implemented on the project.							
Indicate whether all supporting descriptions and worksheets are accompanying this document, Stormwater Control Plan							
Yes	□No						

ATTACHMENT 4

Hydromodification Mitigation Calculations



Fort Bragg Senior Apartments - Hydromodification Mitigation Summary

		DMA	Detention	on Features	2-year, 24 hour Results				
DMA	Impervious	Impervious	Pervious	Pervious	Total Area	Total	Paver	Bioretention	Peak Flow
DIMA	Area (SF)	Area (AC)	Area (SF)	Area (AC)	(SF)	Area (AC)	Area (SF)	Area (SF)	(CFS)
1	28200	0.65	30900	0.71	59100	1.36	1100	1500	0.06
2	8100	0.19	6900	0.16	15000	0.34	4600	0	0
3	13100	0.30	9700	0.22	22800	0.52	4700	0	0
4	650	0.01	350	0.01	1000	0.02	350	0	0
5	550	0.01	350	0.01	900	0.02	350	0	0
6	0	0.00	31600	0.73	31600	0.73	0	0	0.02
Total	50600	1.16	79800	1.83	130400	2.99			0.08
Existing	2300	0.05	0	0.00	130400	2.99			0.09

Note: Pavement detention not modeled for DMA 1. Self-retaining landscaped area not modeled for DMA 3.

Fort Bragg Senior Apartments - Design Infiltration Rate

Test ¹	Infiltration Rate (in/hr)
P-1	1.03
P-2	0.94
Average	0.985

¹ Per geotechnical infiltration testing results.

Average		
Infiltration	0.985	in/hr
Rate (in/hr)		
FS	3	
Design		
infiltration	0.33	in/hr
rate		

Project Description

Project Options

Flow Units	CFS
Elevation Type	Elevation
Hydrology Method	SCS TR-20
Time of Concentration (TOC) Method	SCS TR-55
Link Routing Method	Kinematic Wave
Enable Overflow Ponding at Nodes	YES
Skip Steady State Analysis Time Periods	YES

Analysis Options

Start Analysis On	00:00:00	0:00:00
End Analysis On	00:00:00	0:00:00
Start Reporting On	00:00:00	0:00:00
Antecedent Dry Days	0	days
Runoff (Dry Weather) Time Step	0 01:00:00	days hh:mm:ss
Runoff (Wet Weather) Time Step	0 00:05:00	days hh:mm:ss
Reporting Time Step	0 00:05:00	days hh:mm:ss
Routing Time Step	15	seconds

Number of Elements

	Qt
Rain Gages	4
Subbasins	1
Nodes	1
Junctions	0
Outfalls	1
Flow Diversions	0
Inlets	0
Storage Nodes	0
Links	0
Channels	0
Pipes	0
Pumps	0
Orifices	0
Weirs	0
Outlets	0
Pollutants	0
Land Uses	0

Rainfall Details

SN	Rain Gage	Data	Data Source	Rainfall	Rain	State	County	Return	Rainfall	Rainfall
	ID	Source	ID	Туре	Units			Period	Depth	Distribution
								(years)	(inches)	
1	Rain Gage-01	Time Series	TS-04	Intensity	inches					User Defined
2	Rain Gage-03	Time Series	TS-02	Cumulative	inches				0.00	
3	Rain Gage-04	Time Series	TS-03	Cumulative	inches				0.00	
4	Rain Gage-05	Time Series	TS-04	Intensity	inches					User Defined

Subbasin Summary

SN Subbasin	Area	Peak Rate	Weighted	Total	Total	Total	Peak	Time of
ID		Factor	Curve	Rainfall	Runoff	Runoff	Runoff	Concentration
			Number			Volume		
	(ac)			(in)	(in)	(ac-in)	(cfs)	(days hh:mm:ss)
1 E1	2.99	484.00	58.67	3.29	0.40	1.18	0.09	0 00:20:02

Subbasin Hydrology

Subbasin: E1

Input Data

Area (ac)	2.99
Peak Rate Factor	484
Weighted Curve Number	58.67
Rain Gage ID	Rain Gage-01

Composite Curve Number

32	Area	Soil	Curve
Soil/Surface Description	(acres)	Group	Number
Meadow, non-grazed	2.94	В	58
Paved parking & roofs	0.05	В	98
Composite Area & Weighted CN	2.99		58.67

Time of Concentration

TOC Method: SCS TR-55

Sheet Flow Equation :

Tc = (0.007 * ((n * Lf)^0.8)) / ((P^0.5) * (Sf^0.4))

Where:

Tc = Time of Concentration (hr)

n = Manning's roughness

Lf = Flow Length (ft)

P = 2 yr, 24 hr Rainfall (inches)

Sf = Slope (ft/ft)

Shallow Concentrated Flow Equation :

V = 16.1345 * (Sf^0.5) (unpaved surface)

V = 20.3282 * (Sf^0.5) (paved surface)

 $V = 15.0 * (Sf^0.5)$ (grassed waterway surface)

V = 10.0 * (Sf^0.5) (nearly bare & untilled surface)

V = 9.0 \star (Sf^0.5) (cultivated straight rows surface)

V = 7.0 * (Sf^0.5) (short grass pasture surface)

 $V = 5.0 * (Sf^0.5)$ (woodland surface)

V = 2.5 * (Sf^0.5) (forest w/heavy litter surface)

Tc = (Lf / V) / (3600 sec/hr)

Where:

Tc = Time of Concentration (hr)

Lf = Flow Length (ft)

V = Velocity (ft/sec)

Sf = Slope (ft/ft)

Channel Flow Equation :

V = (1.49 * (R^(2/3)) * (Sf^0.5)) / n

R = Aq / Wp

Tc = (Lf / V) / (3600 sec/hr)

Where:

Tc = Time of Concentration (hr)

Lf = Flow Length (ft)

R = Hydraulic Radius (ft)

Aq = Flow Area (ft²)

Wp = Wetted Perimeter (ft)

V = Velocity (ft/sec)

Sf = Slope (ft/ft)

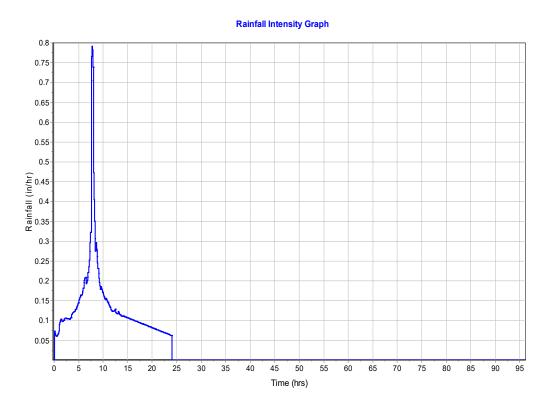
n = Manning's roughness

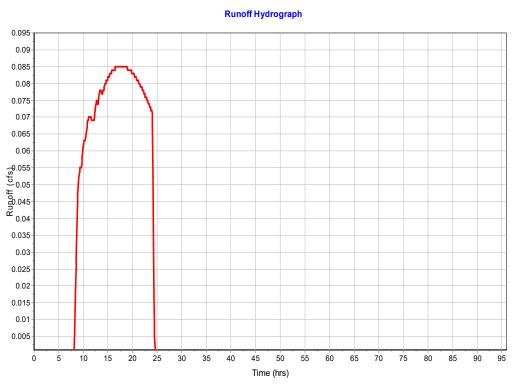
	Subarea	Subarea	Subarea
Sheet Flow Computations	Α	В	С
Manning's Roughness:	0.3	0	0
Flow Length (ft):	100	0	0
Slope (%):	2	0	0
2 yr, 24 hr Rainfall (in) :	3.4	0	0
Velocity (ft/sec):	0.1	0	0
Computed Flow Time (min):	16.55	0	0
	Subarea	Subarea	Subarea
Shallow Concentrated Flow Computations	Α	В	С
Flow Length (ft):	100	130	0
Slope (%):	1.5	4	0
Surface Type :	Grass pasture	Grass pasture	Unpaved
Velocity (ft/sec):	0.86	1.4	0
Computed Flow Time (min):	1.94	1.55	0
Total TOC (min)20.04			

Subbasin Runoff Results

Total Rainfall (in)	3.29
Total Runoff (in)	0.4
Peak Runoff (cfs)	0.09
Weighted Curve Number	58.67
Time of Concentration (days hh:mm:ss)	0 00:20:02

Subbasin: E1





Project Description

Project Options

Flow Units	CFS
Elevation Type	Elevation
Hydrology Method	SCS TR-20
Time of Concentration (TOC) Method	SCS TR-55
Link Routing Method	Kinematic Wave
Enable Overflow Ponding at Nodes	YES
Skip Steady State Analysis Time Periods	YES

Analysis Options

Start Analysis On	00:00:00	0:00:00
End Analysis On	00:00:00	0:00:00
Start Reporting On	00:00:00	0:00:00
Antecedent Dry Days	0	days
Runoff (Dry Weather) Time Step	0 01:00:00	days hh:mm:ss
Runoff (Wet Weather) Time Step	0 00:05:00	days hh:mm:ss
Reporting Time Step	0 00:05:00	days hh:mm:ss
Routing Time Step	15	seconds

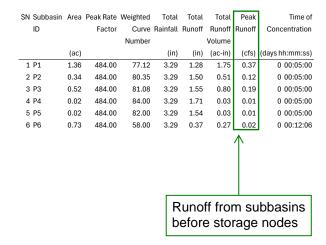
Number of Elements

	Qt
Rain Gages	2
Subbasins	6
Nodes	6
Junctions	0
Outfalls	1
Flow Diversions	0
Inlets	0
Storage Nodes	5
Links	11
Channels	0
Channels	0
	•
Pipes	0
Pipes	0
Pipes Pumps Orifices	0 0 6
Pipes Pumps Orifices Weirs	0 0 6 5

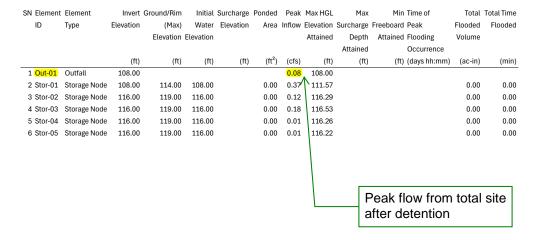
Rainfall Details

SN	Rain Gage	Data	Data Source	Rainfall	Rain	State County	Return	Rainfall	Rainfall
	ID	Source	ID	Туре	Units		Period	Depth	Distribution
							(years)	(inches)	
1	Rain Gage-01	Time Series	TS-03	Intensity	inches				User Defined
2	Rain Gage-02	Time Series	TS-02	Cumulative	inches			0.00	

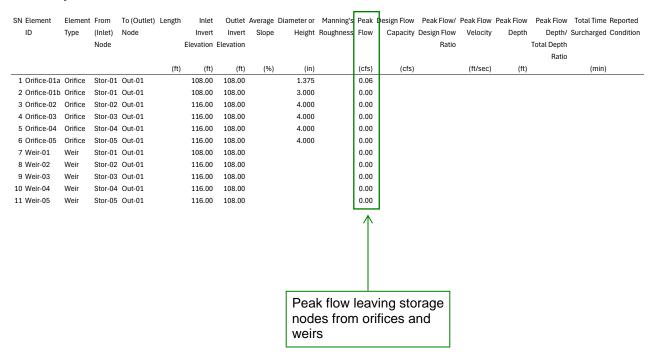
Subbasin Summary



Node Summary



Link Summary



Subbasin Hydrology

Subbasin: P1

Input Data

Area (ac)	1.36
Peak Rate Factor	484
Weighted Curve Number	77.12
Rain Gage ID	Rain Gage-01

Composite Curve Number

32	Area	Soil	Curve
Soil/Surface Description	(acres)	Group	Number
Paved parking & roofs	0.65	В	98
Meadow, non-grazed	0.71	В	58
Composite Area & Weighted CN	1.36		77.12

Time of Concentration

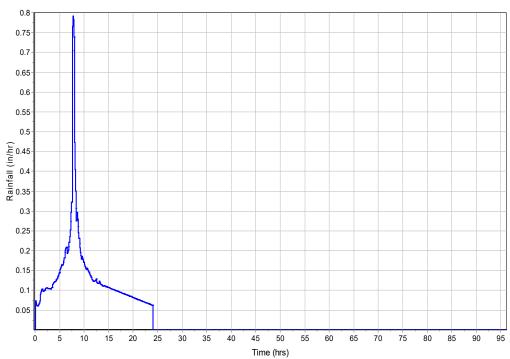
User-Defined TOC override (minutes): 5

Subbasin Runoff Results

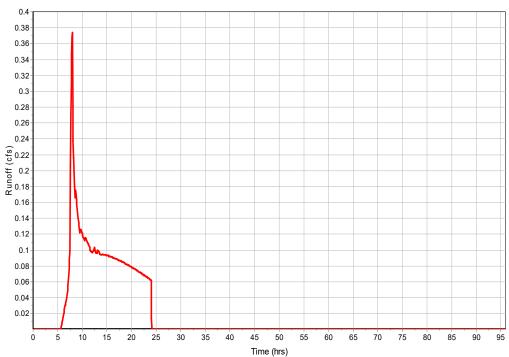
Total Rainfall (in)	3.29
Total Runoff (in)	1.28
Peak Runoff (cfs)	0.37
Weighted Curve Number	77.12
Time of Concentration (days hh:mm:ss)	0 00:05:00

Subbasin: P1





Runoff Hydrograph



Subbasin: P2

Input Data

Area (ac)	0.34
Peak Rate Factor	484
Weighted Curve Number	80.35
Rain Gage ID	Rain Gage-01

Composite Curve Number

32	Area	Soil	Curve
Soil/Surface Description	(acres)	Group	Number
Paved roads with curbs & sewers	0.19	В	98
Meadow, non-grazed	0.15	В	58
Composite Area & Weighted CN	0.34		80.35

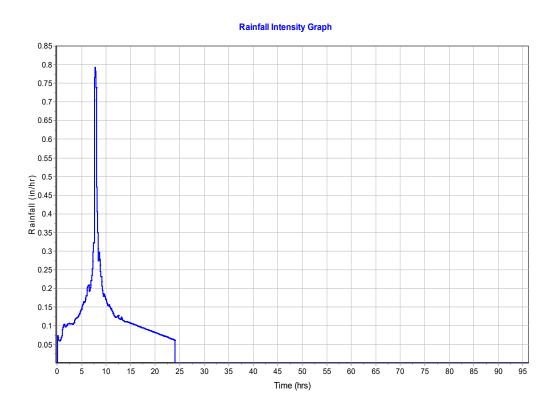
Time of Concentration

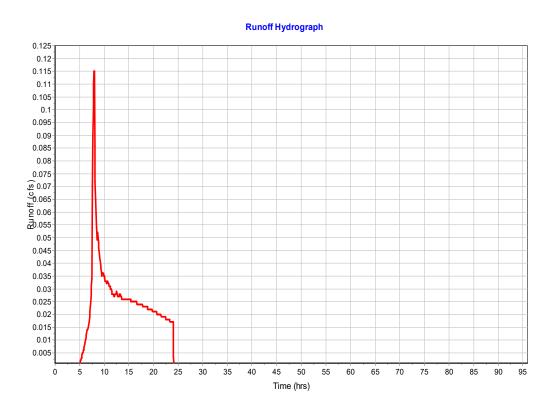
User-Defined TOC override (minutes): 5

Subbasin Runoff Results

Total Rainfall (in)	3.29
Total Runoff (in)	1.5
Peak Runoff (cfs)	0.12
Weighted Curve Number	80.35
Time of Concentration (days hh:mm:ss)	0 00:05:00

Subbasin: P2





Subbasin: P3

Input Data

Area (ac)	0.52
Peak Rate Factor	484
Weighted Curve Number	81.08
Rain Gage ID	Rain Gage-01

Composite Curve Number

32	Area	Soil	Curve
Soil/Surface Description	(acres)	Group	Number
Paved parking & roofs	0.3	В	98
Meadow, non-grazed	0.22	В	58
Composite Area & Weighted CN	0.52		81.08

Time of Concentration

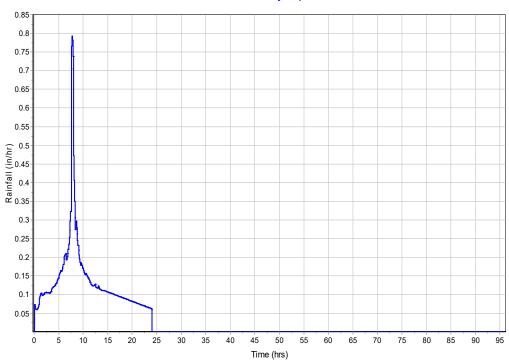
User-Defined TOC override (minutes): 5

Subbasin Runoff Results

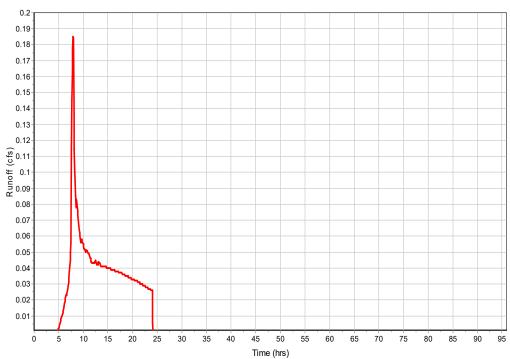
Total Rainfall (in)	3.29
Total Runoff (in)	1.55
Peak Runoff (cfs)	0.19
Weighted Curve Number	81.08
Time of Concentration (days hh:mm:ss)	0.00:05:00

Subbasin: P3





Runoff Hydrograph



Subbasin: P4

Input Data

0.02
484
84
Rain Gage-01

Composite Curve Number

32	Area	Soil	Curve
Soil/Surface Description	(acres)	Group	Number
Paved parking & roofs	0.01	В	98
Meadow, non-grazed	0.01	В	58
Composite Area & Weighted CN	0.02		84

Time of Concentration

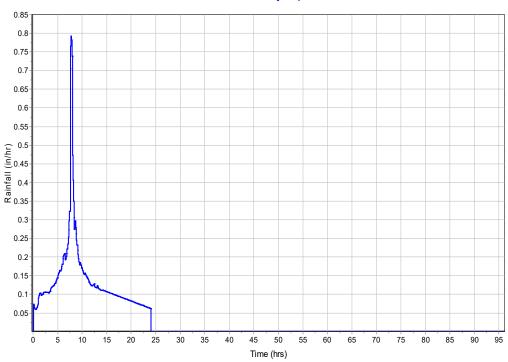
User-Defined TOC override (minutes): 5.00

Subbasin Runoff Results

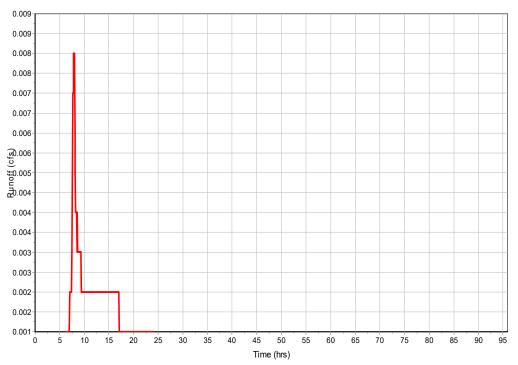
Total Rainfall (in)	3.29
Total Runoff (in)	1.71
Peak Runoff (cfs)	0.01
Weighted Curve Number	84
Time of Concentration (days hh:mm:ss)	0 00:05:00

Subbasin: P4





Runoff Hydrograph



Subbasin: P5

Input Data

0.02
484
82
Rain Gage-01

Composite Curve Number

32	Area	Soil	Curve
Soil/Surface Description	(acres)	Group	Number
Paved parking & roofs	0.01	В	98
Meadow, non-grazed	0.01	В	58
Composite Area & Weighted CN	0.02		82

Time of Concentration

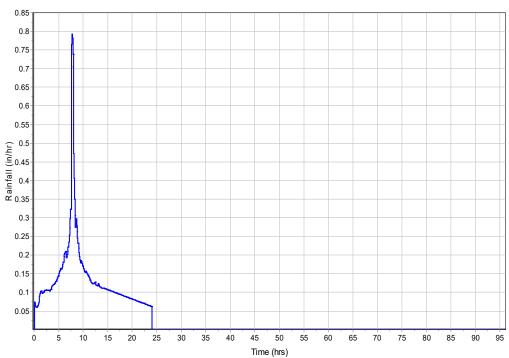
User-Defined TOC override (minutes): 5

Subbasin Runoff Results

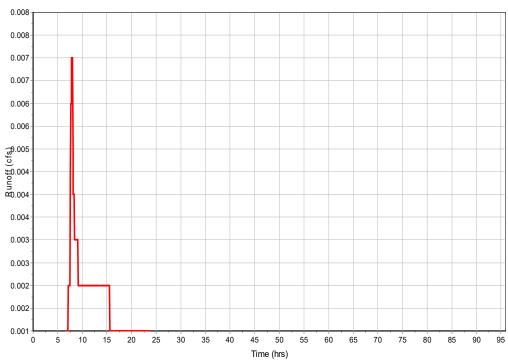
Total Rainfall (in)	3.29
Total Runoff (in)	1.54
Peak Runoff (cfs)	0.01
Weighted Curve Number	82
Time of Concentration (days hh:mm:ss)	0 00:05:00

Subbasin: P5





Runoff Hydrograph



Subbasin: P6

Input Data

Area (ac)	0.73
Peak Rate Factor	484
Weighted Curve Number	58
Rain Gage ID	Rain Gage-01

Composite Curve Number

32	Area	Soil	Curve
Soil/Surface Description	(acres)	Group	Number
Meadow, non-grazed	0.73	В	58
Composite Area & Weighted CN	0.73		58

Time of Concentration

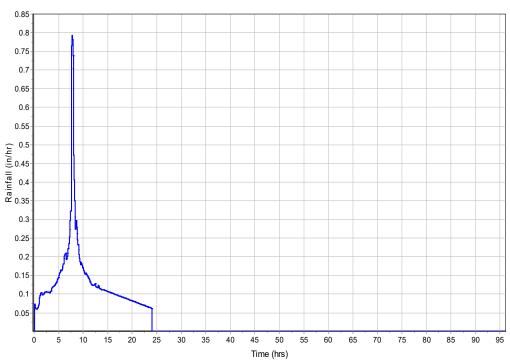
	Subarea	Subarea	Subarea
Sheet Flow Computations	Α	В	С
Manning's Roughness:	0.3	0	0
Flow Length (ft):	80	0	0
Slope (%):	3.5	0	0
2 yr, 24 hr Rainfall (in) :	3.4	0	0
Velocity (ft/sec):	0.12	0	0
Computed Flow Time (min):	11.07	0	0
	Subarea	Subarea	Subarea
Shallow Concentrated Flow Computations	Α	В	С
Flow Length (ft):	50	0	0
Slope (%):	1.3	0	0
Surface Type :	Grass pasture	3rass pastur	Unpaved
Velocity (ft/sec):	0.8	0	0
Computed Flow Time (min):	1.04	0	0
Total TOC (min)12.11			

Subbasin Runoff Results

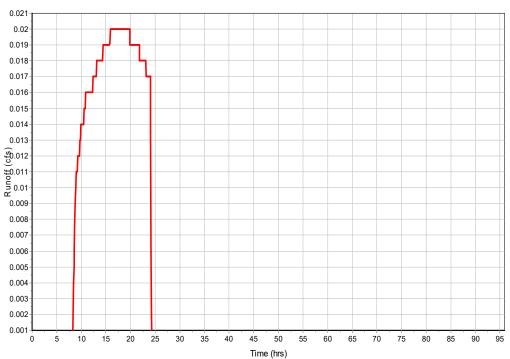
Total Rainfall (in)	3.29
Total Runoff (in)	0.37
Peak Runoff (cfs)	0.02
Weighted Curve Number	58
Time of Concentration (days hh:mm:ss)	0.00-12-07

Subbasin: P6









Storage Nodes

Storage Node: Stor-01

Input Data

Invert Elevation (ft)	108.00
Max (Rim) Elevation (ft)	114.00
Max (Rim) Offset (ft)	6.00
Initial Water Elevation (ft)	108.00
Initial Water Depth (ft)	0.00
Ponded Area (ft²)	0.00
Evaporation Loss	0.00

Infiltration/Exfiltration

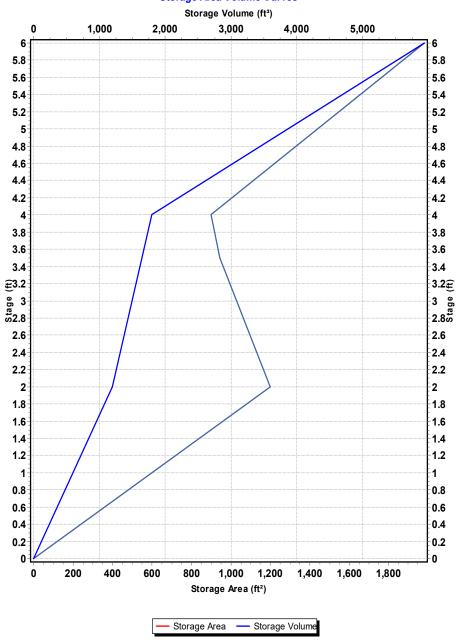
Constant Flow Rate (cfs) 0.011

Storage Area Volume Curves

Storage Curve : Storage-01

Stage	Storage	Storage
	Area	Volume
(ft)	(ft ²)	(ft ³)
0	0	C
2	1200	1200
3.5	942.86	1650
4	900	1800
6	1980.67	5942

Storage Area Volume Curves



Storage Node: Stor-01 (continued)

Outflow Weirs

SN Element	Weir	Flap	Crest	Crest	Length	Weir Total	Discharge
ID	Type	Gate	Elevation	Offset		Height	Coefficient
			(ft)	(ft)	(ft)	(ft)	
1 Weir-01	Trapezo	idal No	113.00	5.00	6.00	1.00	3.33

Outflow Orifices

SN Element	Orifice	Orifice	Flap	Circular	Rectangular	Rectangular	Orifice	Orifice
ID	Туре	Shape	Gate	Orifice	Orifice	Orifice	Invert	Coefficient
				Diameter	Height	Width	Elevation	
				(in)	(in)	(in)	(ft)	
1 Orifice-01a	Side	CIRCULAR	No	1.38			110.00	0.61
2 Orifice-01b	Side	Rectangular	No		3.00	6.00	112.50	0.63

Output Summary Results

Peak Inflow (cfs)	0.37
Peak Lateral Inflow (cfs)	0.37
Peak Outflow (cfs)	0.06
Peak Exfiltration Flow Rate (cfm)	0.66
Max HGL Elevation Attained (ft)	111.57
Max HGL Depth Attained (ft)	3.57
Average HGL Elevation Attained (ft)	109.24
Average HGL Depth Attained (ft)	1.24
Time of Max HGL Occurrence (days hh:mm)	0 21:23
Total Exfiltration Volume (1000-ft ³)	2.359
Total Flooded Volume (ac-in)	0
Total Time Flooded (min)	0
Total Retention Time (sec)	0

Storage Node: Stor-02

Input Data

Invert Elevation (ft)	116.00
Max (Rim) Elevation (ft)	119.00
Max (Rim) Offset (ft)	3.00
Initial Water Elevation (ft)	116.00
Initial Water Depth (ft)	0.00
Ponded Area (ft²)	0.00
Evaporation Loss	0.00

Infiltration/Exfiltration

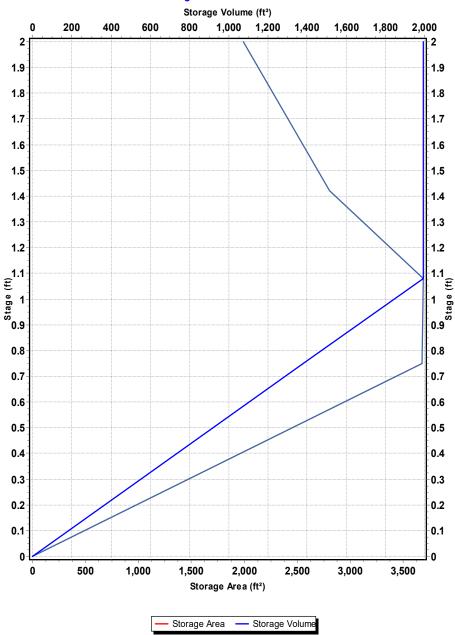
Constant Flow Rate (cfs) 0.035

Storage Area Volume Curves

Storage Curve : Storage-02-03

Stage	Storage	Storage
	Area	Volume
(ft)	(ft ²)	(ft ³)
0	0	0
0.75	3680	1380
1.08	3690.74	1993
1.42	2807.04	1993
2	1993	1993

Storage Area Volume Curves



Storage Node: Stor-02 (continued)

Outflow Weirs

SN Element	Weir	Flap	Crest	Crest	Length	Weir Total	Discharge
ID	Type	Gate	Elevation	Offset		Height	Coefficient
			(ft)	(ft)	(ft)	(ft)	
1 Weir-02	Trapezo	idal No	118.00	2.00	100.00	1.00	3.33

Outflow Orifices

SN Element	Orifice	Orifice	Flap	Circular	Rectangular	Rectangular	Orifice	Orifice
ID	Type	Shape	Gate	Orifice	Orifice	Orifice	Invert	Coefficient
				Diameter	Height	Width	Elevation	
				(in)	(in)	(in)	(ft)	
1 Orifice-02	Side	CIRCULAR	No	4.00			116.75	0.61

Output Summary Results

Peak Inflow (cfs)	0.12
Peak Lateral Inflow (cfs)	0.12
Peak Outflow (cfs)	0
Peak Exfiltration Flow Rate (cfm)	2.1
Max HGL Elevation Attained (ft)	116.29
Max HGL Depth Attained (ft)	0.29
Average HGL Elevation Attained (ft)	116.02
Average HGL Depth Attained (ft)	0.02
Time of Max HGL Occurrence (days hh:mm)	0 10:05
Total Exfiltration Volume (1000-ft ³)	1.229
Total Flooded Volume (ac-in)	0
Total Time Flooded (min)	
Total Retention Time (sec)	

Storage Node: Stor-03

Input Data

Invert Elevation (ft)	116.00
Max (Rim) Elevation (ft)	119.00
Max (Rim) Offset (ft)	3.00
Initial Water Elevation (ft)	116.00
Initial Water Depth (ft)	0.00
Ponded Area (ft²)	0.00
Evaporation Loss	0.00

Infiltration/Exfiltration

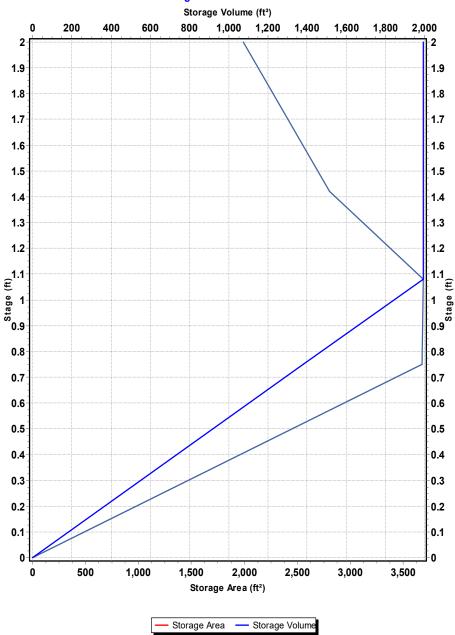
Constant Flow Rate (cfs) 0.036

Storage Area Volume Curves

Storage Curve : Storage-02-03

Stage	Storage	Storage
	Area	Volume
(ft)	(ft ²)	(ft ³)
0	0	0
0.75	3680	1380
1.08	3690.74	1993
1.42	2807.04	1993
2	1993	1993

Storage Area Volume Curves



Storage Node: Stor-03 (continued)

Outflow Weirs

SN Element	Weir	Flap	Crest	Crest	Length	Weir Total	Discharge
ID	Type	Gate	Elevation	Offset		Height	Coefficient
			(ft)	(ft)	(ft)	(ft)	
1 Weir-03	Trapezo	idal No	118.00	2.00	100.00	1.00	3.33

Outflow Orifices

SN Element	Orifice	Orifice	Flap	Circular	Rectangular	Rectangular	Orifice	Orifice
ID	Type	Shape	Gate	Orifice	Orifice	Orifice	Invert	Coefficient
				Diameter	Height	Width	Elevation	
				(in)	(in)	(in)	(ft)	
1 Orifice-03	Side	CIRCULAR	No	4.00			116.75	0.61

Output Summary Results

Peak Inflow (cfs)	0.18
Peak Lateral Inflow (cfs)	0.18
Peak Outflow (cfs)	0
Peak Exfiltration Flow Rate (cfm)	2.16
Max HGL Elevation Attained (ft)	116.53
Max HGL Depth Attained (ft)	0.53
Average HGL Elevation Attained (ft)	116.1
Average HGL Depth Attained (ft)	0.1
Time of Max HGL Occurrence (days hh:mm)	0 18:06
Total Exfiltration Volume (1000-ft ³)	2.786
Total Flooded Volume (ac-in)	0
Total Time Flooded (min)	0
Total Retention Time (sec)	0

Storage Node: Stor-04

Input Data

Invert Elevation (ft)	116.00
Max (Rim) Elevation (ft)	119.00
Max (Rim) Offset (ft)	3.00
Initial Water Elevation (ft)	116.00
Initial Water Depth (ft)	0.00
Ponded Area (ft²)	0.00
Evaporation Loss	0.00

Infiltration/Exfiltration

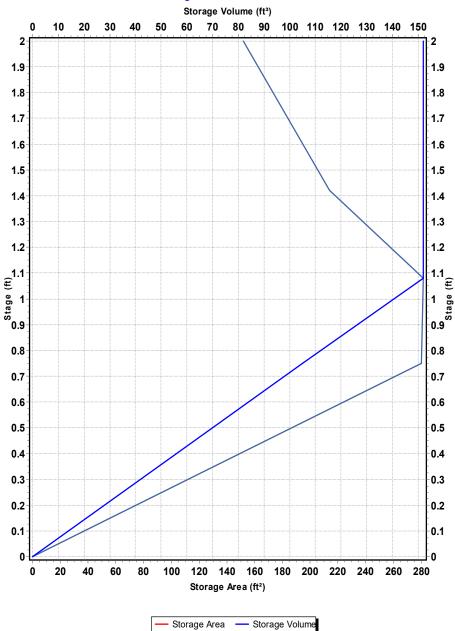
Constant Flow Rate (cfs) 0.0027

Storage Area Volume Curves

Storage Curve : Storage-04-06

Stage	Storage	Storage
	Area	Volume
(ft)	(ft ²)	(ft ³)
0	0	0
0.75	280	105
1.08	281.48	152
1.42	214.08	152
2	152	152

Storage Area Volume Curves



Storage Node: Stor-04 (continued)

Outflow Weirs

SN Element	Weir	Flap	Crest	Crest	Length	Weir Total	Discharge
ID	Type	Gate	Elevation	Offset		Height	Coefficient
			(ft)	(ft)	(ft)	(ft)	
1 Weir-04	Trapezo	idal No	118.00	2.00	15.00	1.00	3.33

Outflow Orifices

SN Element	Orifice	Orifice	Flap	Circular	Rectangular	Rectangular	Orifice	Orifice
ID	Туре	Shape	Gate	Orifice	Orifice	Orifice	Invert	Coefficient
				Diameter	Height	Width	Elevation	
				(in)	(in)	(in)	(ft)	
1 Orifice-04	Side	CIRCULAR	No	4.00			116.75	0.61

Output Summary Results

Peak Inflow (cfs)	0.01
Peak Lateral Inflow (cfs)	0.01
Peak Outflow (cfs)	0
Peak Exfiltration Flow Rate (cfm)	0.16
Max HGL Elevation Attained (ft)	116.26
Max HGL Depth Attained (ft)	0.26
Average HGL Elevation Attained (ft)	116.01
Average HGL Depth Attained (ft)	0.01
Time of Max HGL Occurrence (days hh:mm)	0 09:26
Total Exfiltration Volume (1000-ft ³)	0.066
Total Flooded Volume (ac-in)	0
Total Time Flooded (min)	0
Total Retention Time (sec)	0

Storage Node: Stor-05

Input Data

Invert Elevation (ft)	116.00
Max (Rim) Elevation (ft)	119.00
Max (Rim) Offset (ft)	3.00
Initial Water Elevation (ft)	116.00
Initial Water Depth (ft)	0.00
Ponded Area (ft ²)	0.00
Evaporation Loss	0.00

Infiltration/Exfiltration

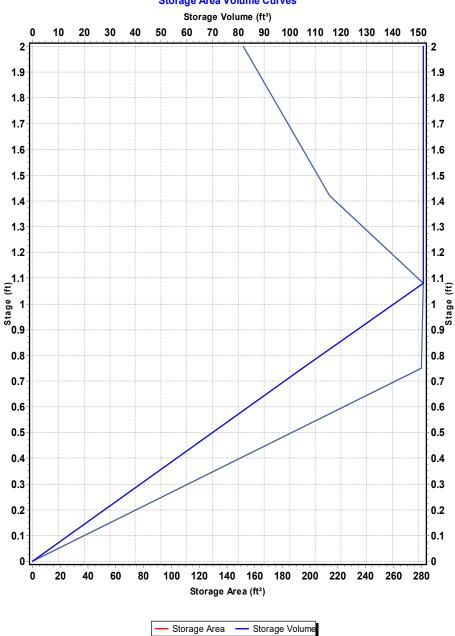
Constant Flow Rate (cfs) 0.0027

Storage Area Volume Curves

Storage Curve : Storage-04-06

Stage	Storage	Storage
	Area	Volume
(ft)	(ft ²)	(ft ³)
0	0	0
0.75	280	105
1.08	281.48	152
1.42	214.08	152
2	152	152

Storage Area Volume Curves



Storage Node: Stor-05 (continued)

Outflow Weirs

SN Elem	ent Weir	Flap	Crest	Crest	Length	Weir Total	Discharge
ID	Type	Gate	Elevation	Offset		Height	Coefficient
			(ft)	(ft)	(ft)	(ft)	
1 Weir	-05 Trape:	zoidal No	118.00	2.00	15.00	1.00	3.33

Outflow Orifices

SN Element	Orifice	Orifice	Flap	Circular	Rectangular	Rectangular	Orifice	Orifice
ID	Type	Shape	Gate	Orifice	Orifice	Orifice	Invert	Coefficient
				Diameter	Height	Width	Elevation	
				(in)	(in)	(in)	(ft)	
1 Orifice-05	Side	CIRCULAR	No	4.00			116.75	0.61

Output Summary Results

Peak Inflow (cfs)	0.01
Peak Lateral Inflow (cfs)	0.01
Peak Outflow (cfs)	0
Peak Exfiltration Flow Rate (cfm)	0.16
Max HGL Elevation Attained (ft)	116.22
Max HGL Depth Attained (ft)	0.22
Average HGL Elevation Attained (ft)	116.01
Average HGL Depth Attained (ft)	0.01
Time of Max HGL Occurrence (days hh:mm)	0 09:11
Total Exfiltration Volume (1000-ft ³)	0.05
Total Flooded Volume (ac-in)	0
Total Time Flooded (min)	0
Total Retention Time (sec)	0

ATTACHMENT 5

References



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3) Historic sites, structures or landscapes that cannot alter their original configuration in order to maintain their historic integrity.

By the second year of the effective date of the permit, each Permittee shall adopt or reference appropriate performance criteria for such biotreatment and media filters.

(iii) **Reporting** – The Permittee shall use State Water Board SMARTS to submit a summary of the past year activities and certify compliance with all requirements of this program element. The summary shall also address the relationship between the program element activities and the Permittee's Program Effectiveness Assessment and Improvement Plan that tracks annual and long-term effectiveness of the storm water program. If a Permittee is unable to certify compliance with a requirement in this program element see Section E.16.a.for compliance directions.

E.12.f. Hydromodification Management

- (i) **Task Description** Within the third year of the effective date of the permit, the Permittee shall develop and implement Hydromodification Management procedures. Hydromodification management projects are Regulated Projects that create and/or replace one acre or more of impervious surface. A project that does not increase impervious surface area over the pre-project condition is not a hydromodification management project.
- (ii) **Implementation Level** The Permittee shall implement the following Hydromodification Standard:
 - (a) Post-project runoff shall not exceed estimated pre-project flow rate for the 2-year, 24-hour storm in the following geomorphic provinces (Figure 1):
 - Coast Ranges
 - Klamath Mountains
 - Cascade Range
 - Modoc Plateau
 - Basin and Range
 - Sierra Nevada
 - Great Valley
 - (b) Post-project runoff shall not exceed estimated pre-project flow rate for the 10-year, 24-hour storm in the following geomorphic provinces (Figure 1):
 - Transverse Ranges
 - Peninsular Ranges
 - Mojave Desert
 - Colorado Desert

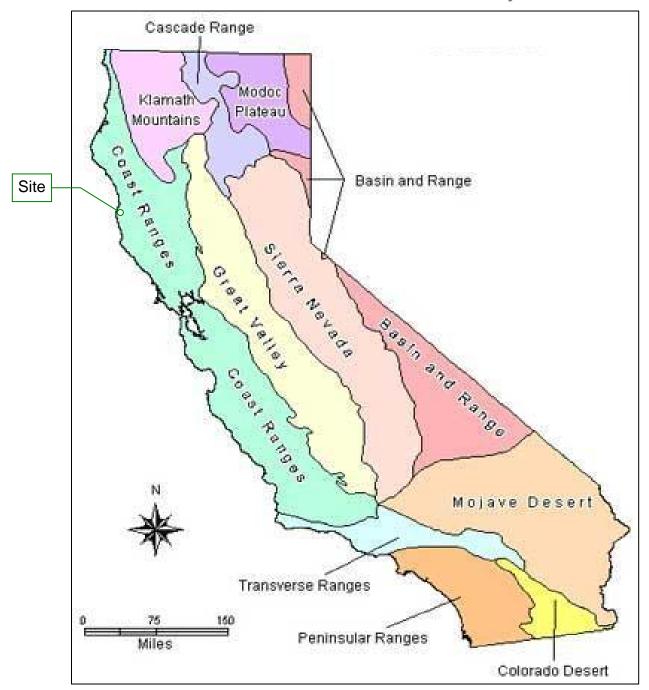


Figure 1 — California Geomorphic Provinces

Alternatively, the Permittee may use a geomorphically based hydromodification standard or set of standards and analysis procedures designed to ensure that Regulated Projects do not cause a decrease in lateral (bank) and vertical (channel bed) stability in receiving stream channels. The alternative hydromodification standard or set of standards and analysis procedures must be reviewed and approved by the Regional Board Executive Officer.

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(iii) **Reporting** –The Permittee shall use State Water Board SMARTS to submit a summary of the past year activities and certify compliance with all requirements of this program element. The summary shall also address the relationship between the program element activities and the Permittee's Program Effectiveness Assessment and Improvement Plan that tracks annual and long- term effectiveness of the storm water program. If a Permittee is unable to certify compliance with a requirement in this program element see Section E.16.a.for compliance directions.

E.12.g. Enforceable Mechanisms

- (i) **Task Description** Within the third year of the effective date of the permit, the Permittee shall develop and/or modify enforceable mechanisms that will effectively implement the requirements in Section E.12.b through f (if necessary).
- (ii) Implementation Level The Permittee shall develop and/or modify enforceable mechanisms that will effectively implement the requirements in Section E.12.b through E.12.f and may include municipal codes, regulations, standards, and specifications. The Permittee shall:
 - (a) Conduct an analysis of all applicable codes, regulations, standards, and/or specifications to identify modifications and/or additions necessary to fill gaps and remove impediments to effective implementation of project-scale development requirements.
 - (b) Approve new and/or modified enforceable mechanisms that effectively resolve regulatory conflicts and implement the requirements in Sections E.12.b through E.12.f (if necessary)
 - (c) Apply new and/or modified enforceable mechanisms to all applicable new and redevelopment projects. Develop and make available specific guidance for LID BMP design
 - (d) Complete a Tracking Report indicating the Permittee's accomplishments in education and outreach supporting implementation of LID requirements for new and redevelopment projects.

E.12.h. Operation and Maintenance of Post-Construction Storm Water Management Measures

- (i) **Task Description** –Within the second year of the effective date of the permit, the Permittee shall implement an O&M Verification Program for storm water treatment and baseline hydromodification management structural control measures defined in Section E.12.e(ii)(f). Storm Water Treatment Measures and Baseline Hydromodification Management Measures on all Regulated Projects.
- (ii) **Implementation Level** At a minimum, the O&M Verification Program shall include the following elements:
 - (a) All Regulated Projects shall at a minimum, require at least one of the following from all project proponents and their successors in control of the Project or successors in fee title:
 - 1) The project proponent's signed statement accepting responsibility for the O&M of structural control measure(s) until such responsibility is legally transferred to another entity;



NOAA Atlas 14, Volume 6, Version 2 Location name: Fort Bragg, California, USA* Latitude: 39.4283°, Longitude: -123.8017° Elevation: 118 ft**

* source: ESRI Maps ** source: USGS



POINT PRECIPITATION FREQUENCY ESTIMATES

Sanja Perica, Sarah Dietz, Sarah Heim, Lillian Hiner, Kazungu Maitaria, Deborah Martin, Sandra Pavlovic, Ishani Roy, Carl Trypaluk, Dale Unruh, Fenglin Yan, Michael Yekta, Tan Zhao, Geoffrey Bonnin, Daniel Brewer, Li-Chuan Chen, Tye Parzybok, John Yarchoan

NOAA, National Weather Service, Silver Spring, Maryland

PF tabular | PF graphical | Maps & aerials

PF tabular

PD:	S-based p	-based point precipitation frequency estimates with 90% confidence intervals (in inches) ¹								
Duration				Avera	ge recurren	ce interval (years)			
Duration	1	2	5	10	25	50	100	200	500	1000
5-min	0.131 (0.116-0.150)	0.193 (0.171-0.220)	0.269 (0.237-0.309)	0.328 (0.287-0.380)	0.405 (0.339-0.488)	0.460 (0.376-0.569)	0.515 (0.408-0.655)	0.568 (0.436-0.748)	0.637 (0.465-0.881)	0.688 (0.482-0.991)
10-min	0.188 (0.167-0.215)	0.277 (0.245-0.316)	0.386 (0.340-0.442)	0.471 (0.411-0.545)	0.580 (0.486-0.699)	0.660 (0.539-0.816)	0.738 (0.585-0.939)	0.814 (0.625-1.07)	0.913 (0.667-1.26)	0.986 (0.691-1.42)
15-min	0.228 (0.202-0.260)	0.335 (0.296-0.382)	0.467 (0.412-0.535)	0.569 (0.497-0.659)	0.702 (0.588-0.846)	0.798 (0.652-0.987)	0.892 (0.708-1.14)	0.985 (0.755-1.30)	1.10 (0.806-1.53)	1.19 (0.835-1.72)
30-min	0.312 (0.277-0.356)	0.459 (0.406-0.524)	0.640 (0.564-0.733)	0.781 (0.681-0.904)	0.962 (0.806-1.16)	1.09 (0.894-1.35)	1.22 (0.970-1.56)	1.35 (1.04-1.78)	1.51 (1.10-2.10)	1.63 (1.14-2.36)
60-min	0.440 (0.390-0.502)	0.646 (0.571-0.738)	0.901 (0.795-1.03)	1.10 (0.959-1.27)	1.36 (1.14-1.63)	1.54 (1.26-1.90)	1.72 (1.37-2.19)	1.90 (1.46-2.50)	2.13 (1.56-2.95)	2.30 (1.61-3.32)
2-hr	0.668 (0.591-0.761)	0.893 (0.790-1.02)	1.18 (1.04-1.36)	1.42 (1.24-1.64)	1.72 (1.44-2.08)	1.96 (1.60-2.42)	2.19 (1.74-2.79)	2.43 (1.86-3.20)	2.74 (2.00-3.79)	2.98 (2.09-4.29)
3-hr	0.861 (0.763-0.982)	1.12 (0.987-1.27)	1.45 (1.27-1.66)	1.71 (1.49-1.98)	2.07 (1.74-2.50)	2.34 (1.92-2.90)	2.62 (2.08-3.34)	2.90 (2.23-3.82)	3.28 (2.39-4.54)	3.57 (2.50-5.14)
6-hr	1.27 (1.12-1.45)	1.59 (1.41-1.82)	2.01 (1.78-2.31)	2.35 (2.05-2.72)	2.81 (2.36-3.39)	3.16 (2.58-3.90)	3.51 (2.78-4.47)	3.87 (2.97-5.09)	4.35 (3.17-6.01)	4.71 (3.30-6.79)
12-hr	1.80 (1.60-2.06)	2.32 (2.05-2.65)	2.96 (2.61-3.39)	3.45 (3.02-4.00)	4.10 (3.43-4.94)	4.57 (3.73-5.64)	5.02 (3.98-6.40)	5.47 (4.20-7.21)	6.05 (4.42-8.38)	6.48 (4.54-9.34)
24-hr	2.49 (2.24-2.83)	(2.95-3.74)	4.26 (3.81-4.85)	4.99 (4.43-5.73)	5.90 (5.08-7.00)	6.56 (5.53-7.94)	7.18 (5.91-8.90)	7.78 (6.23-9.90)	8.53 (6.57-11.3)	9.07 (6.76-12.4)
2-day	3.28 (2.95-3.73)	4.21 (3.78-4.78)	5.34 (4.78-6.09)	6.22 (5.52-7.14)	7.33 (6.31-8.70)	8.13 (6.86-9.84)	8.91 (7.34-11.0)	9.66 (7.75-12.3)	10.6 (8.18-14.1)	11.3 (8.43-15.5)
3-day	3.87 (3.48-4.39)	4.87 (4.37-5.54)	6.13 (5.48-6.98)	7.10 (6.31-8.16)	8.36 (7.19-9.91)	9.28 (7.82-11.2)	10.2 (8.37-12.6)	11.0 (8.86-14.1)	12.2 (9.38-16.1)	13.0 (9.69-17.8)
4-day	4.38 (3.93-4.97)	5.47 (4.91-6.22)	6.84 (6.13-7.80)	7.92 (7.03-9.09)	9.30 (8.00-11.0)	10.3 (8.70-12.5)	11.3 (9.32-14.0)	12.3 (9.87-15.7)	13.6 (10.5-18.0)	14.5 (10.8-19.9)
7-day	5.54 (4.98-6.29)	6.90 (6.19-7.84)	8.60 (7.70-9.81)	9.94 (8.83-11.4)	11.7 (10.0-13.8)	12.9 (10.9-15.6)	14.2 (11.7-17.5)	15.4 (12.3-19.6)	16.9 (13.1-22.5)	18.1 (13.5-24.8)
10-day	6.41 (5.76-7.28)	8.00 (7.18-9.10)	10.0 (8.95-11.4)	11.5 (10.3-13.3)	13.5 (11.7-16.1)	15.0 (12.6-18.2)	16.4 (13.5-20.3)	17.8 (14.3-22.7)	19.6 (15.1-26.0)	20.9 (15.6-28.6)
20-day	8.75 (7.86-9.93)	11.0 (9.90-12.5)	13.8 (12.4-15.8)	16.0 (14.2-18.4)	18.8 (16.1-22.3)	20.8 (17.5-25.1)	22.7 (18.7-28.1)	24.5 (19.7-31.2)	26.9 (20.7-35.6)	28.6 (21.3-39.2)
30-day	10.8 (9.67-12.2)	13.7 (12.3-15.5)	17.2 (15.4-19.6)	19.9 (17.7-22.8)	23.3 (20.0-27.6)	25.7 (21.7-31.1)	28.0 (23.1-34.7)	30.3 (24.3-38.5)	33.1 (25.5-43.8)	35.1 (26.1-48.1)
45-day	13.5 (12.1-15.3)	17.2 (15.4-19.6)	21.7 (19.4-24.8)	25.1 (22.3-28.9)	29.4 (25.3-34.8)	32.4 (27.3-39.2)	35.2 (29.0-43.6)	37.9 (30.4-48.3)	41.3 (31.8-54.7)	43.6 (32.5-59.8)
60-day	16.0 (14.3-18.1)	20.4 (18.4-23.2)	25.8 (23.1-29.4)	29.8 (26.5-34.3)	34.8 (29.9-41.3)	38.3 (32.3-46.3)	41.6 (34.2-51.5)	44.7 (35.8-56.9)	48.5 (37.3-64.2)	51.1 (38.1-70.1)

¹ Precipitation frequency (PF) estimates in this table are based on frequency analysis of partial duration series (PDS).

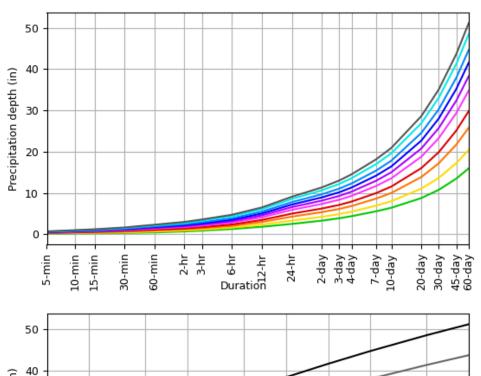
Numbers in parenthesis are PF estimates at lower and upper bounds of the 90% confidence interval. The probability that precipitation frequency estimates (for a given duration and average recurrence interval) will be greater than the upper bound (or less than the lower bound) is 5%. Estimates at upper bounds are not checked against probable maximum precipitation (PMP) estimates and may be higher than currently valid PMP values.

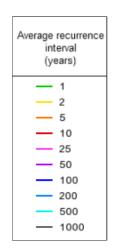
Please refer to NOAA Atlas 14 document for more information.

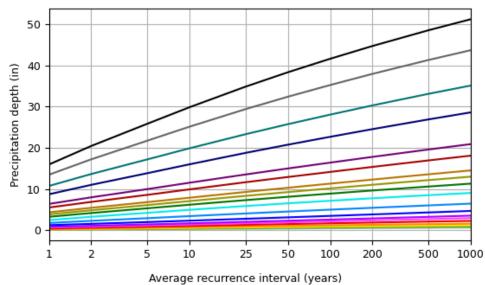
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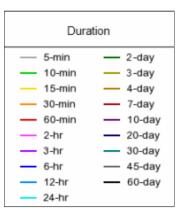
PF graphical

PDS-based depth-duration-frequency (DDF) curves Latitude: 39.4283°, Longitude: -123.8017°









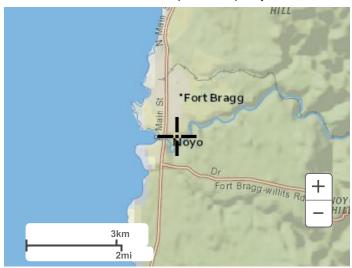
NOAA Atlas 14, Volume 6, Version 2

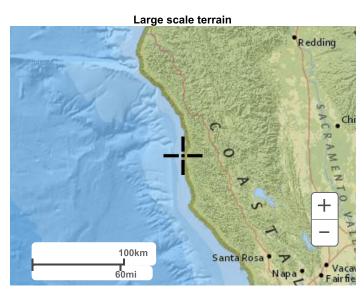
Created (GMT): Tue Dec 17 00:16:46 2024

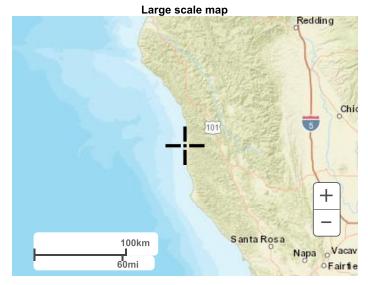
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Maps & aerials

Small scale terrain

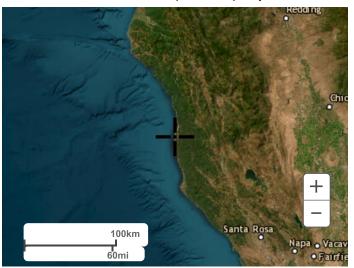






Large scale aerial

Precipitation Frequency Data Server



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US Department of Commerce
National Oceanic and Atmospheric Administration
National Weather Service
National Water Center
1325 East West Highway
Silver Spring, MD 20910
Questions?: HDSC.Questions@noaa.gov

Disclaimer

Table 2-2a Runoff curve numbers for urban areas 1/

Cover description			Curve nu hydrologic-	umbers for soil group	
_	Average percent		_		
Cover type and hydrologic condition	impervious area 2/	A	В	C	D
Fully developed urban areas (vegetation established)					
Open space (lawns, parks, golf courses, cemeteries, etc.) 3/:					
Poor condition (grass cover < 50%)	•••••	68	79	86	89
Fair condition (grass cover 50% to 75%)		49	69	79	84
Good condition (grass cover > 75%)		39	61	74	80
Impervious areas:					
Paved parking lots, roofs, driveways, etc.					
(excluding right-of-way)	•••••	98	98	98	98
Streets and roads:					
Paved; curbs and storm sewers (excluding					
right-of-way)	•••••	98	98	98	98
Paved; open ditches (including right-of-way)		83	89	92	93
Gravel (including right-of-way)		76	85	89	91
Dirt (including right-of-way)		72	82	87	89
Western desert urban areas:					
Natural desert landscaping (pervious areas only) 4		63	77	85	88
Artificial desert landscaping (impervious weed barrier,					
desert shrub with 1- to 2-inch sand or gravel mulch					
and basin borders)		96	96	96	96
Urban districts:	•••••	0.0		0.0	
Commercial and business	85	89	92	94	95
Industrial		81	88	91	93
Residential districts by average lot size:		01	00	01	00
1/8 acre or less (town houses)	65	77	85	90	92
1/4 acre		61	75	83	87
1/3 acre		57	72	81	86
1/2 acre		54	70	80	85
1 acre		51	68	79	84
2 acres		46	65	77	82
2 acres	12	40	00	11	02
Developing urban areas					
Newly graded areas					
(pervious areas only, no vegetation) 5/		77	86	91	94
Idle lands (CN's are determined using cover types					
similar to those in table 2-2c).					

 $^{^{1}}$ Average runoff condition, and $I_a = 0.2S$.

² The average percent impervious area shown was used to develop the composite CN's. Other assumptions are as follows: impervious areas are directly connected to the drainage system, impervious areas have a CN of 98, and pervious areas are considered equivalent to open space in good hydrologic condition. CN's for other combinations of conditions may be computed using figure 2-3 or 2-4.

³ CN's shown are equivalent to those of pasture. Composite CN's may be computed for other combinations of open space cover type.

⁴ Composite CN's for natural desert landscaping should be computed using figures 2-3 or 2-4 based on the impervious area percentage (CN = 98) and the pervious area CN. The pervious area CN's are assumed equivalent to desert shrub in poor hydrologic condition.

⁵ Composite CN's to use for the design of temporary measures during grading and construction should be computed using figure 2-3 or 2-4 based on the degree of development (impervious area percentage) and the CN's for the newly graded pervious areas.

Table 2-2b Runoff curve numbers for cultivated agricultural lands ${}^{1\!\!/}$

	Cover description			Curve num hydrologic s		
		Hydrologic		11, 011 011 011 0	orr Or o orb	
Cover type	Treatment 2/	condition 3/	A	В	С	D
Fallow	Bare soil		77	86	91	94
T dailo W	Crop residue cover (CR)	Poor	76	85	90	93
	erop residue cover (ex)	Good	74	83	88	90
Row crops	Straight row (SR)	Poor	72	81	88	91
1		Good	67	78	85	89
	SR + CR	Poor	71	80	87	90
		Good	64	75	82	85
	Contoured (C)	Poor	70	79	84	88
		Good	65	75	82	86
	C + CR	Poor	69	78	83	87
		Good	64	74	81	85
	Contoured & terraced (C&T)	Poor	66	74	80	82
	, ,	Good	62	71	78	81
	C&T+CR	Poor	65	73	7 9	81
		Good	61	70	77	80
Small grain	SR	Poor	65	76	84	88
		Good	63	75	83	87
	SR + CR	Poor	64	75	83	86
		Good	60	72	80	84
	\mathbf{C}	Poor	63	74	82	85
		Good	61	73	81	84
	C + CR	Poor	62	73	81	84
		Good	60	72	80	83
	C&T	Poor	61	72	79	82
		Good	59	70	78	81
	C&T+ CR	Poor	60	71	78	81
		Good	58	69	77	80
Close-seeded	SR	Poor	66	77	85	89
or broadcast		Good	58	72	81	85
legumes or	\mathbf{C}	Poor	64	75	83	85
rotation		Good	55	69	78	83
meadow	C&T	Poor	63	73	80	83
		Good	51	67	76	80

 $^{^{1}}$ Average runoff condition, and I_a =0.2S

Poor: Factors impair infiltration and tend to increase runoff.

Good: Factors encourage average and better than average infiltration and tend to decrease runoff.

 $^{^{2}}$ Crop residue cover applies only if residue is on at least 5% of the surface throughout the year.

 $^{^3}$ Hydraulic condition is based on combination factors that affect infiltration and runoff, including (a) density and canopy of vegetative areas, (b) amount of year-round cover, (c) amount of grass or close-seeded legumes, (d) percent of residue cover on the land surface (good \geq 20%), and (e) degree of surface roughness.

Table 2-2c Runoff curve numbers for other agricultural lands 1/

Cover description				mbers for soil group	
Cover type	Hydrologic condition	A	В	С	D
Pasture, grassland, or range—continuous	Poor	68	79	86	89
forage for grazing. ¥	Fair Good	49 39	69 61	79 74	84 80
Meadow—continuous grass, protected from grazing and generally mowed for hay.	_	30	58	71	78
Brush—brush-weed-grass mixture with brush	Poor	48	67	77	83
the major element. ¾	Fair	35	56	70	77
	Good	30 4/	48	65	73
Woods—grass combination (orchard	Poor	57	73	82	86
or tree farm). 5/	Fair	43	65	76	82
	Good	32	58	72	79
Woods. 6/	Poor	45	66	77	83
	Fair	36	60	73	79
	Good	30 4/	55	70	77
Farmsteads—buildings, lanes, driveways, and surrounding lots.	_	59	74	82	86

Average runoff condition, and $I_a = 0.2S$.

Poor: <50%) ground cover or heavily grazed with no mulch.

⁵⁰ to 75% ground cover and not heavily grazed.

 $[\]textit{Good:} > 75\%$ ground cover and lightly or only occasionally grazed.

Poor: <50% ground cover.

Fair: 50 to 75% ground cover.

Good: >75% ground cover.

Actual curve number is less than 30; use CN = 30 for runoff computations.

CN's shown were computed for areas with 50% woods and 50% grass (pasture) cover. Other combinations of conditions may be computed from the CN's for woods and pasture.

Poor: Forest litter, small trees, and brush are destroyed by heavy grazing or regular burning.

Fair: Woods are grazed but not burned, and some forest litter covers the soil.

Good: Woods are protected from grazing, and litter and brush adequately cover the soil.

Appendix B

Synthetic Rainfall Distributions and Rainfall Data Sources

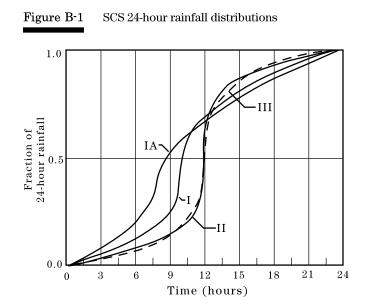
The highest peak discharges from small watersheds in the United States are usually caused by intense, brief rainfalls that may occur as distinct events or as part of a longer storm. These intense rainstorms do not usually extended over a large area and intensities vary greatly. One common practice in rainfall-runoff analysis is to develop a synthetic rainfall distribution to use in lieu of actual storm events. This distribution includes maximum rainfall intensities for the selected design frequency arranged in a sequence that is critical for producing peak runoff.

Synthetic rainfall distributions

The length of the most intense rainfall period contributing to the peak runoff rate is related to the time of concentration (T_c) for the watershed. In a hydrograph created with NRCS procedures, the duration of rainfall that directly contributes to the peak is about 170 percent of the T_c . For example, the most intense 8.5-minute rainfall period would contribute to the peak discharge for a watershed with a T_c of 5 minutes. The most intense 8.5-hour period would contribute to the peak for a watershed with a 5-hour T_c .

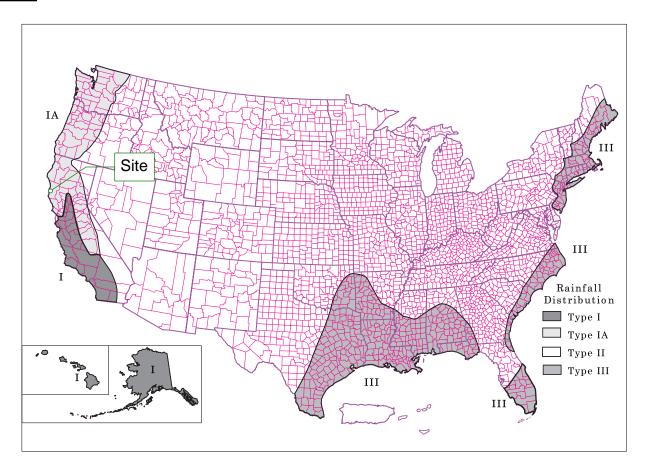
Different rainfall distributions can be developed for each of these watersheds to emphasize the critical rainfall duration for the peak discharges. However, to avoid the use of a different set of rainfall intensities for each drainage area size, a set of synthetic rainfall distributions having "nested" rainfall intensities was developed. The set "maximizes" the rainfall intensities by incorporating selected short duration intensities within those needed for longer durations at the same probability level.

For the size of the drainage areas for which NRCS usually provides assistance, a storm period of 24 hours was chosen the synthetic rainfall distributions. The 24-hour storm, while longer than that needed to determine peaks for these drainage areas, is appropriate for determining runoff volumes. Therefore, a single storm duration and associated synthetic rainfall distribution can be used to represent not only the peak discharges but also the runoff volumes for a range of drainage area sizes.



The intensity of rainfall varies considerably during a storm as well as geographic regions. To represent various regions of the United States, NRCS developed four synthetic 24-hour rainfall distributions (I, IA, II, and III) from available National Weather Service (NWS) duration-frequency data (Hershfield 1061; Frederick et al., 1977) or local storm data. Type IA is the least intense and type II the most intense short duration rainfall. The four distributions are shown in figure B-1, and figure B-2 shows their approximate geographic boundaries.

Types I and IA represent the Pacific maritime climate with wet winters and dry summers. Type III represents Gulf of Mexico and Atlantic coastal areas where tropical storms bring large 24-hour rainfall amounts. Type II represents the rest of the country. For more precise distribution boundaries in a state having more than one type, contact the NRCS State Conservation Engineer.



Rainfall data sources

This section lists the most current 24-hour rainfall data published by the National Weather Service (NWS) for various parts of the country. Because NWS Technical Paper 40 (TP-40) is out of print, the 24-hour rainfall maps for areas east of the 105th meridian are included here as figures B-3 through B-8. For the area generally west of the 105th meridian, TP-40 has been superseded by NOAA Atlas 2, the Precipitation-Frequency Atlas of the Western United States, published by the National Ocean and Atmospheric Administration.

East of 105th meridian

Hershfield, D.M. 1961. Rainfall frequency atlas of the United States for durations from 30 minutes to 24 hours and return periods from 1 to 100 years. U.S. Dept. Commerce, Weather Bur. Tech. Pap. No. 40. Washington, DC. 155 p.

West of 105th meridian

Miller, J.F., R.H. Frederick, and R.J. Tracey. 1973. Precipitation-frequency atlas of the Western United States. Vol. I Montana; Vol. II, Wyoming; Vol III, Colorado; Vol. IV, New Mexico; Vol V, Idaho; Vol. VI, Utah; Vol. VII, Nevada; Vol. VIII, Arizona; Vol. IX, Washington; Vol. X, Oregon; Vol. XI, California. U.S. Dept. of

Commerce, National Weather Service, NOAA Atlas 2. Silver Spring, MD.

Alaska

Miller, John F. 1963. Probable maximum precipitation and rainfall-frequency data for Alaska for areas to 400 square miles, durations to 24 hours and return periods from 1 to 100 years. U.S. Dept. of Commerce, Weather Bur. Tech. Pap. No. 47. Washington, DC. 69 p.

Hawaii

Weather Bureau. 1962. Rainfall-frequency atlas of the Hawaiian Islands for areas to 200 square miles, durations to 24 hours and return periods from 1 to 100 years. U.S. Dept. Commerce, Weather Bur. Tech. Pap. No. 43. Washington, DC. 60 p.

Puerto Rico and Virgin Islands

Weather Bureau. 1961. Generalized estimates of probable maximum precipitation and rainfall-frequency data for Puerto Rico and Virgin Islands for areas to 400 square miles, durations to 24 hours, and return periods from 1 to 100 years. U.S. Dept. Commerce, Weather Bur. Tech. Pap. No. 42. Washington, DC. 94 P.

ATTACHMENT 6

Geotechnical Report





Services

Geotechnical Engineering Study

Project

Proposed 3-Story Apartment Building

Location

Fort Bragg, California

Client

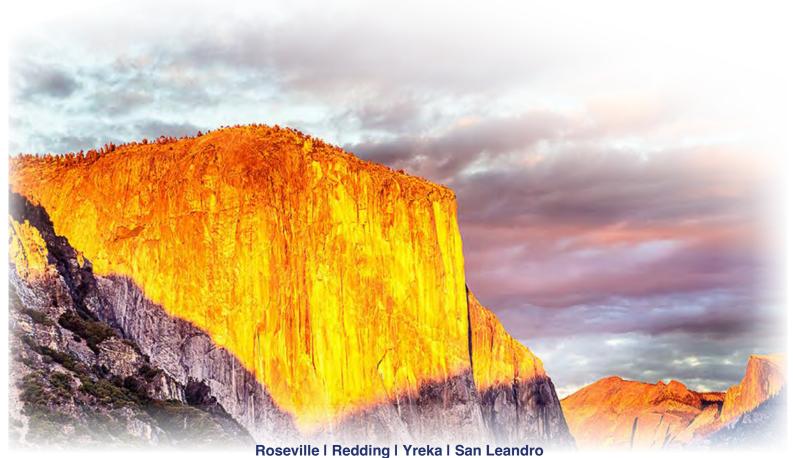
Pacific West Communities, Inc.

Project No.

05-24059G

Date

September 19, 2024





A Report Prepared for:

PACIFIC WEST COMMUNITIES, INC. ATTN: MR. DON SLATTERY 430 EAST STATE STREET, SUITE 100 EAGLE, IDAHO 83616

GEOTECHNICAL ENGINEERING STUDY PROPOSED 3-STORY APARTMENT BUILDING 860 HAZELWOOD STREET FORT BRAGG, CALIFORNIA

C 94550

Prepared by:

Mohammed Khalid, MS, PE

Senior Engineer

Reviewed by:

Curtis "Ed" Hendrick, PE, GE, RG, CEG

Principal Geotechnical Engineer /

Engineering Geologist

Allerion Consulting Group, Inc.

1050 Melody Lane, Suite 160 Roseville, California 95678

September 19, 2024 Allerion Project No. 05-24059G



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INTRODUCTION

PURPOSE AND SCOPE OF STUDY

Allerion Consulting Group, Inc. (ACG) prepared this Geotechnical Engineering Study for the proposed

improvements to be designed and constructed on the above referenced subject site (refer to the

Location Plan, Figure 1, Appendix A). The purpose of the study is to evaluate the general conditions of

the earth materials at the site to provide conclusions and recommendations related to the geotechnical

and geological aspects of the project as discussed in ACG's proposal/agreement of August 7, 2024, and

client's acceptance agreement of August 20, 2024, executed August 20, 2024.

The scope of our work included a site reconnaissance, review of client provided documents and readily

available published documents (including aerial images, topographic maps, and nearby groundwater

levels), obtaining drilling permit, exploring and sampling the general subsurface earth and groundwater

conditions, performing percolation testing, performing soil mechanics laboratory tests, assessing

potential for geological and seismic hazards (including liquefaction and expansive soil conditions),

performing geotechnical analysis, and making recommendations for earthworks, foundation design

criteria, lateral resistance, floor slab-on-grade support, exterior flatwork, and on-site asphaltic-concrete

and concrete pavements.

The attached Appendices contain further information including graphic presentations (Site Vicinity Map

and Map of Explorations - Appendix A); field exploration procedures and logs of subsurface explorations

(Appendix B); laboratory testing, and procedures used (Appendix C); Guide Specifications for Earthwork

(Appendix D); and SEAOC/OSHPD U.S. Seismic Design Maps (Appendix E).

PROJECT LOCATION

ACG understands the project is proposed on an approximately 2.83 acres and consists of one parcel

identified as Mendocino County Assessor's Parcel Number 018-210-29-00. The subject site is located at

860 Hazelwood Street in Fort Bragg, California. The site is bounded by Hazelwood Street to the west,

beyond which are residential properties; residential development to the north; Mendocino Coast

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Recreation and Park District to the south, beyond which are residential properties; and residential

property with mostly vacant land to the east, beyond which is Noyo River to the southeast.

PROPOSED PROJECT INFORMATION

In preparing this report we reviewed a preliminary site plan provided by the client (untitled and undated)

and historic Google Earth aerial images related to the subject site. Based on the referenced preliminary

site plan and information provided by the client, the proposed project consists of design/construction of

one (1) 3-story apartment building. Additional improvements include paved driveways and parking

spaces, a dog park, a community garden, a bocce ball court, an open space, and covered trash enclosures.

The site grading is anticipated to be in order of about 2 to 4 feet of fill based on the topography of the

site, but the grading plans were not available for review at the time of this report preparation.

FINDINGS

SITE HISTORICAL BACKGROUND

The Google Earth aerial images dated back to June 1998 indicate the site was generally similar to that

described below in the Site Description section.

SITE DESCRIPTION

During ACG's exploration on September 3, 2024, the subject site in the northwestern portion if the

property was occupied by an abandoned house and a nearby storage container. The northwestern

portion was fenced with a gravel driveway providing access to the residence. The remainder of the site

was vacant and covered with grasses and weeds, with some trees near the boundaries of the site and

one tree near the center of the site.

The northern portion of the site at the proposed building location was relatively flat-lying with elevations

that varied from approximately +117 to +120 feet above mean sea level (MSL) per Google Earth elevation

profiles. The southern portion of the site was gently sloped down towards Noyo River to the southeast

with elevations that varied from approximately +105 to +117 feet above MSL per Google Earth elevation

profiles.

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SITE GEOLOGY

Based on our review of readily available published geologic literature/maps (California Geological Survey

"Geologic map of California: Ukiah sheet", 1960; 1:250,000) the site is mapped to be underlain by

Quaternary Pleistocene marine and marine terrace deposits (Map Symbol: Qm). The total thickness of

the formation was not determined and is beyond the scope of this study. ACG considers the native earth

materials discovered in the explorations are consistent with the mapped earth materials.

EARTH MATERIAL CONDITIONS

As shown on the Exploratory Logs (Appendix B), the subsurface earth material conditions exhibited

variability. Generally, the uppermost soils consisted of loose to medium dense, moist, brown, Silty SAND

(Unified Soil Classification: SM) to depths varying between approximately 5½ to 6 feet below existing

ground surface (begs). Below the uppermost soils to depths varying between 25 to 26 feet begs, the

earth materials consisted of interbedded layers of medium dense, moist, light brown to brown with rust

staining, Silty SAND (SM)/ SAND with Silt (SP-SM)/ SAND (SP); and stiff, light gray with rust staining, Lean

CLAY (CL). Below these layers was encountered dense to very dense, moist to wet, gray and light brown

to red-brown with rust staining, Silty SAND (SM) to the maximum explored depth of about 30½ feet begs.

Since the earth material profile is generalized, the reader is advised to consult the Boring and CPT Logs

contained in Appendix B, if the earth material conditions at a specific depth and location are desired.

The logs contain a more detailed earth material description regarding color, earth material type, and

Unified Soil Classification System (USCS) symbol.

Earth material conditions cannot be fully determined by surface and subsurface explorations and earth

material sampling. Hence, unexpected earth material conditions might be encountered during

construction. If earth material conditions are encountered during construction which vary from earth

materials encountered during the investigation, then appropriate recommendations will be needed

during construction. Therefore, we suggest a contingency fund for additional expenditures that might

have to be made due to unforeseen conditions.

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SOIL CORROSION SCREENING

A representative sample of the near surface soil was selected and transported to Sunland Analytical in Rancho Cordova, California, for testing soil corrosivity potential. The test methods for pH, minimum resistivity (CA DOT Test #643), sulfate content (CA DOT Test #417), and chloride content (CA DOT Test #422m) are shown in the following table.

TABLE 1. CORROSIVITY TEST RESULTS		
Sample ID / Depth: B-4/1 @ 2' – 3.5' begs		
Constituent	Test Result	
Soil pH	5.43	
Minimum Resistivity (ohm-cm)	11.26	
Chloride Content (ppm)	6.2	
Sulfate Content (ppm)	3.6	

Notes: ohm-cm = Ohm centimeters ppm = Parts per million

The California Department of Transportation Corrosion and Structural Concrete Field Investigation Branch, May 2021 Corrosion Guidelines (Version 3.2), considers a site to be corrosive to foundation elements if one or more of the following conditions exists for the representative soil and/or water samples taken: has a chloride concentration greater than or equal to 500 ppm, sulfate concentration greater than or equal to 2000 ppm, or the pH is 5.5 or less. Based on this criterion, the on-site soils tested are considered corrosive to reinforced concrete. The presence of high acidity (pH values less than 5.5) indicates the soil (or water) can react with the lime in concrete to form soluble reaction products that can leach out of the concrete, resulting in a more porous and weaker concrete.

Table 4.2.1 – Exposure Categories and Classes, American Concrete Institute (ACI) 318, Section 4.2, as referenced in Section 1904.1 of the 2022 CBC, indicates the severity of sulfate exposure for the sample tested is *Not Applicable*. The low pH (acidic) soil conditions suggest that Type II modified or Type V cement along with higher cement contents and a specific water-cement ratio (around 4.5) likely will be required for this project.

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Allerion is not a corrosion engineering firm. We recommend a licensed Corrosion Engineer be consulted to evaluate the above test results, assess the soil corrosion potential, and design resistant materials. We can provide references to a licensed Corrosion Engineer, upon request.

GROUNDWATER CONDITIONS

Observations of groundwater conditions were made during and just after drilling the exploratory borings. Groundwater was encountered after drilling at depths varying between approximately 11 and 13 feet below existing ground surface. It is possible that some borings may not have been left open long enough for groundwater to reach equilibrium.

Groundwater levels at the site should be expected to fluctuate throughout the year due to seasonal precipitation, local pumping, and other factors.

PERCOLATION TEST RESULTS

Two (2) percolation test borings (P-1 and P-2) were drilled using 4-inch outer-diameter continuous flight helical solid stem augers (SSA), to approximate depths as indicated in the table below. The percolation test locations and depths were provided by project's Civil Engineer. Please refer to the Appendix A – Figure 2 "Explorations Location Map" for approximate locations of the percolation test holes.

The soils encountered in the percolation test borings are consistent with the conditions found in the exploratory borings. The sidewalls of each boring were scored along the outer walls to reduce the effects of smearing. Approximately six (6)-inches of clean pea gravel was added to the bottom of each test hole. In each test hole a 2-inch inner diameter (ID) slotted PVC pipe was installed on top of the gravel. Pea gravel was placed in the annular space between the boring wall and pipe. Each hole was filled with water to let the soils presoak before performing the tests. Following the presoak time each test boring was filled with water to at least 12 inches above the bottom of the boring. The drop in water level was measured at specific time intervals until a steady rate of drop in water level was obtained when at least three consecutive readings were within 10 percent from each other. Pre-adjusted percolation rates were determined by dividing the drop in water level over the time required for the drop in water level. The infiltration rates were estimated using the percolation rate divided by a Conversion Factor to convert the percolation rate to infiltration rate. The test results are shown on Table 2, below.



TABLE 2. RESULTS OF PERCOLATION TESTS				
PERCOLATION TEST NO.	APPROXIMATE DEPTH – from Top of AC (ft)	CALCULATED INFILTRATION RATE (in/hr)	TESTED SOIL DESCRIPTION	
P-1	5	1.03	Silty Fine SAND (SM)	
P-2	5	0.94	Silty Fine SAND (SM)	

The infiltration rates of water into the soils (per the test method referenced and results on Table 2, above) could be used by the project Civil Engineer as a preliminary infiltration rate at the locations indicated. A safety factor was not applied to these values. During construction of the stormwater infiltration systems, ACG recommends confirmation infiltration testing be performed with a double ring infiltrometer, if feasible, within the area of the proposed stormwater infiltration system.

CONCLUSIONS AND DISCUSSIONS

SITE SUITABILITY AND GEOTECHNICAL CONSIDERATIONS

From a geotechnical standpoint, the site is considered suitable for the proposed construction provided the conclusions and recommendations presented in this report are incorporated into the design and construction of the project. Geotechnical considerations that were evaluated by our office include undocumented fill, loose/soft native soils, and soils disturbed by removal of the existing structures and pavements. Mitigation measures for these items are discussed in the following sections of this report.

BEARING CAPABILITY

Field and laboratory tests show that the affirmed undisturbed, native earth materials encountered at the exploration locations are considered competent for support of the proposed construction. The upper loose / soft soils and any disturbed soils (includes undocumented fill) that are present at the time of construction are not considered stable and should not be utilized to directly support new structural elements. Mitigation measures for unsuitable soil conditions are discussed in the Recommendations section of this report. Mitigation measures considered include removal and replacing the disturbed

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and/or loose soils with engineered fill; or, foundation elements designed to extend through the

unsuitable soils.

Engineered fill, composed of approved materials placed and compacted according to the following

recommendations, is considered competent for support of low to moderate loading increases.

COMPRESSIBLE AND EXPANSIVE SOILS

Compressible materials consisting of surficial disturbed material (e.g., from razing structures, demolition

of other features/pavements, etc.), loose/soft soils, undocumented fills, debris, rubble, rubbish, etc., are

considered unsuitable materials for support of the proposed structure and pavements. Such materials

can differentially settle. We consider that any undocumented fill encountered and disturbed and / or

loose/soft soil materials in the construction areas should be removed and replaced with engineered fill.

Overexcavated earth materials deemed suitable for re-use as engineered fill could be stockpiled. If the

unsuitable materials are not removed, then ground improvement systems should be designed to account

for the potential settlements. In areas where unsuitable or loose/soft, wet soils are encountered,

remedial grading should be undertaken to remove the loose / soft soils and ensure the removal of the

entire disturbed soils.

Engineered fill, composed of approved granular materials placed and compacted according to those

discussed in the recommendations section, below, are considered competent for support of moderate

loading increases anticipated for this project.

Based on visual observation and on laboratory test results performed on representative uppermost soil

samples, we consider the expansion potential of uppermost subsurface soils to be low.

GROUNDWATER AND SEASONAL MOISTURE

The groundwater levels could be seasonal – varying between the winter and summer months. It is our

opinion that perched groundwater could have an impact on the proposed design or construction

depending on the foundation system selected by designers and depths of underground structures. If

groundwater is encountered in excavations (especially if wet-season construction is undertaken), then

groundwater seepage into the excavations is expected to be generally controllable by

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pumping/diversion; likewise, inflow from surface waters (dependent on quantity and duration of storm

intensity/rainfall) is expected to be similarly controllable as temporarily necessary. If the uppermost

soils should become saturated, then this condition would likely impede or delay grading operations.

Groundwater levels can fluctuate on a seasonal basis due to changes in precipitation, irrigation,

pumping, tides, etc. We consider groundwater levels might change based on site topography and the

time our investigation was performed. Excavations below perched groundwater (if encountered) might

be impacted by seepage; therefore, we recommend grading and utility excavations be performed during

dry season when groundwater levels are lowest.

SEISMIC HAZARDS

Seismic ground shaking of the earth materials underlying the site can cause ground failures, including

fault rupture, liquefaction and densification, lateral spreading, landsliding, and tsunamis / seiches. The

following sections discuss our conclusions / opinions regarding these conditions based on our findings

and literature review.

Fault Rupture

Fault rupture hazards are important near active faults and tend to reoccur along the surface

traces of previous fault movements. The site is not located within an Alquist-Priolo Special

Studies Zone. We consider the potential for fault rupture, damage from fault displacement, or

fault movement directly below the site to be low. However, the site is located within an area

where shaking from earthquake generated ground motion waves should be considered likely.

Seismic Ground Shaking

The mapped and design spectral response accelerations (refer to Appendix E) presents seismic

design criteria for the subject project site obtained from the SEAOC/OSHPD Seismic Design Maps

(https://seismicmaps.org) that are based on data provided by ASCE 7-16 and are for use with the

2022 California Building Code (CBC). The values for spectral response accelerations with a Risk

Category of II are summarized on the following table.

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Table 3. Mapped and Design Spectral Accelerations			
Description	Value		
Site Soil Classification ¹	D		
Site Latitude, Longitude	39.4286097, -123.8020746		
S _S – Spectral Acceleration for a Short Period	1.505 g		
S ₁ – Spectral Acceleration for a 1-Second Period	0.607 g		
S _{MS} – MCE _R , 5% damped Spectral Acceleration for a Short Period	1.505 g		
S _{M1} – MCE _R , Spectral Acceleration for a 1-Second Period ¹	1.032 g		
S _{DS} – design, 5% damped, Spectral Acceleration for a Short Period	1.003 g		
S _{D1} – design, 5% damped, Spectral Accel. For a 1-Second Period ¹	0.688 g		
Seismic Design Category ²	D		
Τι	12		
PGA	0.654 g		
PGA _M	0.719 g		
F _{PGA}	1.1		

 $^{^1}$ The 2022 CBC requires an earth material profile determination extending to a depth of 100 feet for site soil classification. ACG's explorations extended to depth of about 30.5 feet begs, and Site Class D was selected based on soils conditions encountered in our explorations. Exception 2 of ASCE 7-16 Section 11.4.8 for Site Class D is used to calculate S_{MS} , S_{M1} , S_{DS} and S_{D1} . 2 In general accordance with the 2022 CBC (refers to ASCE 7-16) Seismic Design Category is based on spectral acceleration for a 1-sec Period, short & 1-sec period response acceleration parameters (S_1 , S_{DS} & S_{D1} , respectively) and corresponding Risk Category. Please refer to ASCE/SEI 7-16 Section 11.4.8 for base shear (V) calculations. Please refer to Appendix E for the U.S. Seismic Design Maps.

Liquefaction and Seismic Settlement Evaluation

Liquefaction occurs when saturated fine-grained sands and/or silts lose their physical strength temporarily during earthquake induced shaking and behave as a liquid. This is due to loss of point-to-point grain contact and transfer of normal stress to the pore water. Liquefaction potential varies with water level, soil type, material gradation, relative density, and probable intensity and duration of ground shaking. Dynamic settlement of the soils that experience liquefaction may occur after earthquake shaking has ceased.

The California Geological Survey (CGS) has designated certain areas within California as potential liquefaction hazard zones. These are areas considered at risk of liquefaction-related ground failure during a seismic event based upon mapped surficial deposits and the depth to the areal groundwater table. The project site is not currently mapped for potential liquefaction hazard by the CGS (refer to CGS website: https://www.conservation.ca.gov/cgs/earthquakes).

Based on the information for this study, it is our opinion that dynamic settlement due to an earthquake event might affect the proposed improvements. Total vertical settlements due to



earthquake shaking (i.e., seismic induced settlements) were estimated as part of ACG's investigation and analysis in general accordance with the Recommended Procedures for Implementation of DMG Special Publication 117A, "Guidelines for Analyzing and Mitigating Liquefaction in California.". The seismic settlement evaluation was performed using the software program NovoLiq 4.0.2021.311 (Novo Tech Software Ltd. © 2009 - 2021). The analysis conducted estimated total seismic induced settlements at the highest anticipated groundwater depth of 10 feet begs, which should be considered in design and construction. USGS Unified Hazard Tool was used estimate seismic in to parameters used the analysis (https://earthquake.usgs.gov/hazards/interactive/). The analysis is based on return period of 975 years (5% occurrence in 50 years) and peak ground acceleration (PGA) of 0.6435 g. Based on the summary statistics analysis per USGS Unified Hazard Tool for the highest seismic contribution, the earthquake magnitude of 7.71 at an approximate fault distance of 9.6 kilometers from the subject site were used in the analysis.

The analysis results indicate that the subsurface soils at the site are variably susceptible to liquefaction under the criteria indicated above. The loose to medium silty sand and sand with silt soils encountered at depths between 10 and 25 feet begs are considered the most susceptible to liquefaction. The estimated vertical liquefaction induced settlement is estimated at about 3 inches and relatively small lateral displacement. Provided the foundations are designed and constructed with seismic ties, the risk of structural collapse because of soil liquefaction is considered low and not a life safety concern.

The consequences of one-dimensional seismic induced settlement may be largely mitigated by the presence of a relatively thick non-liquefied layer above the potentially liquefiable soils (Ishihara 1985, Naesgaard et al. 1998, Bouckovalas and Dakoulas 2007). It is our opinion that the presence of the 5 feet engineered fill layer (per the Earthwork recommendations section of this report) may act as a bridging layer that redistributes stresses and therefore results in more uniform ground surface settlement beneath the proposed structures, as well as decreasing the amount of potential seismic induced settlement.

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Ground Lurching

Ground lurching is a result of the rolling motion imparted to the ground surface due to seismic

waves released by an earthquake that can cause cracks in weaker soils. The potential for cracking

at this site is considered low due to the generally stiff soil consistencies and medium dense to

very dense relative densities.

Earthquake Induced Landsliding

Based on information available on the California Geological Survey (CGS) website the subject site

is not currently within a State of California Seismic Hazard Zone for seismically induced

landsliding. In addition, there are no steep slopes on or adjacent to the subject site. Therefore,

seismically induced and/or other landslides are not considered a significant hazard at the site.

ON-SITE EARTH MATERIALS SUITABILITY

On-site soils like those encountered in the test borings are considered suitable for re-use as engineered

fill. Rubble, rubbish, oversize materials, significant organic matter, highly plastic soil, or any other

substance deemed unsuitable should not be used as engineered fill.

POTENTIAL SLOPE STABILITY

No landslides, slumps, or other indications of slope instabilities were observed on the site area during

our field investigation. We consider the potential for slope instability to be negligible.

EXCAVATION CONDITIONS

The on-site soils are considered to be readily excavatable with conventional construction equipment to

at least the maximum depth explored of approximately 30.5 feet begs. In our opinion, shallow

excavations into native soils less than four feet in depth should stand at a near-vertical inclination for

the short periods of time required for foundation and shallow utility construction. However, sloughing

and "running" conditions could occur if the soils are saturated, where loose fills are encountered, or

where zones of clean (cohesionless) sands are encountered, especially when subjected to construction

vibrations or allowed to dry significantly.

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Excavations deeper than four feet that will be entered by workers should be sloped, braced, or shored

in accordance with current Occupational Safety and Health Administration (OSHA) and Cal/OSHA

regulations. The contractor must provide an adequately constructed and braced shoring system in

accordance with federal, state, and local safety regulations for individuals working in an excavation that

may expose them to the danger of moving ground.

Temporarily sloped excavations less than 20 feet deep should be constructed no steeper than a one and

one-half horizontal to one vertical (1½H:1V) inclination. Temporary slopes might stand at this inclination

for the short-term duration of construction, provided loose sands/sandy silts, soft clays, and/or

saturated granular soils are not encountered. Flatter slopes would be required if these conditions are

encountered.

Excavated materials should not be stockpiled directly adjacent to an open trench to prevent surcharge

loading of the trench sidewalls. Excessive truck and equipment traffic also should be avoided near open

trenches. If material is stored or heavy equipment is operated near an excavation, stronger shoring

would be needed to resist the extra pressure due to the superimposed loads.

RECOMMENDATIONS

Recommendations for earthworks and the design and construction of the proposed structure(s) and

associated improvements follow. All recommendations could require modifications based on conditions

encountered during earthworks and general construction. In addition, changes in the locations of the

proposed structures and pavements could also necessitate modifications to the recommendations

provided herein.

EARTHWORK

Earthwork specifications which may be used as a guide in the preparation of contract documents for site

preparation / grading are included in Appendix D. However, recommendations in the text of this report

supersede those presented in Appendix D. The conclusions and recommendations contained in this

report should be incorporated into the guide specifications.

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We consider it essential that our office review grading and structural foundation plans to verify the applicability of the following recommendations, and to provide supplemental recommendations, if necessary.

The recommendations presented below are considered appropriate for proposed construction in the late spring through fall months. The on-site soils likely will be saturated by rainfall in the winter and early spring months and will not be compactable without drying by aeration or the addition of lime (or a similar product). Should the construction schedule require work to continue during the wet months, additional recommendations can be provided, as conditions dictate.

Site preparation should be accomplished in accordance with the recommendations of this report. A representative of the Geotechnical Engineer should be present during earthworks to evaluate compliance with the recommendations presented in this report and the approved project plans and specifications. The Geotechnical Engineer of Record referenced herein should be considered the Geotechnical Engineer that is retained to provide geotechnical engineering observations and testing services during construction.

Site Clearing and Stripping

The building pad is considered to extend laterally away from (outside of) all perimeter foundation/building edges at least five (5) feet in plan view, or to edges of any adjacent features restricting this width. We recommend the construction areas be cleared of all obstructions or unsuitable materials, including all loose, wet, or disturbed soil, undocumented fill, rubble, rubbish, vegetation, structural elements (includes foundations, pavements) to be razed, and any buried utility lines to be removed. Any foundations, pavements, cisterns, septic tanks, leach fields, water wells, etcetera that might be encountered and are to be abandoned should be removed. Any undocumented fill and loose soils overlying the underlying firm earth materials should be overexcavated and, if deemed suitable, be re-processed as engineered fill or off-hauled. The excavated soils could be evaluated for reuse as engineered fill. The resulting subgrades of excavation(s) should be prepared and filled to planned project subgrade level with engineered fill as discussed in the following sections.

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Excavations resulting from the removal of unsuitable materials and/or loose soils should be

cleared to expose firm, stable material. The surface of the resulting excavations should be

scarified to a depth of 12 inches, moisture conditioned, and then compacted to the

recommendations given below under subgrade preparation.

Existing utilities that extend into the construction area and are scheduled to be abandoned

should be properly capped or plugged with grout at the perimeter of the construction zone or

moved as directed in the plans. It may be feasible to abandon on-site utilities in-place by filling

them with grout, provided they will not interfere with future utilities or affect building

foundations. The utility lines should be addressed on a case-by-case basis.

In conjunction with clearing, the improvement areas should be stripped to sufficient depth to

remove all organic laden topsoil. The actual stripping depth should be determined by our

representative at the time of construction. The cleared and stripped materials should be removed

from the site or stockpiled for possible use as landscape materials. In areas where trees and tree

roots 2-inches or greater have been cleared, depressions resulting from site clearing operations,

as well as any loose, soft, disturbed, saturated, or organically contaminated soils, as identified by

the Geotechnical Engineer's representative, should be cleaned out to firm, undisturbed soils and

backfilled with engineered fill placed and compacted in accordance with the recommendations

of this report.

It is important that the Geotechnical Engineer's representative be present during clearing

operations to verify adequate removal of the surface and subsurface items, as well as the proper

backfilling of resulting excavations.

Over-excavation Recommendations

Due to differential movement considerations, we recommend building foundations, slabs-on-

grade, concrete flatwork, and structural pavements bear on engineered fill. We recommend

uppermost loose native earth materials be overexcavated to estimated depth of at least five

(5) feet below existing ground surface (begs), or at least 3 feet below the bottom of the

structure's foundation, whichever is deeper. Geogrids (e.g. Tensar InterAx NX750 or NX850)

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should be placed at the exposed bottom of over-excavations, and the geogrids should be installed per the manufacture criteria. The resulting overexcavation should be backfilled with engineered fill comprised of low to non-expansive soil. The overexcavation limits should extend laterally to at least 5 feet beyond the proposed building footprint, or to where practical, as affirmed by ACG's representative.

We recommend concrete slabs-on-ground, flatwork and structural pavements bear on at least 18-inches of engineered fill comprised of low to non-expansive soil.

Soils to be used for engineered fill should be per the criteria in the following recommendations "Material for Fill" section. All materials should be placed and compacted per the "Fill Placement and Compaction" section.

Subgrade Preparation

Once the construction areas have been cleared, any unsuitable soils over-excavated, and any other excavations made, then subgrades that will receive engineered fill, that are to be left at existing grade, or that represent final subgrades in soil achieved by excavation should be scarified to at least 12 inches. Suitability of soils exposed in the bottom of all subgrades should be verified by an ACG special inspector during site grading. The scarified soils should be uniformly moisture conditioned as determined by ACG's field representative based upon the compaction characteristics of the earth material (typically 1 to 3 percent over optimum for granular soils and 2 to 4 percent over optimum for fine grained, silty/clayey soils) and compacted to at least 90 percent relative compaction per ASTM D 1557.

The geotechnical engineer's special inspector should observe the recompacted subgrades be proof-rolled with very heavy construction equipment (e.g., loaded water truck) in order to verify subgrade earth material stability. Inability to achieve the stated moisture content, compaction, or instability of the subgrade materials unsuitable conditions and would be used as criteria for the removal of loose, wet, or soft soils, or for the need of special stabilizing measures.

If unanticipated unsuitable materials are encountered at subgrade such that they are unstable and/or proper compaction cannot be obtained, then mitigation measures, such as over



excavations or use of a geotextile material, would be recommended. In addition, construction equipment on saturated soils could destabilize the earth materials, sometimes to several feet of depth, which might necessitate further over excavation and/or special stabilization.

An ACG special inspector should observe and approve the bottoms of all excavations and overexcavations to confirm adequate conditions have been reached and should observe and approve the scarification, moisture conditioning and recompaction of the exposed excavated surfaces.

Material for Fill

All fill materials should be inorganic, granular soils free of vegetation, debris, and fragments larger than three inches in size. Pea gravel or other similar non-cementitious, poorly graded materials should not be used as fill or backfill without the prior approval of the geotechnical engineer. Imported earth materials and or earth materials from onsite borrow areas may be used as engineered fill material for general site grading, foundation backfill, foundation areas, trench backfill, slab areas, and pavement areas, provided the materials meet the criteria on the following table. All fill materials from any source (on-site or off-site) to be used for engineered fill should be meet the criteria on the following table, be pre-approved by this firm, and should be observed by our representative and samples obtained for laboratory testing (if needed) at least four days prior to any materials being used for engineered fill.

Table 4. Material for Fill Criteria		
3" (ASTM D 6913)	100 Percent Passing	
Standard No. 4 Sieve (ASTM C136)	25 to 100 (% finer by weight)	
Standard No. 200 Sieve (ASTM D 1140)	10 to 35 (% finer by weight)	
Liquid Limit (ASTM D 4318)	Less than 30	
Plasticity Index (ASTM D 4318)	Less than 15	
Expansion Index (ASTM D 4829)	Less than 40	



Fill Placement and Compaction

Engineered fill should be placed and compacted in horizontal lifts, using equipment and procedures that will produce recommended moisture contents and densities throughout the lift. Materials for engineered fill should be spread and compacted in lifts not exceeding 8 inches in uncompacted thickness. Engineered fill placed at the site and subgrades requiring recompaction should be uniformly compacted to at least 90 percent relative compaction in building areas, and to at least 95 percent relative compaction in the upper 18-inches of pavement and flatwork areas, as determined by ASTM Test Designation D 1557, or to the method as might be determined by an ACG special inspector. The moisture content of engineered fill materials should be determined by ACG's field representative based upon the compaction characteristics of the earth material (typically 1 to 3 percent over optimum for granular soils and 2 to 4 percent over optimum for fine grained, silty/clayey soils). ACG should continuously observe and test the grading and earthwork operations. Such observations and tests are essential to identify field conditions that differ from those predicted by this investigation, to adjust these recommendations to actual field conditions encountered, and to verify that the grading is in overall accordance with the recommendations presented in this report and the 2022 CBC.

If construction proceeds during or shortly after the wet winter months, it may require time to dry the on-site soils since their moisture content will probably be appreciably above the optimum. In addition, if subgrade soils are wet at the time of construction, they could be rutted, loosened, or otherwise disturbed to several feet of depth by the construction equipment and may need additional over-excavation and/or stabilization.

Construction occurring in later summer or early fall (after on-site earth materials becoming dry) may require substantial amounts of water to be added during earthwork operations to enable the appropriate moisture content and compaction to be achieved.

Upon completion of filling and grading, care should be taken to maintain the subgrade moisture content prior to construction of foundations, exterior flatwork/slabs, and pavements. Construction traffic over the completed subgrade should be avoided in order to prevent disturbance of subgrade soils. The site should also be graded to prevent ponding of surface water

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on the prepared subgrades or in excavations. If the subgrade consisting of engineered fill should

become desiccated, saturated, or disturbed, the affected material should be removed, or these

materials should be scarified, moisture conditioned, and recompacted prior to construction.

The geotechnical engineer should be retained during the earthwork construction phase of the

project to continuously observe earthwork and to perform necessary tests and observations

during subgrade preparation, backfilling of excavations to the completed subgrade, placement

and compaction of engineered fills, proof-rolling, backfilling of utility trenches, etc.

Utility Trench Backfill

Generally, utility trenches should be backfilled with mechanically compacted fill placed in lifts not

exceeding 6 inches in uncompacted thickness. Water content of the fill material should be

adjusted (typically 1 to 4 percent over optimum) during the trench backfilling operations to

obtain compaction. If on-site soil or import fill material is used, then the material should be

compacted to at least 90 percent relative compaction. Imported sand or gravel could also be used

for bedding and shading backfill in trenches provided the granular material is compacted to at

least 95 percent relative compaction. Public and private utility companies' standard plans and

specifications should be adhered to when backfilling their utility trenches.

Utility trenches should be plugged with lean concrete wherever the utility line passes beneath

the perimeters of the structures. The plug should be at least one foot on either side of the

perimeter of the building perimeter foundation and extend from the bottom of the building

foundation to the bottom of the trench.

Finish Grading and Site Drainage

On-site soils are considered to be slightly susceptible to erosion where drainage concentrations

occur. Concentrated flowing water should be either dissipated or channeled to appropriate

discharge facilities. Appropriate erosion control measures should be provided, where applicable,

by the general civil engineer on his grading and/or winterization plan.

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Positive surface gradients should be provided adjacent to the building and pavement areas (includes flatwork) to direct surface water away from the buildings and pavements for at least ten feet and toward suitable discharge facilities. Ponding of surface water should not be allowed adjacent to the building or pavements or on top of pavement. Positive drainage should be provided during construction and maintained throughout the life of the project. Infiltration of water into utility trenches or foundation excavations should be prevented during construction. Backfill against foundations, exterior walls, and in utility and sprinkler line trenches should be well compacted as previously recommended and free of all construction debris to reduce the possibility of moisture infiltration. We recommend a horizontal setback distance of at least 10 feet from the perimeter of any building and the high-water elevation of the nearest storm-water retention.

Downspouts, roof drains or scuppers should discharge into splash blocks or extensions when the ground surface beneath such features is not protected by exterior slabs or paving. Sprinkler systems should not be installed within 5 feet of foundation walls. Landscaped irrigation adjacent to the foundation system should be minimized or eliminated.

All grades must provide effective drainage away from the building during and after construction. Water permitted to pond next to a building can result in greater soil movements than those discussed in this report. These greater movements can result in unacceptable differential floor slab movements, cracked slabs and walls, vapor transmission issues in interior slabs, and roof leaks. Estimated movements described in this report are based on effective drainage for the life of the structure and cannot be relied upon if effective drainage is not maintained.

Per 2022 CBC Section 1804.4, the soil ground surface should be sloped at least 5 percent (2 percent for pavement) down and away from the building for at least of 10 feet beyond the perimeter of the building or pavement. After building construction and landscaping, we recommend the Civil Engineer and/or surveyor verify final grades to document that effective drainage has been achieved. Grades around the structure should also be periodically inspected as part of the structure's maintenance program and adjusted, as may be necessary.

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Cut and Fill Slopes

Cut/fill slopes are not anticipated. If slopes should be needed, then permanent excavation and

embankment slopes up to 10 feet of height in soil should be graded at an inclination of 2

horizontal to 1 vertical (2H: 1V) or flatter. The crowns of all slopes should be constructed so that

surface run-off water is not allowed to flow over the faces of the slopes. All cut slopes should be

observed during grading by the Geotechnical Engineer and/or Engineering Geologist to

determine if any adverse defects are present. If defects are observed, then additional study

and/or recommendations would be made at that time.

For temporary excavations, the individual contractor(s) is/are responsible for designing and

constructing stable, temporary excavations as required to maintain stability of both the

excavation sides and bottom. Excavations should be sloped or shored in the interest of safety

following local and federal regulations, including current OSHA excavation and trench safety

standards.

Earthwork Construction Considerations

At the time of our study, moisture contents of the surface and near-surface native soils were

moderate. Based on these moisture contents, some moisture conditioning might be needed for

the project to make the soil compactible and suitable for use as engineered fill. The soils may

need to be dried by aeration during wet weather conditions, or a chemical treatment, such as

cement, lime, or kiln dust, may be needed to stabilize the soil. The soils may need more moisture

and water during the dry season to make the soil compactible and suitable. Subgrade conditions

may need a rock protective mat covering exposed subgrades in order to limit disturbance of site

soils as well as provide a stable base for construction equipment.

Although the exposed subgrades are anticipated to be relatively stable upon initial exposure, on

site soils may pump and unstable subgrade conditions could develop during general construction

operations, particularly if the soils are wet and/or subjected to repetitive construction traffic. The

use of light construction equipment would aid in reducing subgrade disturbance. The use of

remotely operated equipment, such as a backhoe, would be beneficial to perform cuts and

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reduce subgrade disturbance. If unstable subgrade conditions develop, then stabilization measures will need to be employed. Upon completion of filling and grading, care should be taken to maintain the subgrade moisture content just prior to construction of the floor slabs and pavements. Construction traffic over the completed subgrades should be avoided to the extent practical. The site should also be graded to prevent ponding of surface water on the prepared subgrades or in excavations. If the subgrade should become desiccated, saturated, or disturbed, the affected material should be removed, or these materials should be scarified, moisture conditioned, and recompacted prior to floor slab and pavement construction. We anticipate that site grading for concrete foundations, slab construction, pavements and shallow utility trenches could be performed with conventional earthmoving equipment.

We emphasize the contractor is responsible for designing and constructing stable, temporary excavations (including utility trenches) as required to maintain stability of both the excavation sides and bottom and should be in accordance with OSHA excavation and trench safety standards.

We recommend that the earthwork portion of this project be completed during extended periods of dry weather if possible. If earthwork is completed during the wet season (typically November through May) it may be necessary to take extra precautionary measures to protect subgrade soils. Wet season earthwork may require additional mitigation measures beyond that which would be expected during the drier summer and fall months. This could include diversion of surface runoff around exposed soils and draining of ponded water on the site. Once subgrades are established, it may be necessary to protect the exposed subgrade soils from construction traffic.

Geotechnical Engineering Earthwork Construction Observation

As previously discussed, variations in subsurface conditions are possible and may be encountered during construction. In order to permit correlation between the preliminary subsurface data obtained during this investigation and the actual subsurface conditions encountered during construction, as well as affirm substantial conformance with the plans and specifications, a representative of this firm should be present during all phases of the site earthwork to make tests

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and observations of the site preparation, selection of satisfactory fill materials, proof rolling,

placement and compaction of controlled compacted fills, backfilling of excavations to the

completed subgrade, etc. Additionally, if lime or cement treatment is needed to stabilize or dry

the soil, then our representative should perform observations during mixing, remixing, and

compaction.

Any site earthwork performed without the presence of our representative will be entirely at the

grading contractor's and/or owner's risk and no responsibility for such operations will be

accepted by our firm. Sufficient notification (at least two working days) is necessary so that our

special inspections and testing will coincide with the construction schedule.

We emphasize the importance of ACG's presence during the observation and testing of the

grading operations. ACG's observation of the subsurface soil conditions, especially under the

loads imposed by construction equipment, is considered an extension of our investigation,

particularly within those areas away from the subsurface explorations.

Guide Specifications

Earthwork guide specifications which may be used as a guide in the preparation of contract

documents for site grading are included in Appendix D. The conclusions and recommendations

contained in this report should be incorporated into the guide specifications.

CRITERIA FOR FOUNDATION DESIGN

Based on the field and laboratory information for this study, we recommend that the proposed 3-story

building be supported upon isolated and/or continuous spread footings that penetrate below the lowest

adjacent building pad soil grade into the approved engineered fill bearing earth materials at least 18-

inches. Foundation dimensions and reinforcement should be based on allowable dead plus live soil

bearing values of 2,000 pounds per square foot (psf) for continuous footings of at least 18 inches in width

and isolated footings at least 30 inches wide (both directions). The footings should be supported on at

least 3 feet of engineered fill per Over-excavation Recommendations section of this report. An increase

in the bearing capacity of 200 psf per every 12 inches of additional footing depth to a maximum 2,600

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psf is allowed. The allowable foundation bearing pressures apply to dead loads plus design live load

conditions. The design bearing pressure may be increased by one-third when considering total loads that

include short duration wind or seismic conditions. The weight of the foundation concrete below grade

may be neglected in dead load computations.

Total settlement is estimated at about 1-inch for static and seismic compression and the static

settlement is expected to occur as the structure is built. Foundations should be proportioned to reduce

differential foundation movement estimated at 1/2-inch over 40 linear feet. We recommend that all

footings be reinforced as designed by the structural engineer to accommodate potential differential

movements. Proportioning based on equal total settlement is recommended; however, proportioning

to relative constant dead-load pressure would reduce differential settlement between adjacent

foundations.

Lateral Resistance

Foundations placed in approved soil bearing materials could be designed using a coefficient of

friction of 0.30 for granular soils. A design passive resistance value of 300 pounds per square foot

per foot (psf/ft) of depth (with a maximum value of 3,000 pounds per square foot) is

recommended for engineered fill per the Earthwork section, above. If both friction and passive

pressures are combined, then the smaller value should be halved. The lateral sliding resistance

for clay soils should not exceed one-half the dead load.

The sides of the excavations for the foundations should be nearly vertical and the concrete should

be placed neat against these vertical faces for the passive earth pressure values to be valid. If the

loaded side is sloped or benched in the soil, and then backfilled with engineered fill, then the

nominal passive pressure should be reduced to the soil frictional or adhesive resistance.

General Foundation Considerations

ACG's geotechnical engineer or ACG's representative should observe earth material conditions

exposed in foundation excavations to confirm the adequacy for structural foundation bearing,

confirm the appropriateness of these recommendations, and to allow for an opportunity to

provide additional recommendations if deemed necessary. If the earth material conditions

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encountered differ significantly from those presented in this report, then supplemental recommendations will be required.

An important factor in soils supporting structural improvements is a change in moisture content. The recommendations herein are predicated on the soil moisture beneath and within five feet of the building perimeters, slabs and pavements being maintained in a uniform condition during and after construction. Please be advised that over watering or under watering, types of plants (trees should be at least the distance away from the improvement equal to their maximum height), altering design site drainage, etc., might be detrimental to the foundation, slabs, and/or pavements. We suggest that automatic timing devices be utilized on irrigation systems; however, provision should be made to interrupt the normal watering cycle during and following periods of rainfall. Additional foundation movements could occur if water, from any source, saturates the foundation soils; therefore, proper drainage should be provided during in the final design, during construction, and maintained for the life of the development.

Static and seismic settlement could affect various aspects of the planned development, including utilities, building entrances, sidewalks, footings, and grade beams. Design of these elements should incorporate features to mitigate the effects of the predicted settlements. Because of the anticipated settlements during an earthquake, it may be necessary to replace esthetic features, sheetrock, glazing, exterior flatwork, etc., after a major earthquake.

The foundation excavations should be clean (i.e., free of <u>all</u> loose slough) and maintained in a moist condition between 2 to 4 percent over optimum moisture just prior to placing steel and concrete. The concrete for the foundation should not be placed against a dry excavation surface.

The base of all foundation excavations should be free of water, loose soil, and gravel prior to placing concrete. Concrete should be placed soon after excavating and placement of engineered fill (and lime treatment, if needed) to reduce bearing soil disturbance. Should the soils at bearing level become excessively dry, disturbed, or saturated, the affected soil should be removed prior to placing concrete. In addition, as previously described, unsuitable soils should be completely removed from any proposed construction areas prior to construction. Concrete should not be

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chuted against the excavation sidewalls. Concrete should be pumped or placed by means of a

tremie or elephant's trunk to avoid aggregate segregation and earth contamination. Rebar

reinforcement should be properly supported with proper clearances maintained during concrete

placement. The concrete should be properly vibrated to mitigate formation of voids and to

promote bonding of the concrete to steel reinforcing. These recommendations are predicated

upon ACG's representative observing the bearing materials as well as the manner of concrete

placement.

Foundation Setback

The bottoms of utility trenches placed along the perimeter of the foundation should be above an

imaginary plane that projects at a 2H:1V angle projected down from 9-inches above the bottom

edge of the lowest outermost edge of the foundation per 2022 CBC Section 1809.14. Where

trenches pass through the plane, the trench should be installed perpendicular to the face of the

foundation for at least the distance of the depth of the foundation. Alternatively, the foundation

could be deepened to attain the recommended setback. Foundation details under the influence

of this recommendation should be forwarded along with the structural load information to the

geotechnical engineer for review.

INTERIOR FLOOR SLAB-ON-GROUND SUPPORT

On most project sites, the site mass grading is generally accomplished early in the construction phase.

However, as construction proceeds, the subgrade soils may be disturbed due to utility excavations,

construction traffic, desiccation, rainfall, etc. As a result, the floor slab subgrade soils may not be suitable

for placement of base rock and concrete and corrective action may be required.

We recommend the engineered fill underlying the floor slab be rough graded and then thoroughly proof

rolled with a loaded tandem axle dump truck or water truck prior to final grading and placement of base

rock. Particular attention should be paid to high traffic areas that were rutted and disturbed earlier and

to areas where backfilled trenches are located. Areas where unsuitable conditions are located should

be repaired by removing and replacing the affected material as engineered fill.

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A building pad comprised of engineered fill (constructed in accordance with the criteria contained within the above "Earthwork" section) is considered suitable for support of the slabs-on-ground of the building. In all cases the floor slab should not be placed on a dry subgrade. The subgrade soils should be maintained at 1 to 4 percent above the compaction moisture content in the upper 12 inches as verified by ACG prior floor slab concrete placement. In all cases the floor slab should not be placed on a dry subgrade.

The lightly loaded building floor slab-on-grade design, thickness and reinforcement should be designed by the structural designer for the anticipated loadings based on a modulus of subgrade soil reaction (k) estimated at 90 pounds per square inch per inch (psi/in) for engineered fill. The concrete slabs should be at least 4-inches thick for light duty use. The slabs should be supported on at least 4-inches thick %-inch crushed rock underlain by approved engineered fill subgrade soils prepared per the recommendations of this report.

The exterior ground surface should be at least 6 inches below the top of the floor slab. We emphasize that all surfaces should slope to drain away from all sides of the building. Slabs subjected to heavier loads may require thicker slab sections and/or increased reinforcement per the structural engineer's design.

Slabs-on-grade subject to low frequency, light to medium vehicle traffic should be at least five inches thick, or as per the project structural engineer, and have at least a six-inch-thick layer of Class 2 aggregate base (compacted to at least 95 percent relative compaction) placed beneath the slabs. If elastic design is utilized for designing slabs-on-grade founded on at least a six-inch thick layer of Class 2 aggregate base compacted to at least 95 percent relative compaction, then the design k value may be increased to 125 pci. The modulus was provided based on the slab being supported on 6 inches or more of compacted aggregate base and estimates obtained from NAVFAC 7.1 design charts. This value is for a small, loaded area (1 sq. foot or less) such as for small truck wheel loads or point loads. Slabs subjected to heavier loads (e.g., forklifts) would require thicker slab sections and/or increased reinforcement. The slabs could be separated from the foundations supporting the structure to allow for differential movements between the two elements unless the structural designer designs the slab - footing to be monolithic. We suggest the structural designer consider slab reinforcement consist of at least #4 reinforcing bars placed on maximum 18-inch centers at mid-slab height.

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Moisture Penetration Resistance

We are not experts regarding measures for mitigating (or preventing) moisture intrusion into building's slab-on-grade. If such should be desired, then an expert regarding moisture intrusion should be consulted.

We suggest the following measures for mitigating (not preventing) moisture intrusion into moisture sensitive interior floor slab(s). For slab-on-grade floor slab, we recommend the slab be underlain by a 4-inch-thick layer of crushed washed rock which is intended to serve as a capillary mitigating moisture break and to provide uniform slab support. Gradation of this material should be such that 100 percent will pass a 1-inch sieve and 0 to 5 percent passes the No. 4 sieve.

When conditions warrant the use of a vapor retarder, the slab designer should refer to ACI 302 and/or ACI 360 for procedures and cautions regarding the use and placement of a vapor retarder. At a minimum, we recommend in areas where it is desired to reduce floor dampness where moisture-sensitive coverings are anticipated, construction should have a suitable waterproof vapor retarder (at least 15 mils thick polyethylene vapor retarder sheeting, Raven Industries "VaporBlock 15, Stego Industries 15 mil "StegoWrap" or W.R. Meadows Sealtight 15 mil "Perminator") incorporated into the slab design. The water vapor retarder should be decay resistant material complying with ASTM E96 not exceeding 0.04 perms, ASTM E154 and ASTM E1745 Class A. The vapor barrier should be placed between the concrete slab and the compacted granular aggregate subbase material. The water vapor retarder (vapor barrier) should be installed in accordance with ASTM Specification E 1643-94 or the manufacturer's recommendations, whichever is more stringent. If maximum two-inches of clean sand should be placed above the vapor retarder (not recommended), then we recommend a moisture barrier be placed against the outer face of the perimeter foundation. Please note that the sand can be a conduit for water beneath the slab. In addition, the sand can form boils/pockets in the slab concrete. If proposed floor areas or coverings are considered especially sensitive to moisture emissions, additional recommendations from a specialty consultant should be obtained. If desired, further resistance to moisture vapor intrusion could be achieved with proper curing of the concrete, adding a sealant to the mix (e.g., Moxie), having a mix design with low slump (e.g., 2 to 4 inches), low

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water/cement ratio (we suggest not greater than 0.48), and high strength (we suggest at least

3000 psi).

The structural engineer/architect and contractor should refer to ACI 302 and ACI 360 for

procedures and cautions regarding the use and placement of a vapor barrier. In areas of exposed

concrete, control joints should be saw-cut into the slab after concrete placement in accordance

with ACI Design Manual, Section 302.1R-37 8.3.12 (tooled control joints are not recommended).

To control the width of cracking, continuous slab reinforcement should be considered in exposed

concrete slabs.

Positive separations and/or isolation joints should be provided between slabs and all

foundations, columns, or utility lines to allow independent movement. Interior trench backfill

placed beneath slabs should be compacted in accordance with recommendations outlined in the

Earthwork section of this report and Appendix D. Other design and construction considerations,

as outlined in the ACI Design Manual, Section 302.1R are recommended.

RETAINING WALL DESIGN CRITERIA

Retaining wall(s) (if proposed) should be designed to resist lateral pressures of soils having equivalent

fluid weights given in the table below. Per 2022 California Building Code (CBC) Section 1803.5.12, for

retaining walls supporting more than 6 feet backfill, lateral earth pressures due to earthquake loading

should be considered for structures to be designed in Seismic Design Categories E or F.

Lateral pressures from surcharge loads in psf should be equal to lateral pressure coefficient (provided in

the table below) multiply by vertical surcharge pressure in psf from surcharge loads located within ten

lateral feet of the retaining wall.

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TABLE 5: Retaining Walls Soil Parameters									
WALL TYPE	EQUIVALENT WEIGHTS (pou foo	nds per cubic	Lateral Pressure	Earthquake Loading - Dynamic Thrust	Total Soil Unit				
	LEVEL BACKFILL	2H:1V BACKFILL	Coefficient	Increment (plf)*	Weight				
CANTILEVER WALL (YIELDING)	40	62	0.33	9H ²	100 (
RESTRAINED WALL	60	86	0.50	24H ²	120 pcf				

^{*} Where H = height of retaining wall. Lateral pressures on cantilever retaining walls (yielding walls) are calculated based on work by Seed and Whitman (1970). Lateral pressures on non-yielding (or "restrained") retaining walls are calculated based on work by Wood (1973). The increment of dynamic thrust in both cases should be based on a trapezoidal distribution (essentially an inverted triangle), with a line of action located at 0.6H above the bottom of the wall.

Measures should be designed to prevent moisture buildup behind all retaining walls. We recommend drainage measures could include free draining backfill materials and sloped, perforated drains. These drains should discharge at least 10 feet away from the structure(s) to an appropriate discharge location. The wall permeable back drain could consist of either CalTrans Class 2 permeable materials or with ¾-inch up to 2-inch size drainage rock wrapped in geotextile filter fabric. The back drain should be placed behind the entire wall height to within 18 inches of ground surface at the top of the wall. The width of free draining permeable materials behind the wall should be at least two feet. Alternatively, a prefabricated drainage system (e.g., Mira-drain) could be considered behind the wall to collect the water. Water passing through the back drain system should be directed into perforated/slotted pipes that direct the collected water to an appropriate outlet for disposal away from the wall. The pipes should be placed behind and at the bottom of the wall.

Waterproofing of the wall, if needed, should be specified by the project architect/engineer. Adequate drainage should be provided behind the below-grade retaining walls to collect water from irrigation, landscaping, surface runoff, or other sources, to achieve a free-draining backfill condition.

PAVEMENT SECTION ALTERNATIVES

The R-value test result by exudation at 300 psi is 63 for Silty SAND (SM) subgrade soil obtained from R-1 shown in Figure 2 – Explorations Map. Based on the maximum R-value of 50 per the CalTrans "Highway Design Manual" and the Traffic indices (T.I.'s) indicated below, pavement section alternatives for the on-site pavement were evaluated in general conformance with Chapters 600 to 670 per the



CalTrans "Highway Design Manual" (July 1, 2020). A factor of safety per CalTrans HDM was **not** applied for on-site pavements. The Traffic Index selected for the final pavement design should be based upon the CalTrans "Highway Design Manual" - latest revision and/or edition including consideration of the vehicular traffic anticipated, number of repetitions, etc., as determined by the project civil engineer or per regulatory agency requirements. Additional traffic index pavement design alternatives may be provided, upon request.

	Table 6. RECO	OMMENDED PAVEMEN	T SECTION ALTERNATI	VES			
Design	Non-treated Subgrad	e (12"+ Engineered Fill)	Non-treated Subgrade (12"+ Engineered Fill)				
Traffic Index	Asphalt Concrete (AC) (Type B)	Aggregate Base (AB) (Class 2¹)	Portland Cement Concrete ²	Aggregate Base (AB) (Class 2¹)			
5.0	2.5"	6"	4"	5"			
6.0	2.5"	6"	5"	6"			
7.0	3"	6"	6"	7"			

(¹Caltrans Class 2 aggregate base (AB). ²Portland Cement Concrete (PCC) should have a modulus of rupture of at least 600 psi and the concrete reinforced per the pavement designer).

The above sections should be used for preliminary design and planning purposes <u>only</u>. We recommend representative subgrade sample(s) be obtained and "R" Value test(s) be performed on actual earth materials exposed once pavement areas have been pioneered. These additional test results may then be used to evaluate pavement sections for construction. It is possible that significant variations in pavement sections (vs. those listed above) could result if the resulting test(s) is/are different than that used for this study.

The preliminary sections above should be reviewed and approved by the owner, the civil engineer, and the governing authorities prior to construction. In addition, other recommendations for the stated traffic indices are available, if needed. The total thickness of most sections would closely approximate those given. Thinner sections than those recommended could result in increased maintenance and/or shorter pavement life. If desired, please contact this office for further analysis.

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Asphaltic-concrete paved areas should be designed, constructed, and maintained in accordance with,

for example, the recommendations of the Asphalt Institute, CalTrans Highway Design Manual, or other

widely recognized authority. Concrete paved areas should be designed and constructed in accordance

with the recommendations of the American Concrete Institute, CalTrans Highway Design Manual, or

other widely recognized authority, particularly regarding thickened edges, joints, and drainage.

Materials and compaction requirements within the structural sections should conform to the applicable

provisions of the CalTrans Standard Specifications (latest edition) including at least 95 percent relative

compaction of at least the uppermost twelve inches of subgrade earth materials. Asphalt concrete

pavement should conform to the specifications of Type A or B per section 39, and aggregate base should

conform to the specifications of Class II per Section 26 of the referenced specifications.

Concrete pavements could be reinforced with nominal rebar, such as at least #4 bars spaced no greater

than 24 inches, on center, both ways, placed at above mid-slab height, but with proper concrete cover,

as designed by the pavement engineer or structural engineer. If concrete pavements are to be

unreinforced, then we suggest the designer use expansion/contraction and/or construction joints

spaced no greater than 24 times the pavement thickness, both ways, in nearly square patterns, and

detailed in general accordance with ACI Guidelines. Doweling of concrete pavements at critical pathways

is also recommended.

We recommend that reinforced concrete pads be provided for truck pad areas in front of and beneath

trash receptacles as determined by the structural designer. The trash collection trucks should be parked

on the rigid concrete pavement when the trash receptacles are lifted. The concrete pads should be at

least 5 inches thick and properly reinforced. Thickened edges should be used along outside edges of

concrete pavements. Edge thickness should be at least 2 inches thicker than concrete pavement

thickness and taper to the actual concrete pavement thickness 36 inches inward from the edge. Integral

curbs may be used in lieu of thickened edges.

The above pavement section alternatives were estimated on the basis that a comparable soil type with

R-value indicated above would constitute the final subgrade of the pavement. ACG should be retained

to observe and test final subgrade soil(s) exposed to affirm that the soil is comparable to that indicated

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above. Where differing earth materials are encountered, they should be tested to affirm that they will

also provide the same or better support for pavement sections like those recommended above for

preliminary design.

We emphasize that the performance of the pavement is dependent upon uniform and adequate

compaction of the soil subgrade, as well as all engineered fill and utility trench backfill within the limits

of the pavements. Pavement subgrade preparation (i.e., scarification, moisture conditioning and

compaction) be performed after underground utility construction is complete, and just prior to

aggregate base placement.

The upper 12 inches of pavement subgrade soils should be compacted to at least 95 percent relative

compaction at no less than the optimum moisture content for granular soils, maintained in a moist

condition, and protected from disturbance. Aggregate base should also be compacted to at least 95

percent of the ASTM D1557 maximum dry density at the optimum moisture content or above.

Final pavement subgrades should be stable and unyielding under construction traffic prior to aggregate

base placement and be protected from disturbance or desiccation until covered by aggregate base. To

help identify unstable pavement subgrades within the pavement limits, a proof-roll should be performed

with a fully loaded, 4000-gallon water truck (or equivalent) on the exposed subgrades prior to placement

of aggregate base. The proof-roll should be observed by the Geotechnical Engineer's representative.

In the summer heat, high axle loads coupled with shear stresses induced by sharply turning tire

movements can lead to failure in asphalt concrete pavements. Therefore, Portland cement concrete

(PCC) pavements should be used in areas subjected to concentrated heavy wheel loading, such as entry

driveways, and/or in storage/unloading areas. Alternate PCC pavement sections have been provided in

the table above.

We recommend concrete slabs be constructed with thickened edges in accordance with American

Concrete Institute (ACI) design standards, latest edition. Reinforcing for crack control, if desired, should

be provided in accordance with ACI guidelines. Reinforcement must be located at mid-slab depth to be

effective. Joint spacing and details should conform to the current PCA or ACI guidelines. PCC should

achieve a minimum compressive strength of 3,500 pounds per square inch at 28 days.

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All pavement materials and construction methods of structural pavement sections should conform to the applicable provisions of the Caltrans Standard Specifications, latest edition.

Pavement Drainage

Base course or pavement materials should not be placed when the subgrade surface is wet. Surface drainage should be provided away from the edge of paved areas to minimize lateral moisture transmission into the subgrade.

Adequate drainage systems should be provided to prevent both surface and subsurface saturation of the subgrade soils. As a design option, a subdrain system beneath and along the edges of the pavements might be considered. The purpose of the system would be to mitigate saturation and loss of strength/stability of the subgrade soils. Subdrains should be especially considered beneath valley drains, if utilized for the project. As an alternate to edge drains (especially around landscape planters), barrier curbing that extends to at least four inches into the soil subgrade below the bottom of the aggregate base layer could be considered to limit infiltration of water beneath the adjacent pavement. Drainage inlets should be perforated (weep holes installed) at the level of the aggregate base layer. A layer of geotextile fabric should be placed on the outside of the drain inlet over the weep holes to reduce the potential for migration or piping of fines through the holes.

Base course or pavement materials should not be placed when the subgrade surface is wet. Surface drainage should be provided away from the edge of paved areas to minimize lateral moisture transmission into the subgrade.

Pavement Construction Considerations

On most project sites, the site grading is generally accomplished early in the construction phase. However, as construction proceeds, the subgrades may become disturbed due to utility excavations, construction traffic, rainfall, etc. As a result, the pavement subgrade may not be suitable for placement of aggregate base and pavement. We recommend the area underlying the pavement be rough graded and proof-rolled prior to placement of aggregate base material. Particular attention should be paid to high traffic areas and utility trenches that were backfilled.

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Areas where disturbance has occurred and materials are unsuitable, they should be removed and

replaced with compacted structural fill.

The aggregate base should be uniformly moisture-conditioned and compacted to at least 95

percent relative compaction (modified proctor) in accordance with this report. Base course or

pavement materials should not be placed when the surface is wet. Surface drainage should be

provided away from the edge of paved areas to minimize lateral moisture transmission into the

subgrade.

Minimizing subgrade saturation is an important factor in maintaining subgrade strength. Water

allowed to pond on or adjacent to pavements could saturate the subgrade and cause premature

pavement deterioration. The pavement should be sloped to provide rapid surface drainage, and

positive surface drainage should be maintained away from the edge of the paved areas. Design

alternatives which could reduce the risk of subgrade saturation and improve long-term pavement

performance include crowning the pavement subgrades to drain toward the edges, rather than

to the center of the pavement areas; and installing surface drains next to any areas where surface

water could pond. Properly designed and constructed subsurface drainage will reduce the time

subgrade soils are saturated and can also improve subgrade strength and performance. In areas

where there will be irrigation adjacent to pavements, we recommend the owner consider

installing perimeter drains for the pavements.

Preventative maintenance should be planned and provided for through an on-going pavement

management program to enhance future pavement performance. Preventative maintenance

activities are intended to slow the rate of pavement deterioration, and to preserve the pavement

investment.

EXTERIOR FLATWORK

Final subgrade areas for exterior concrete flatwork (i.e., sidewalks, patios, etc.) should be prepared in

accordance with the recommendations of Earthwork sections included in this report. Proper moisture

conditioning of the subgrade soils is considered essential to the performance of the exterior flatwork.

At least 5-inch layer of aggregate base (AB) compacted to at least 95 percent relative compaction should

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be used as a leveling course beneath the exterior flatwork. The AB should be supported on at least 12

inches of engineered fill subgrade compacted to at least 95 percent relative compaction per the

Earthwork section of this report.

All exterior flatwork concrete should be at least four inches thick. Consideration should be given to

thickening the edge of the slab to at least twice the slab thickness where wheel traffic is expected over

the slabs. Expansion joints should be provided to allow for minor vertical movement of the flatwork.

Exterior flatwork should be constructed independent of perimeter building foundations by the

placement of a layer of felt material between the flatwork and the foundation. The slab designer should

determine the final thickness, strength and joint spacing of exterior slab-on-grade concrete. The slab

designer should also determine if slab reinforcement for crack control is required and determine final

slab reinforcing requirements.

Practices recommended by the Portland Cement Association (PCA) for proper placement, curing, joint

depth and spacing, construction, and placement of concrete should be followed during exterior concrete

flatwork construction.

Areas adjacent to new exterior flatwork should be landscaped to maintain more uniform soil moisture

conditions adjacent to and under flatwork. We recommend final landscaping plans not allow fallow

ground adjacent to exterior concrete flatwork.

SITE DRAINAGE

Final site grading should be designed to provide positive drainage of surface water away from structures

and prevent ponding of water adjacent to foundations, slabs and pavements. The grade adjacent to

structures should be sloped away from foundations at least two percent slope for a distance of at least

five feet, where possible. Roof gutter downspouts and surface drains should drain onto pavements or

sidewalks, or be connected to rigid non-perforated piping directed to an appropriate drainage point

away from the structure(s). Ponding of surface water should not be allowed adjacent to the building(s)

or pavements. Landscape berms, if planned, should not be constructed in such a manner as to promote

drainage toward structures.

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SUBDRAINAGE

Subdrains might be needed to control subsurface water that might become perched in top and/or fill soils. Each case should be evaluated by the Geotechnical Engineer so that he/she could make appropriate mitigation recommendations.

LIMITATIONS

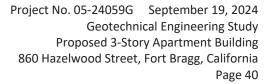
This report contains statements regarding opinions, conclusions, and recommendations, all of which involve certain risks and uncertainties. These statements are often, but are not always, made through the use of words or phrases such as "anticipates", "intends", "estimates", "plans", "expects", "we believe", "we consider", "it is our opinion", "mitigation or mitigate", "suggest", "may be", "expected", "predicated", "advised", and similar words or phrases, or future or conditional verbs such as "will", "would", "should", "potential", "can continue", "could", "may", or similar expressions. Actual results may differ significantly from the expectations contained in the statements. Among the factors that may result in differences are the inherent uncertainties associated with earth material conditions, groundwater, project development activities, regulatory requirements, and changes in the planned development.

The analysis and recommendations submitted in this report are based in part upon the data from the exploratory borings at the indicated locations and in part on information provided by the client. The nature and extent of subsurface variations between the test borings across the site (or due to the modifying effects of weather and/or man) may not become evident until further exploration or during construction. If variations then appear evident, then the conclusions, opinions, and recommendations in this report shall be considered invalid, unless the variations are reviewed and the conclusions, opinions, and recommendations are modified or approved in writing.

This report was prepared to assist the client in the evaluation of the site and to assist the architect and/or engineer in the design of the improvements. ACG recommends that we be retained to review the project plans and specifications to assess that the recommendations of this report have been properly interpreted and implemented in the plans and specifications.

If there are any significant changes in the project as described herein, then the conclusions and recommendations contained in this report shall not be considered valid unless the changes are reviewed, and conclusions and recommendations modified or verified in writing.

This report is issued for the client's use only. In addition, it is his responsibility to ensure that the information and recommendations contained herein are called to the attention of the designer for the project; and, that necessary steps are taken to implement the recommendations during construction.





The findings in this report were developed on the date(s) indicated. Changes in the conditions of the property can occur with the passage of time, whether they are due to natural processes or the works of man, on this or adjacent properties. In addition, changes in applicable or appropriate standards may occur, whether they result from legislation or from the broadening of knowledge. Accordingly, the findings in this report might be invalidated, wholly or partially, by changes outside of our control. Therefore, this report and the findings on which it is based are subject to our review at the onset of and during construction, or within two years, whichever first occurs.

We recommend having a pre-construction meeting, including the owner, design professionals, contractor(s), and ACG, to discuss the planned work and scheduling. In addition, we should be retained to observe the geotechnical construction, particularly site earthworks and foundation excavations, as well as to perform observations and testing. If, during construction, subsurface conditions are discovered to be different from those described herein, or appear to be present beneath excavations, then we should be advised at once so that those conditions may be observed and our recommendations reconsidered.

The scope of services of this project does not include either specifically or by implication any environmental or biological (e.g., mold, fungi, bacteria, etc.) assessment of the site and adjacent properties or identification or prevention of pollutants, hazardous materials, or any other adverse conditions. If the owner is concerned about the potential of such contamination or pollution, other studies should be undertaken. In addition, our work scope does not include an evaluation or investigation of the presence or absence of wetlands or flood zone considerations.

No warranties, either expressed or implied, are intended or made. Site safety, excavation support, and dewatering requirements are the responsibility of others. If any changes in the nature, design, or location of the project as outlined in this report are planned, the conclusion and recommendations contained in this report shall not be considered valid unless ACG reviews the changes, and either verifies or modifies the conclusions of this report in writing.

This report is applicable only for the project and site studied and should not be used for design and/or construction on any other site.

Our work scope does not include obtaining permits for any aspect of the subject project. The owner of the project or his representative is responsible for obtaining permits necessary for the project.

We appreciate this opportunity to be of service on this project. If you have any questions regarding this report, then please do not hesitate to contact us.



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- 1. American Concrete Institute (ACI), April 2010, "Guide to Design of Slabs-on-Ground", ACI 360-10.
- 2. American Concrete Institute (ACI), June 2015, "Guide to Concrete Floor and Slab Construction", ACI 302.1R-15.
- 3. American Society for Civil Engineers, 2016 "Minimum Design Loads for Buildings and Other Structures", ASCE/SEI 7-16.
- **4.** ASTM, "Test Method for Laboratory Compaction Characteristics of Soil Using Modified Effort", Volume 04.08
- **5.** California Building Code, 2022, "California Code of Regulations, Title 24, Part 2, Volume 2 of 2", California Building Standards Commission, published by ICBO.
- 6. California Department of Transportation (Caltrans), 2023, Standard Specifications.
- 7. California Department of Transportation (Caltrans), July 2020, "Highway Design Manual".
- 8. California Geological Survey, 1960, "Geologic map of California: Ukiah sheet", Scale 1:250,000
- **9.** CGS website (https://www.conservation.ca.gov/cgs/earthquakes) for Regulatory Maps, Reports and GIS data that includes Earthquake Fault Zones, Landslide and Liquefaction Zones.
- **10.** Hart, Earl W., Revised 1994, "Fault-Rupture Hazard Zones in California, Alquist Priolo, Special Studies Zones Act of 1972," California Division of Mines and Geology, Special Publication 42.
- **11.** Jennings, Charles W. and Bryant, William A., 2010, "Fault Activity Map of California" (scale 1: 750,000) published by CGS, Geologic Data Map No. 6.
- 12. SEAOC/OSHPD U.S. Seismic Hazard Maps (reference ASCE/SEI 7-16).
- 13. Pacific West Communities, Inc., undated, Preliminary Site Plan.
- **14.** Google Earth Aerial Photography of the Subject Site.



APPENDIX A

VICINITY MAP

EXPLORATIONS MAP



NOTES:

- 1- Location of site (designated by yellow border) is approximate.
- 2- Source for base map: Imagery from Google Earth 2024[©].



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VICINITY MAP

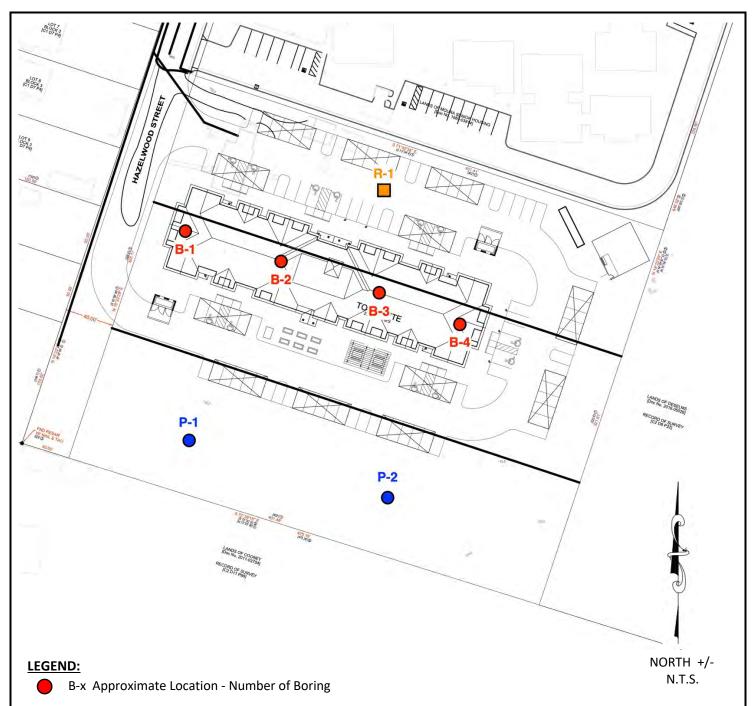
Proposed 3-Story Apartment Building 860 Hazelwood Street Fort Bragg, California **ACG JOB NO.** 05-24059G

05-240590 DATE

September 2024

FIGURE

1



P-x Approximate Location - Number of Percolcation Test

R-1 Approximate Location of R-value Sample

NOTE:

Source for base map: Preliminary Site Plan provided by the client.



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EXPLORATIONS MAP

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DATE

September 2024

FIGURE

2



APPENDIX B

FIELD EXPLORATION METHODS

LOGS OF SUBSURFACE EXPLORATIONS



FIELD EXPLORATION METHODS

Field exploration included a general geotechnical engineering reconnaissance within the study area, as well as the excavation of subsurface explorations at approximate locations shown on the Explorations Map, Figure 2, Appendix A. Locations of explorations were determined in the field by estimating from the existing site features shown on an aerial photo. The exploration locations should only be considered accurate to the degree implied by the means and methods used to define them. The explorations were accomplished, and the soil logging and sampling performed by, a Staff Geologist and/or Engineer under the direct supervision of a California licensed Geotechnical Engineer. The explorations were conducted to determine the geometry and geotechnical characteristics of subsurface geologic deposits at the site.

The exploratory borings were advanced with 7-inch outer-diameter continuous flight helical hollow stem augers (HSA) powered by a truck mounted drill rig. Relatively undisturbed soil samples were recovered from the borings at selected intervals by either a 1.4-inch SPT (standard penetration) or 2-inch inner-diameter samplers (Modified California) advanced with an automatic hammer driving a 140 lb. hammer freely falling 30 inches (standard 350-foot/lb. striking force). The number of blows of the hammer required to drive the samplers each 6-inch to 18-inch interval of each drive is denoted as the penetration resistance or "blow count" and provides a field estimate of soil consistency/relative density. Blow counts shown on the logs have not been corrected/converted. Selected undisturbed samples were retained in moisture-proof containers for laboratory testing and reference. Bulk soil samples were recovered directly from excavation cuttings and placed in sealed plastic sample bag(s).

Soils were logged in the field by the Staff Geologist or Engineer and were field classified based on inspection of samples and auger cuttings per the Unified Soil Classification System (ASTM D2487) by color, gradation, texture, type, etc. Groundwater observations were made in the explorations during and after drilling. Exploration log prepared for the exploration provides soil descriptions and field estimated depths. The exploration logs are included in this Appendix B which also contains the Explorations Log Legend. This log includes visual classifications of the materials encountered during drilling as well as the field engineer's interpretation of the subsurface conditions. Final exploration logs included with this report represents the geotechnical engineer's interpretation of the field logs.

Samples of the subsurface soil earth materials were obtained from the exploratory borings for use in laboratory testing to further determine the soil's engineering properties and geotechnical design parameters to be used for future site improvements. The samples were tagged for identification, sealed to reduce moisture loss, and taken to our laboratory for further examination, testing, and classification. Bulk soil samples were recovered directly from excavation cuttings and placed in a plastic sample bag. Soil samples were then transported to ACG's soil mechanics laboratory for further testing. Field descriptions within the exploration logs have been modified, where appropriate, to reflect laboratory test results.

Upon completion of drilling the test borings the resulting holes were backfilled with cement grout from final test boring depth up to original ground surface.

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Latitude

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Geotechnical Log - Borehole

B-1

: 39.428455 Drill Rig : CME 55 Job Number : 05-24059G

Longitude : -123.802230 Driller Supplier : V&W Drilling, Inc. Client : Pacific West Communities

Ground Elevation : 119 (ft) Logged By : JC Project : Project 2-Story Apartment Building
Total Depth : 26 ft BGL Reviewed By : MK Location : Fort Bragg, Caliornia

Date : 09/04/2024 Loc Comment : Refer to Explorations Map

						Date	: 09/04	/2024		Loc Comment : Refer to Explorations Map							
			Sam	ples			Blows per 6 in			e					Testing		
Elevation (ft)	Depth (ft)	Drilling Method	SPT Sample	Mod Cal Sample	COMMENT	TYPE	BLOWS per 6 in 140 lb hammer 30 lnch drop	z	REC	Classification Code	Graphic Log	Material Description	Groundwater	Water Content, %	Dry Unit Weight, pcf	% Fines	Remarks
- 119 -	=	†								SM		Loose, moist, brown, fine grained sand, SILTY SAND.					
— 118 -	1 -											5/11 5 .					
117	2 — 3 —		\bigvee			SPT	3-3-5	8	18	-				9.7	93	24.8	
115	4		B1/1														
114	5 —																
113	6-6			X		Mod Cal	9-7-10	17	12	SP-SM		Medium dense, mojet, brown and light brown					
112	7 =			B1/2						OI -OIWI		Medium dense, moist, brown and light brown, fine grained sand, POORLY GRADED SAND WITH SILT, trace gravel.					
111	8 -																
110	9 9									SM		Medium dense moist brown fine grained sand					
109	10 —									- 0111		Medium dense, moist, brown, fine grained sand, SILTY SAND.					
108	11 =	Stem Auger	X			SPT	6-7-10	17	18				ϫ				
107	12 -	Stem	B1/3														
106	13 13	Hollow										- wet.	\subseteq				
105	14 —	7-inch Hollow															
104	15 —	ĺ								_							
103	16 —					Mod Cal	6-6-9	15	6								
102	17			B1/4													
— 101 -	18 —																
— 100 -	19 —																
— 99 - -	20 20		\bigvee			SPT	2-4-5	9	18	SP-SM		Loose to medium dense, moist, orange brown, POORLY GRADED SAND WITH SILT, fine grained sand.					
98 - - - 97	21 — 22 <u>22</u>		B1/5							-		grained sand.					
- 96	23											- dense to very dense, brown					
95	24																
94	25	\															
93	26			24/2		Mod Cal	17-50	50/6"	12								
92	27			B1/6								B-1 Terminated at 26ft (Groundwater was encountered at a depth of					
91	28 —											approximately 13 feet during drilling and 11 feet after drilling. Boring was backfilled with cement grout and					
90	29 —											topped with soil cuttings.)					
89	30 —																
88	31 =																
87	32 —																
- - 86	33 —																
- - 85	34 —																
<u> </u>	-																

Allerion Consuling lines for

Ground Elevation : 119 (ft)

Latitude

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: JC

Phone: 916.742.5096

Logged By

Geotechnical Log - Borehole

: Proposed 3-Story Apartment Building

B-2

: 39.428372 Drill Rig : CME 55 Job Number : 05-24059G

Longitude : -123.801972 Driller Supplier : V&W Drilling, Inc. Client : Pacific West Communities

Total Depth : 30.5 ft BGL Reviewed By : MK Location : Fort Bragg, Caliornia

Date : 09/04/2024 Loc Comment : Refer to Explorations Map

Project

						Date	: 09/04	/2024		Loc Comment : Refer to Explorations Map									
		_	Sam	ples			Blows per 6 in			ge					Testing				
Elevation (ft)	Depth (ft)	Drilling Method	SPT Sample	Mod Cal Sample	COMMENT	TYPE	BLOWS per 6 in 140 lb hammer 30 lnch drop	Z	REC	Classification Code	Graphic Log	Material Description	Groundwater	Water Content, %	Dry Unit Weight, pcf	% Fines	Remarks		
- 119 -	=	1								SM		Loose, moist, brown, fine grained, SILTY SAND.							
— 118 -	1																		
117	2 -									!						31			
116	3 -					Mod Cal	3-4-4	8	12							31			
115	4 =			B2/1]									
_ 114	5 <u>-</u> 5 <u>.5</u>																		
113	5 <u>.5</u>		X			SPT	5-6-9	15	18	SP		Medium dense, moist, light brown with rust staining, fine grained, POORLY GRADED SAND.							
_ 	7 =		B2/2									staining, fine grained, POORLY GRADED SAND.							
-	=																		
— 111 - -	8 —																		
— 110 - -	9																		
109 	10 10			$\overline{}$		Mod Cal	4-7-7	14	18.0	CL		Stiff, moist, grey and brown with orange, LEAN CLAY, with 6 inches Silty Sand lenses at 10.5							
108	11 -					IVIOU Cai	4-7-7	14	16.0			CLAY, with 6 inches Silty Sand lenses at 10.5 feet.							
107	12 -			B2/3									ϫ						
106	13 —	ger																	
105	14	m Au																	
104	15 15	w Ste																	
103	16 —	7-inch Hollow Stem Auger	X			SPT	2-4-7	11	18	SM		Medium dense, moist, grey with rust staining, fine grained sand, SILTY SAND, trace fine sized gravel.		24.9	104	32			
102	17	7-inch	B2/4									gravo.							
101	18																		
100	19 —																		
Ē	20 20																		
— 99 - -	3					Mod Cal	3-5-10	15	18.0			- brown with rust staining.		27.1	99	16			
— 98 - - -	21 —			B2/5															
— 97 - -	22 —			D2/3															
— 96 -	23 —																		
95 -	24 —																		
- 94 -	25 25					95=						- very dense.							
E 93 	26 — 26.5		$ \Delta $			SPT	7-15-50	65	16			, 20100.							
92	27 —		B2/6									- red-brown with rust staining.							
91	28 —																		
90	29																		
89	29 <u>.5</u>	<u> </u>										- wet, gray.	\subseteq						
- 88	31 —			B2/7		Mod Cal	50/6"	50/6"	6		4:::1	B-2 Terminated at 30.5ft (Groundwater							
- 87	32 —											was encountered at a depth of approximately 30 feet during drilling							
-	3											and 12 feet after drilling. Boring was backfilled with cement grout and							
86 	33 —											topped with soil cuttings.)							
— 85 - -	34 —																		
									I			I					. 2 -64		

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Geotechnical Log - Borehole

1050 Melody Lane, Suite 160. Roseville, CA 95678

Phone: 916.742.5096

B-3

Latitude : 39.428321 Longitude

: 26.5 ft BGL

Ground Elevation : 118 (ft)

Total Depth

Drill Rig : CME 55 : -123.801688

Driller Supplier Logged By

Job Number : 05-24059G Client : Pacific West Communities

Location

: JC Reviewed By : MK

Project : Proposed 3-Story Apartment Building

: Fort Bragg, Caliornia

						Date	: 09/04	/2024		Loc Comment : Refer to Exploration				ns Map				
			Sam	ples			Blows per 6 in			e				Tes	ting			
Elevation (ft)	Depth (ft)	Drilling Method	SPT Sample	Mod Cal Sample	COMMENT	TYPE	BLOWS per 6 in 140 lb hammer 30 lnch drop	z	REC	Classification Code	Graphic Log	Material Description	Groundwater	Water Content, %	Dry Unit Weight, pcf	Remarks		
- 118 -	=	†								SM		Medium dense, moist, brown, fine grained sand,						
117	1=											SILTY SAND.						
116	2																	
115	3 —		X			SPT	4-5-7	12	12									
114	4 -		B3/1															
113	5 =																	
112	6-6			M		Mod Cal	5-5-8	13	18					12.6	102			
111	7 -			B3/2						SP-SM		Medium dense, moist, light brown with rust staining, fine grained sand, POORLY GRADED SAND WITH SILT.		12.0	102			
110	8-																	
- - 109	9 —																	
108	10																	
107	10 — 10 <u>.5</u> 11 —	. Jebr	$ \times $			SPT	3-3-5	8	18	CL	323	Medium stiff, moist, light brown with rust staining, LEAN CLAY.						
- - - 106	12 —	tem Aı	B3/3									staining, LEAN CLAY.						
105	13	7-inch Hollow Stem Auger											≖					
104	14 —	ch Ho											_					
103	15 15	– 7-in																
ŧ l				M		Mod Cal	4-10-14	24	18	SM		Medium dense, moist to wet, light brown with gray to orange brown with rust staining, fine grained sand, SILTY SAND.						
— 102 - -	16 —			B3/4								grained sand, SILTY SAND.	\subseteq					
— 101 - -	17 —												<u> </u>					
100 - - -	18 — 19 19																	
— 99 - -	3									SP		Medium dense, brown, wet, POORLY GRADED SAND, fine to coarse grained sand.						
— 98 - -	20 —					SPT	8-10-15	25	18			OAND, line to coarse grained saird.						
97	21 —		P0/5			0	0 10 10											
— 96 -	22 —		B3/5															
95 -	23 —																	
94	24																	
93	25 <u>25</u>	•				Mari O :	0.41.10	67	40			- light brown, trace gravel.						
92	26 —					Mod Cal	9-11-16	27	12									
91 -	27			B3/6								B-3 Terminated at 26.5ft (Groundwater was encountered at a depth of						
- 90	28 —											approximately 17 feet during drilling and 13 feet after drilling. Boring was						
- - 89 -	29 —											backfilled with cement grout and topped with soil cuttings.)						
88	30 =																	
87	31 =																	
86	32 —																	
- 85	33 —																	
84	34 —																	
-	=																	

Allerion

Allerion Consulting Group

1050 Melody Lane, Suite 160. Roseville, CA 95678

Phone: 916.742.5096

Geotechnical Log - Borehole

B-4

Longitude : -123.801453 Driller Supplier : V&W Drilling, Inc. Client : Pacific West Communities

Ground Elevation : 118 (ft)

Logged By

: JC

Project : Proposed 3-Story Apartment Building

1 to a logged By

: MK

Location : Fort Bragg, Caliornia

Date : 09/03/2024 Loc Comment : Refer to Explorations Map

	Date : 09/03/2024						Loc Comment : Refer to Explorations Map									
			Sam	ples			Blows per 6 in			9				Tes	ting	
Elevation (ft)	Depth (ft)	Drilling Method	SPT Sample	Mod Cal Sample	COMMENT	TYPE	BLOWS per 6 in 140 lb hammer 30 lnch drop	N	REC	Classification Code	Graphic Log	Material Description	Groundwater	Water Content, %	Dry Unit Weight, pcf	Remarks
- 118 -		1								SM		Loose, moist, brown, fine grained, SILTY SAND.				
— 117 -	1 =															
116	2									1						
115	3 -					Mod Cal	2-3-3	6	18					11.3	90	
114	4 -			B4/1												
113	5 — 5.5															
112	6 -					SPT	2-3-5	8	12	SP		Loose, moist, light brown, fine grained, POORLY GRADED SAND.				
111	7 -		B4/2													
110	8 <u>.5</u>	e.									•					
109	9 -	m Aug									• •	- brown, fine to medium grained, fine to medium to grained sand.				
108	10 — 10.5	id Stel								-						
107	11	5-inch Solid Stem Auger				Mod Cal	2-5-8	13	18	CL		Stiff, moist, light gray with rust staining, LEAN CLAY.				
106	12 —	- 5-in		B4/3						1						
105	13												▼			
104	14 —												×			
103	15 15															
102	16 —		$ \times $			SPT	4-7-10	17	18	SP		Medium dense, moist to wet, gray with white, fine grained, POORLY GRADED SAND.				
101	17		B4/4													
100	18 —															
99	19 —															
- - 98	20 20	+														
97	21			X		Mod Cal	8-9-17	26	18			- wet, brown with orange, medium to coarse grained.				
96	22 —			B4/5								B-4 Terminated at 21.5ft (Groundwater				
- 95	23 —											was encountered at a depth of approximately 13.5 feet during drilling				
94	24 —											B-4 Terminated at 21.5ft (Groundwater was encountered at a depth of approximately 13.5 feet during drilling and 13 feet after drilling. Boring was backfilled with cement grout and topped with soil cuttings.)				
93	25 —											topped with soil cuttings.)				
92	26 —															
91	27 —															
- - - 90	28 —															
89	29 —															
88	30 —															
87	31 —															
86	32 —															
Ė I	=															
- 85 - -	33 —															
— 84 - -	34 —															
					•	•		-			•					e 4 of 4



Allerion Consulting Group

1050 Melody Lane, Suite 160. Roseville, CA 95678

Phone: 916.742.5096

UNIFIED SOIL CLASSIFICATION

PT	ОН	CH	MH	OL	CL	ML	SC	SM	SP	SW	GC	CM	GP	GW
Highly						Sands with fines Clean sands > 12% fines < 5% fines			Gravels with fines Clean gravels > 12% Fines < 5% fines					
					uid Limit <	50)		- more that is smaller			Gravels - more than 50% of coa fraction is larger than No. 4 siev			
Fine grained soils (more than 50% is smaller than No. 200 sieve)							(r	nore than		grained so arger than		sieve)		

LABORATORY CLASSIFICATION CRITERIA

GW and SW-C_u= $\frac{D}{D_{10}}$ greater than 4 for GW & 6 for SW; $C_c = \frac{(D_{30})^2}{D_{10} \times D_{60}}$ between

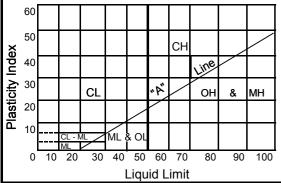
GP and SP - Clean gravel or sand not meeting requirements for GW and SW.

GM and SM - Atterberg limits below "A" line or P.I. less than 4.

GC and SC - Atterberg limits above "A" line with P.I. greater than 7.

Fines (silt or clay)	Fine Sand	Sand	Sand	Fine Gravel	Gravel	Cobbles	Boulders
Sieve sizes	> # 200	> # 40	> # 10	> # 4	> 3/4"	> 3"	> 10"

Classification of earth materials shown on this sheet is based on field inspection and should not be construed to imply laboratory analysis so stated.



MATERIAL SYMBOLS

WELL GRADED GRAVEL or GRAVEL WITH SAND (GW)

POORLY GRADED GRAVEL or GRAVEL WITH SAND (GP)

SILTY GRAVEL or SILTY GRAVEL WITH SAND (GM)

CLAYEY GRAVEL or CLAYEY GRAVEL WITH SAND (GC)

WELL-GRADED SAND or SAND WITH GRAVEL (SW)

POORLY GRADED SAND or SAND WITH GRAVEL (SP)

SILTY SAND or SILTY SAND WITH GRAVEL (SM)

CLAYEY SAND or CLAYEY SAND WITH GRAVEL (SM)

INORGANIC LOW PLASTIC CLAY, SANDY CLAY, or CLAY WITH SAND/GRAVEL (CL)

INORGANIC LOW PLASTIC SILT, SANDY SILT, or SILT WITH SAND/GRAVEL (ML)

INORGANIC HIGH PLASTIC CLAY, SANDY CLAY, or CLAY WITH SAND/GRAVEL (CH)

INORGANIC HIGH PLASTIC SILT, SANDY SILT, or SILT WITH SAND/GRAVEL (MH)

ORGANIC LOW/HIGH PLASTIC CLAY or SILT (OL or OH)

RELATIVE DENSITY / CONSISTENCY CLASSIFICATION **FOR SOILS**

According to the Standard Penetration Test and AASHTO 1988

No. of Blows	Granular	PP (tsf)	No. of Blows	Cohesive
0 - 4	Very Loose	< 0.25	< 2	Very Soft
5 - 10	Loose	0.25 - 0.5	3 - 4	Soft
		0.5 - 1	5 - 8	Medium Stiff
11 - 30	Medium Dense	1 - 2	9 - 15	Stiff
31 - 50	Dense	2 - 4	16 - 30	Very Stiff
> 50	Very Dense	> 4	> 30	Hard

Where the standard penetration test has not been performed, consistencies shown on the logs are estimated and given in parenthesis, e.g., (Very Stiff).

FIELD AND LABORATORY TEST ABBREVIATIONS

REC: Sample recovery in inches.

PP: Field Pocket Penetrometer in tsf.

LL: Liquid Limit, expressed as a water content.

PI: Plasticity Index, expressed as a water content.

%Fines: percent passing No. 200 Sieve)

UC: Unconfined compressive strength test in tsf.

Dry Unit Weight, pcf: Dry weight per unit volume of soil sample.

TYPICAL SAMPLER GRAPHIC SYMBOLS

2-inch-OD split spoon (SPT)

3-inch-OD California

Modified w/ 2.38-inch-ID Stainless Steel Tube

Bulk Sample

2.5-inch-OD Modified

Grab Sample

California w/ 1.91-inch-ID stainless steel tube

☐ Groundwater level (during drilling)

OTHER GRAPHIC SYMBOLS

Inferred/gradational contact between strata

-?- Queried contact between strata

GENERAL NOTES

- 1: Soil classifications are based on the Unified Soil Classification System (USCS). Descriptions and stratum lines are interpretive, and actual lithologic changes may be gradual. Field descriptions may have been modified to reflect results of lab tests.
- 2: Descriptions on these logs apply only at the specific exploration locations and at the time the explorations were advanced.

They are not warranted to be representative of subsurface conditions at other locations or times.

LEGEND FOR EXPLORATIONS LOGS



APPENDIX C

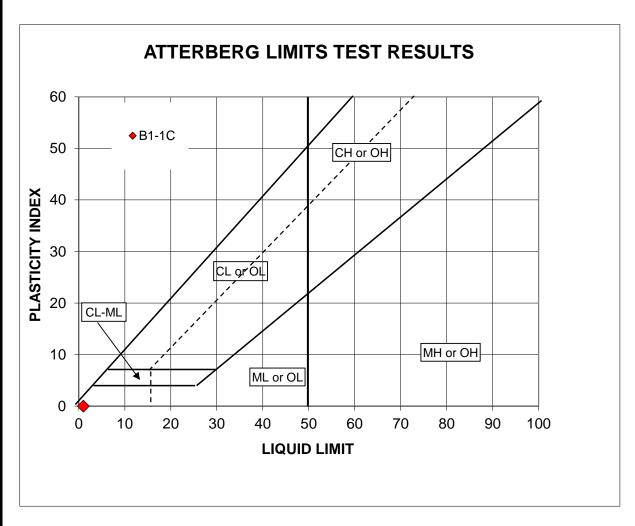
LABORATORY TESTING



LABORATORY TESTING

Samples retrieved during the field exploration were taken to the soil mechanics laboratory for further observation by the project geotechnical engineer and were classified in accordance with the Unified Soil Classification System (USCS) described in Appendix B. An applicable laboratory testing program was formulated for classification testing and to determine engineering properties of the subsurface earth materials. The field descriptions were confirmed or modified based on the test results.

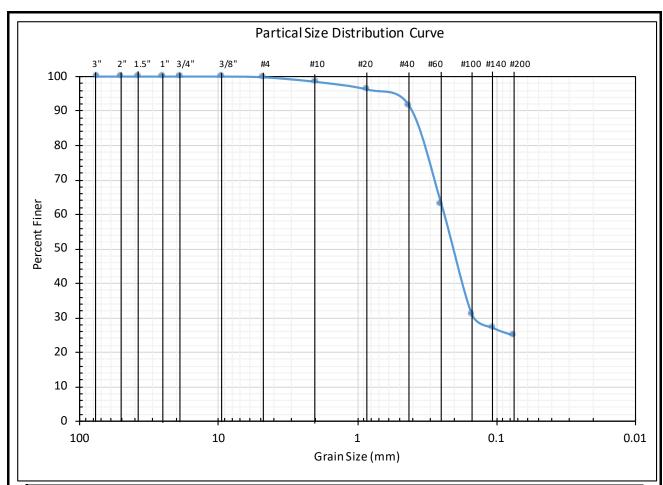
Soil mechanics laboratory tests were performed on soil samples recovered from the explorations to further determine the physical and engineering properties of the soils. These tests included materials R-value test (CTM 301), sieve analysis (ASTM D6913), finer than no. 200 sieve (ASTM D 1140), dry density (ASTM D 2937), Atterberg limits (ASTM D4318), natural moisture content (ASTM D 2216) and evaluation for soil corrosion, including pH and minimum resistivity (CA DOT Test #643), sulfate content (CA DOT Test #417), and chloride content (CA DOT Test #422m). The results of these tests are shown on the Exploration Log at the depth that each sample was recovered. The Atterberg limits, sieve analysis, R-value, and soil corrosion test results are attached. The laboratory test results were used to assess the relative soil and geologic conditions of the site of the proposed construction and to provide geotechnical design criteria for foundations, slabs, grading and drainage.



GROUP	UNIFIED SOIL CLASSIFICATION
SYMBOL	FINE-GRAINED SOIL
OL	Organic silts and organic silty clays of low plasticity
ML	Inorganic clayey silts to very fine sands of slight plasticity
CL	Inorganic clays of low to medium plasticity
ОН	Organic sillts and clays of medium to high plasticity
МН	Inorganic silts, clayey silts, and sandy silts
СН	Inorganic clays of high plasticity

SAMPLE ID	DEPTH (feet)	Content (%)	% Fines	LL	PL	PI
B1/1	2-3.5	9.7	25	Ν	on-Plas	tic

Lab No.:	118G	ATTERBERG LIMITS	1
Project Name:	860 Hazelwood Avenue	(ASTM - D4318)	
Project No.:	05-24059G	MATERIAL FINER THAN #200 SIEVE	
Tested By:	RP	(ASTM D-1140)	Allerion
Reviewed By:	MK		Consulting Group, Ir
Sample Date:	9/4/24		Sheet 1
Test Date:	9/12/24		Sileet i



% +3"	% Gravel		% Sand			% Fines
	Coarse	Fine	Coarse	Medium	Fine	Silt & Clay
0	0	0.2	1.3	6.9	66.7	24.8
0	0.2		75.0			24.8

SEIVE	PERCENT	
DESIGNATION	FINER	
3"	100.0	
2"	100.0	
1.5 inch	100.0	
1 inch	100.0	
3/4 inch	100.0	
3/8 inch	100.0	
#4	99.8	
#10	98.5	
#20	96.2	
#40	91.5	
#60	63.2	
#100	30.9	
#140	27.1	
#200	24.8	

Soil Description:

Silty Fine SAND (SM)

Lab No.:	118G	Gradation of Soils Using Sieve Anaylsis		
Project Location:	Fort Bragg, California	(ASTM - D6913)		
Project No.:	05-24059G	— (A31Wi - D0913)	-	
Tested By:	RP	Boring Number:	B-1	A
Reviewed By:	MK	Sample Number:	B1/1	Con
Sample Date:	9/4/24	Sample Depth:	2 - 3.5'	
Test Date:	9/12/24			



Sheet 2

R-Value **CTM 301** CTL Job No.: 1191-054 Boring: NA RU Reduced By: Client: Allerion Consulting Group Sample: R-1 Checked By: lРJ Project Number: 05-24059G Depth: 0-3' Date: 9/16/24 Project Name: 860 Hazelwood Street R-Value 63 Soil Description: Dark Reddish Brown Silty SAND Remarks: **Expansion Pressure** 320 В С Specimen Designation Α Ε Compactor Foot Pressure (psi) 150 180 280 Exudation Pressure (psi) 122 272 782 Exudation Load (lbf) 1533 3418 9827 Height After Compaction (in) 2.52 2.44 2.40 Expansion Pressure (psf) 215 310 404 Stabilometer @ 2000 40 66 26 Turns Displacement 4.40 3.82 3.56 R-value 48 63 78 Corrected R-Value 48 62 77 Moisture Content (%) 20.0 18.1 16.3 Wet Density (pcf) 122.5 123.6 122.6 Dry Density (pcf) 102.1 103.7 106.2 Exudation Pressure vs R-Value 100 ■ Exudation Pressure vs. Expansion 90 Pressure 800 80 700 70 60 600 500 50 400 40 30 300 200 20 10 100

400

500

100

200

300

600

700

800

Sunland Analytical



11419 Sunrise Gold Circle, #10 Rancho Cordova, CA 95742 (916) 852-8557

Date Reported 09/13/2024
Date Submitted 09/10/2024

To: Mohammed Khalid
Allerion Consulting Group, Inc.
1050 Melody Lane Suite 160
Roseville, CA 95678

From: Gene Oliphant, Ph.D. \ Ty Bui General Manager \ Lab Manager

The reported analysis was requested for the following location: Location: 05-24059G Site ID: B4-1B+A. Thank you for your business.

* For future reference to this analysis please use SUN # 93059-192716.

EVALUATION FOR SOIL CORROSION

Soil pH 5.43

Minimum Resistivity 11.26 ohm-cm (x1000)

Chloride 6.2 ppm 00.00062 %

Sulfate 3.6 ppm 00.00036 %

METHODS

pH and Min.Resistivity CA DOT Test #643 Sulfate CA DOT Test #417, Chloride CA DOT Test #422m



APPENDIX D

GUIDE SPECIFICATIONS FOR EARTHWORK



GUIDE SPECIFICATIONS FOR EARTHWORK

A. <u>General Description</u>

- 1. This item shall consist of all clearing and grubbing, removal of existing obstructions, preparation of the land to be filled, filling the land, spreading, compaction and control of the fill, and all subsidiary work necessary to complete the grading of the cut and fill areas to conform with the lines, grades and slopes as shown on the accepted plans.
- 2. The Geotechnical Engineer is not responsible for determining line, grade elevations or slope gradients. The property owner or his representative shall designate the party that will be responsible for those items of work.

B. <u>Geotechnical Report</u>

- 1. The Geotechnical Report has been prepared for this project by Allerion Consulting Group (ACG), Roseville, California, (916-742-5096). This report was for design purposes only and may not be sufficient to prepare an accurate bid. A copy of the report is available for review at **ACG's** office.
- 2. Contents of these <u>guide</u> specifications shall be integrated with the Geotechnical Report of which they are a part and <u>shall not be used as a self-contained document</u>. Where a conflict occurs between these guide specifications and the conclusions and recommendations contained in the report, then the conclusions and recommendations shall take precedence and these guide specifications adjusted accordingly.

C. <u>Site Preparation</u>

- 1. Clearing Area(s) to be Filled: All trees, brush, logs, rubbish, and other debris shall be removed and disposed of to leave the areas that have been disturbed with a neat appearance. Underground structures shall be removed or may be crushed in place upon approval by the Geotechnical Engineer. Excavations and depressions resulting from the removal of the above items shall be cleaned out to firm undisturbed soil and backfilled with suitable materials in accordance with the specifications contained herein. Stockpiles of clean soil may be reused as filled material provided the soil is free of significant vegetation, debris, rubble, and rubbish and is approved by the Geotechnical Engineer.
- 2. Surfaces upon which fill is to be placed, as well as subgrades of structure pad(s) left at existing grade, shall have all organic material removed; or, with permission of the Geotechnical Engineer, closes cut and remove vegetation and thoroughly disc and blend the remaining nominal organics into the upper soil. Discing must be thorough enough so that no concentrations of organics remain, which may require re-discing or cross-discing several times.
- 3. Organic laden material removed per paragraph C.2. above, may be used as fill in landscaped areas provided that the material shall not extend closer than ten (10) feet to any structure, shall not exceed two (2) feet in thickness or be used where the material could, in the opinion of the Geotechnical Engineer, create a slope stability problem, and shall be compacted to at least eighty-two (82) percent relative compaction per ASTM Test Designation D 1557. Alternatively, the organic laden material may be hauled off-site and suitably disposed of.

- 4. Upon completion of the organic removal, exposed surface shall be plowed or scarified to a depth of at least six (6) inches, and until the surface is free from ruts, hummocks, or other uneven features which would tend to prevent uniform compaction by the equipment to be used. Where vegetation has been close cut and removed and remaining organics blended with the upper soil, further scarifying may not be necessary. Where fills are to be placed on hill slopes, scarifying shall be to depths adequate to provide bond between fill and fill foundation. Where considered necessary by the Geotechnical Engineer, (typically where the slope ratio of the original ground is steeper than five (5) horizontal to one (1) vertical), the ground surface shall be stepped or benched to achieve this bond. Vertical dimension of the required benches shall be as determined by the Geotechnical Engineer, based upon location, degree, and condition of the hill slope.
- 5. After the foundation for the fill has been cleared and scarified, it shall be disced or bladed until it is uniform and free from large clods, uniformly moisture conditioned to the range specified by the Geotechnical Engineer, and compacted to not less than [refer to report -- if not recommended, use 90] percent of maximum dry density as determined by ASTM D 1557, or to such other density as may be determined appropriate for the materials and conditions and acceptable to the Geotechnical Engineer and the owner or his representative.

D. Fill Materials

- 1. Materials for fill shall consist of material approved by the Geotechnical Engineer.
- 2. The materials used for fill shall be free from organic matter and other deleterious substances and shall not contain rocks, clods, lumps, or cobbles exceeding four (4) inches in greatest dimension with not more than fifteen (15) percent larger than two and one-half (2-1/2) inches.
- 3. Imported materials to be used for fill shall be non-expansive [typically, have a plasticity index not exceeding twelve (12)], shall be of maximum one (1) inch size, and shall be tested and approved by the Geotechnical Engineer prior to commencement of grading and before being imported to the site.
- 4. The Contractor shall notify the Geotechnical Engineer at least four (4) working days in advance of the Contractor's intention to import soil; shall designate the borrow area; and, shall permit the Geotechnical Engineer to sample the borrow area for the purposes of examining the material and performing the appropriate tests to evaluate the quality and compaction characteristics of the soil. Compaction requirements for the material shall be based upon the characteristics of the material as determined by the Geotechnical Engineer.

E. Placement of Fill

- 1. The selected fill material shall be placed in level, uniform layers (lifts) which, when compacted, shall not exceed six (6) inches in thickness. Water shall be added to the fill, or the fill allowed to dry as necessary to obtain fill moisture content at which compaction as specified can be achieved. Each layer shall be thoroughly mixed during the spreading to obtain uniformity of moisture in each layer.
- 2. The fill material shall be compacted within the appropriate moisture content range (typically optimum to slightly above the optimum) as determined by the Geotechnical Engineer for the soil(s) being used.

- 3. Each layer of fill shall be compacted to not less than [refer to report; if not recommended, use 90] percent of maximum dry density as determined by ASTM Test Designation D 1557. Compaction equipment shall be of such design that it will be able to compact the fill to the specified density. Compaction shall be accomplished while the fill material is within the specified moisture content range. Compaction of each layer shall be continuous over its entire area and the compaction equipment shall make sufficient trips to ensure that the required density has been obtained. No ponding or jetting is permitted.
- 4. If work has been interrupted for any reason, the Geotechnical Engineer shall be notified by the contractor at least two (2) working days prior to the intended resumption of grading.

F. <u>Geotechnical Engineer</u>

Owner is retaining Geotechnical Engineer to make observations and tests to determine general
compliance with Plans and Specifications, to verify expected or unexpected variations in subsurface
conditions, and to give assistance in appropriate decisions. Cost of Geotechnical Engineer will be
borne by the Owner, except costs incurred for re-tests and/or re-observations caused by failure of
the Contractor to meet specified requirements will be paid by the Owner and back charged to
Contractor.

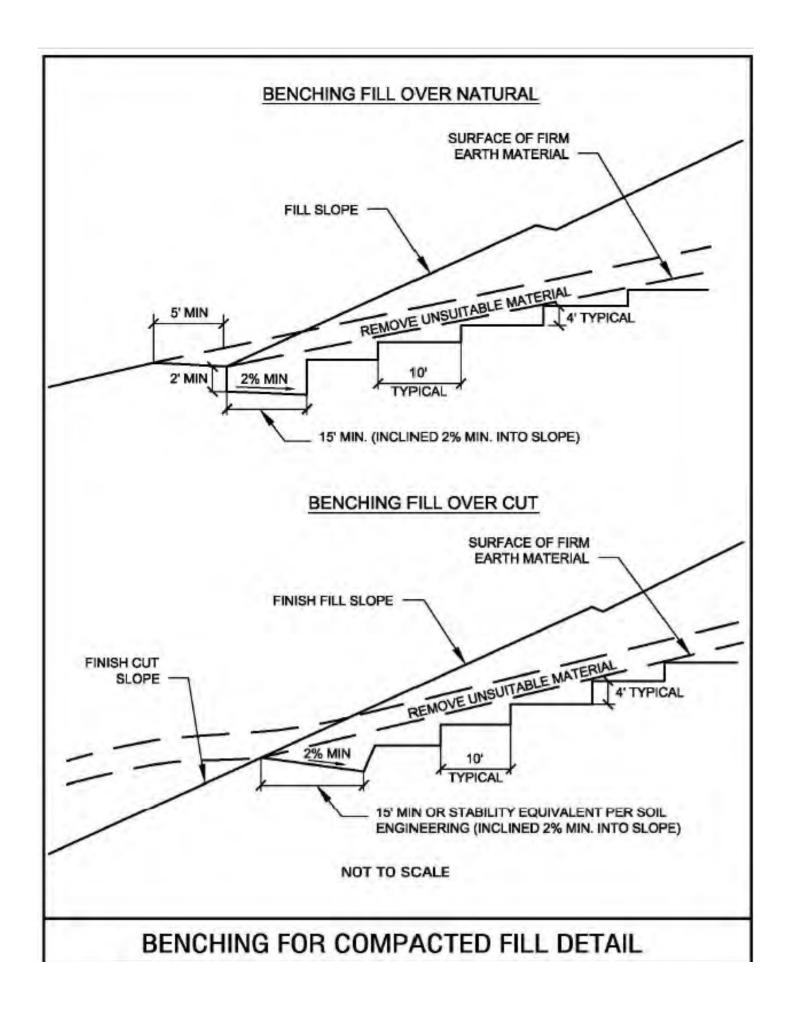
G. Observation and Testing

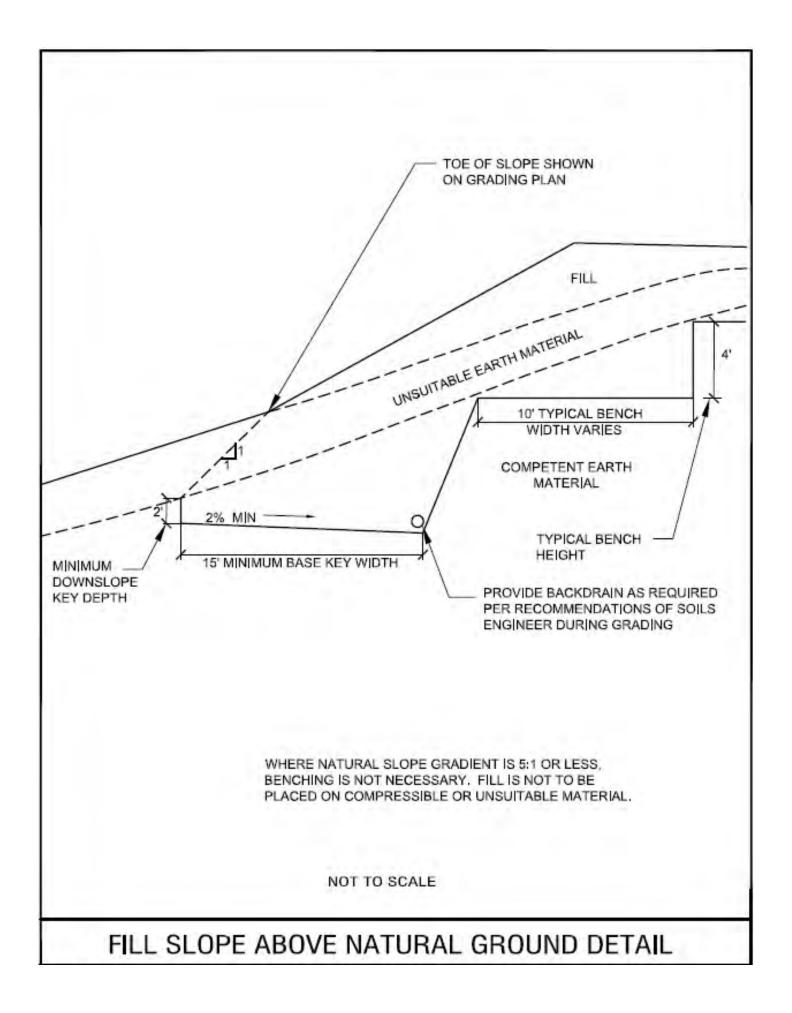
- 1. Field density tests shall be made by the Geotechnical Engineer or his representative of the compaction of each layer of fill. Density tests shall be taken in the compacted material below any surfaces disturbed by the construction equipment. When these tests indicate that the density of any layer of fill or portion thereof is below the required density or moisture content, the particular layer or portion shall be reworked until the required density or moisture content has been obtained.
- 2. All aspects of the site earthwork shall be observed and tested as deemed necessary by the Geotechnical Engineer or his representative so that he can render a professional opinion of the completed fill for substantial compliance with plans and specifications and design concepts. The grading contractor shall give the Geotechnical Engineer at least two (2) working days' notice prior to beginning any site earthwork to allow proper scheduling of the work.

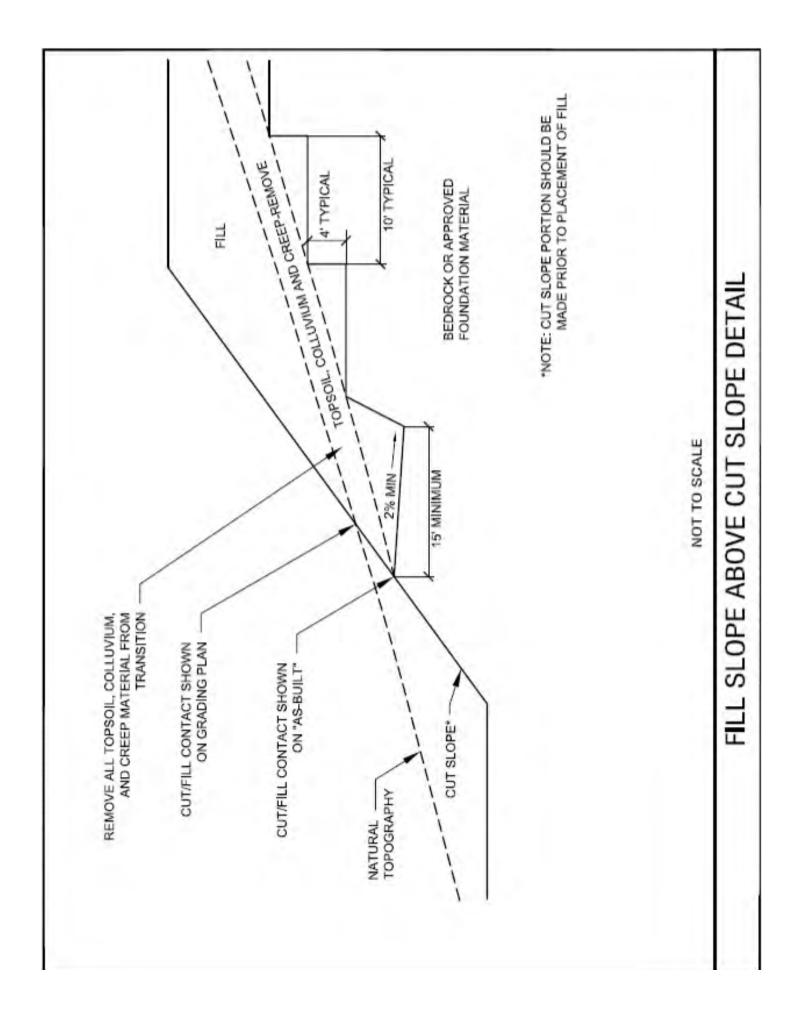
H. <u>Seasonal Limits</u>

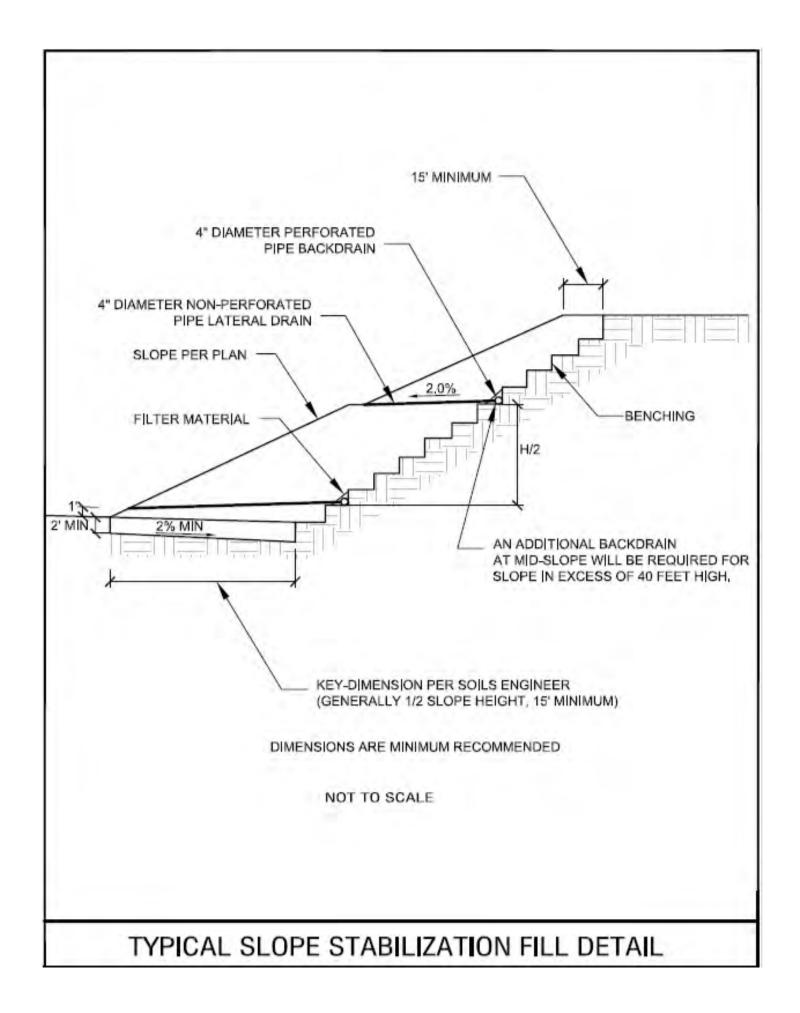
No fill material shall be placed, spread, or compacted during unfavorable weather conditions. When
work is interrupted by heavy rain, fill operations shall not be resumed until the Geotechnical Engineer
or his representative indicates that the moisture content and density of the previously placed fill are
as specified.

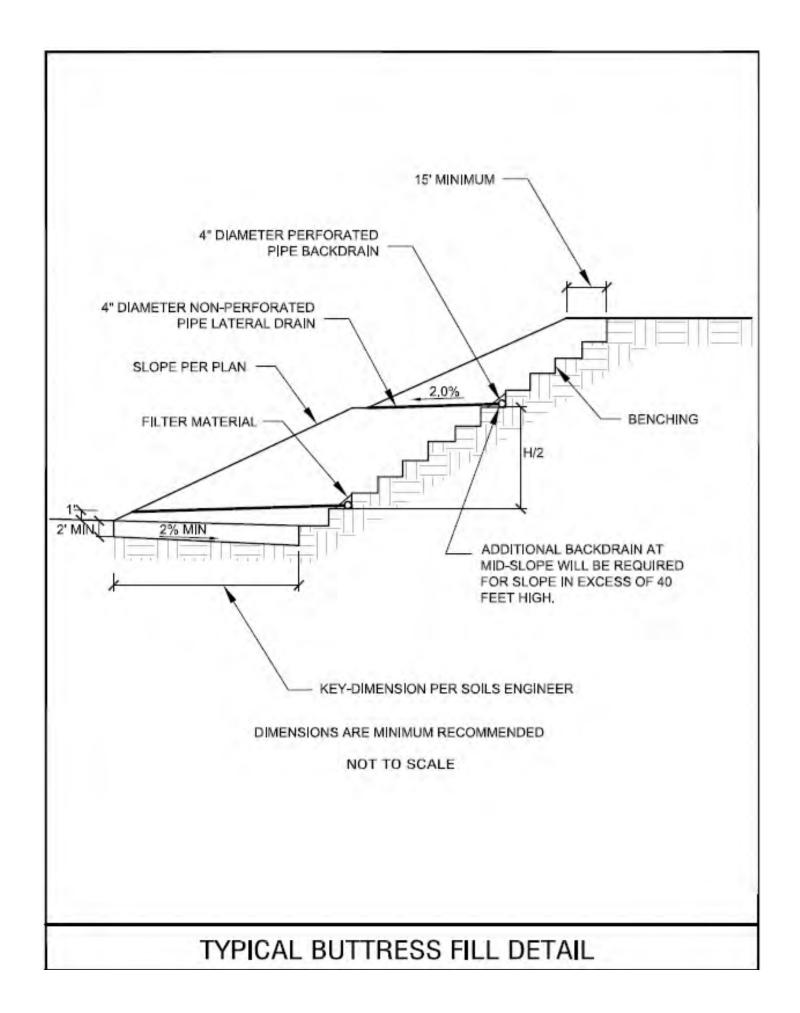
GRADING DETAILS (On following pages)

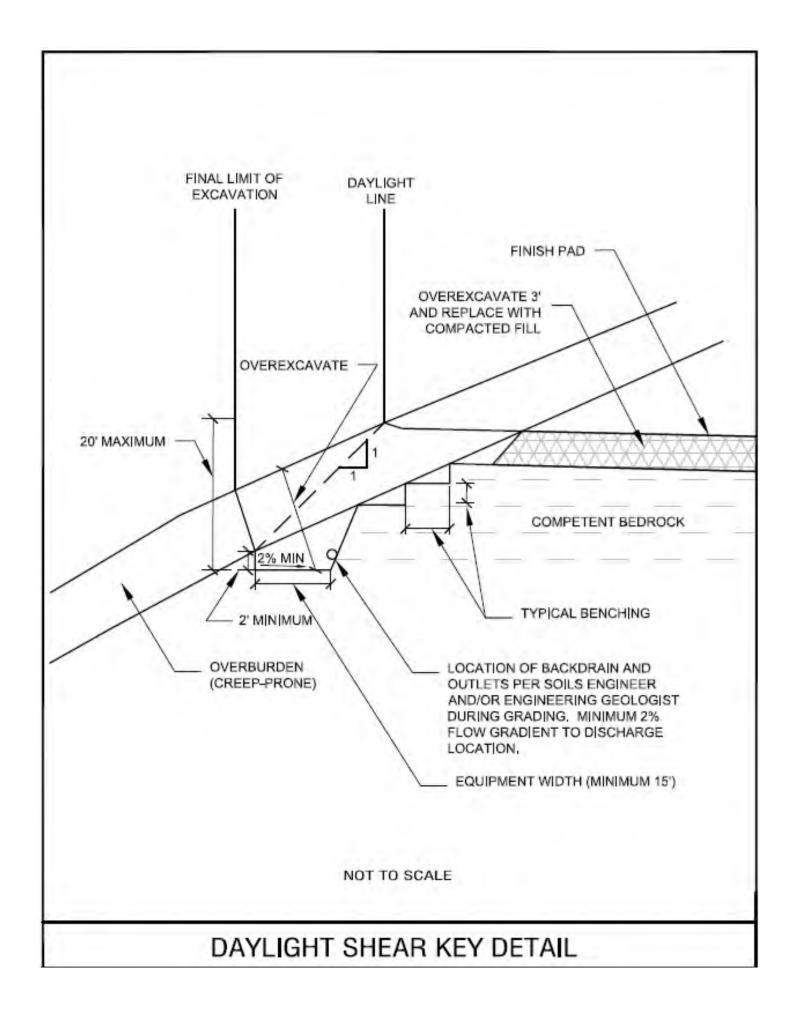


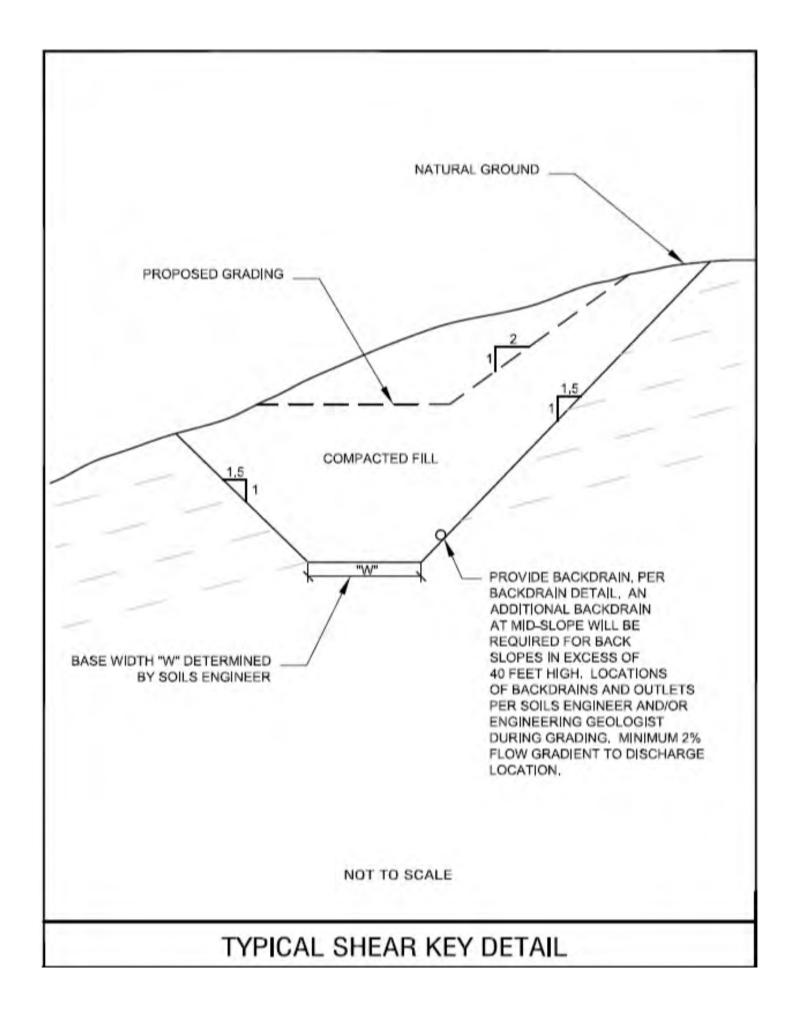


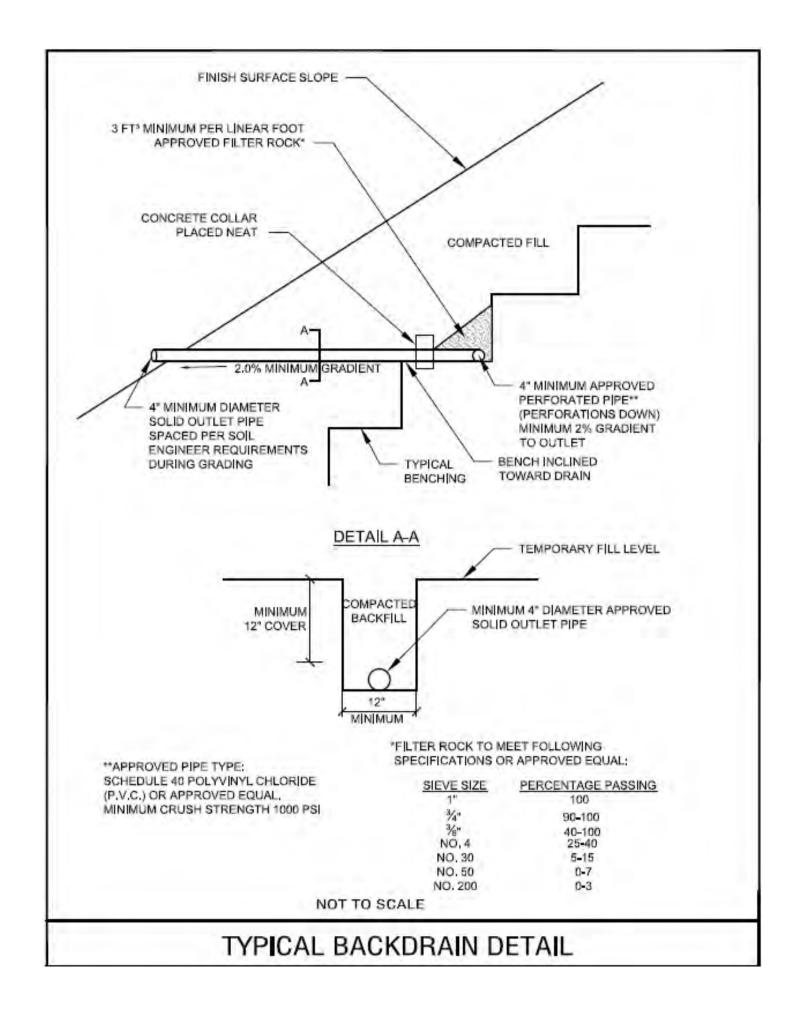


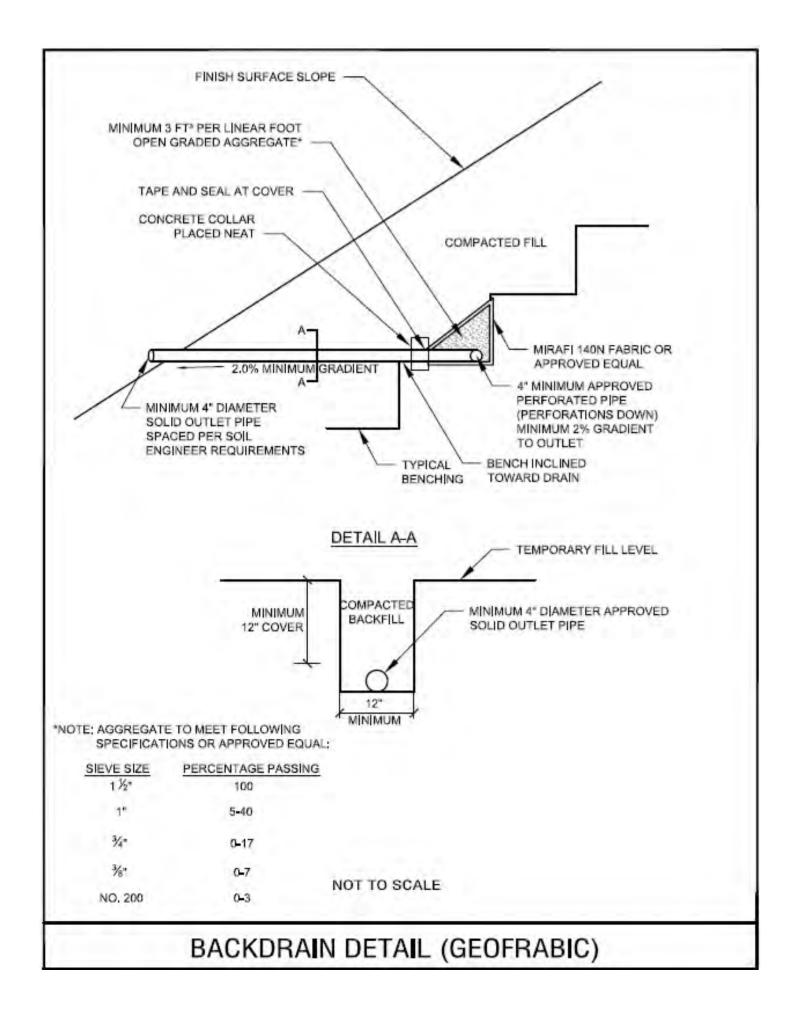


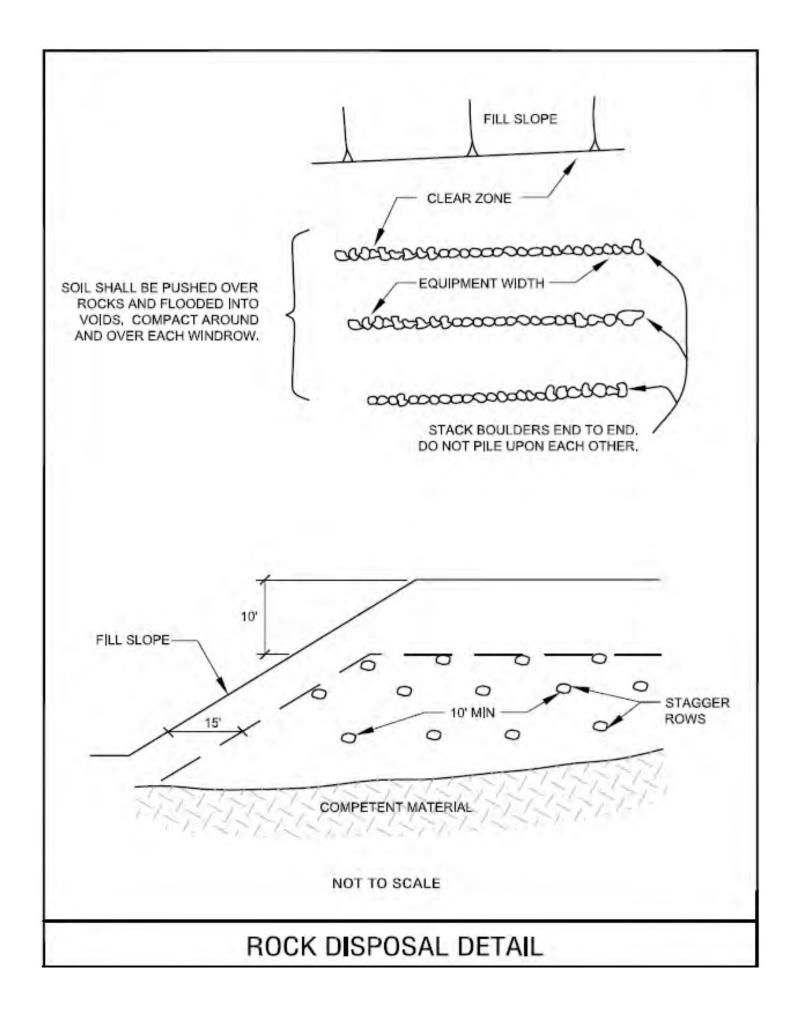


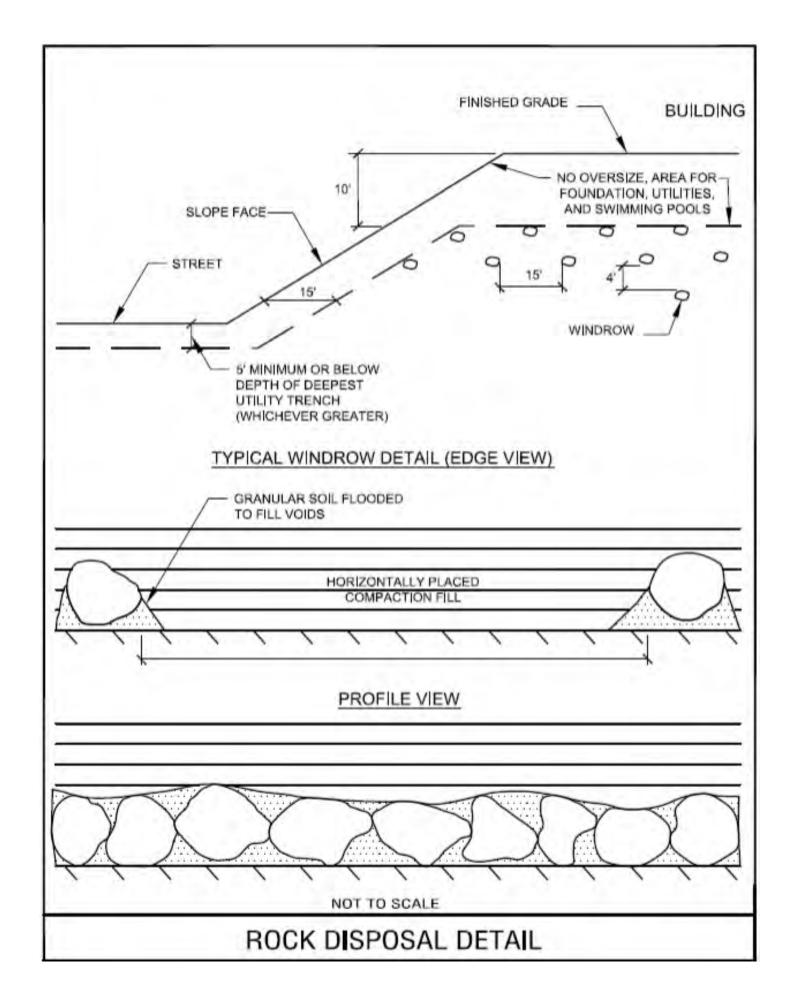


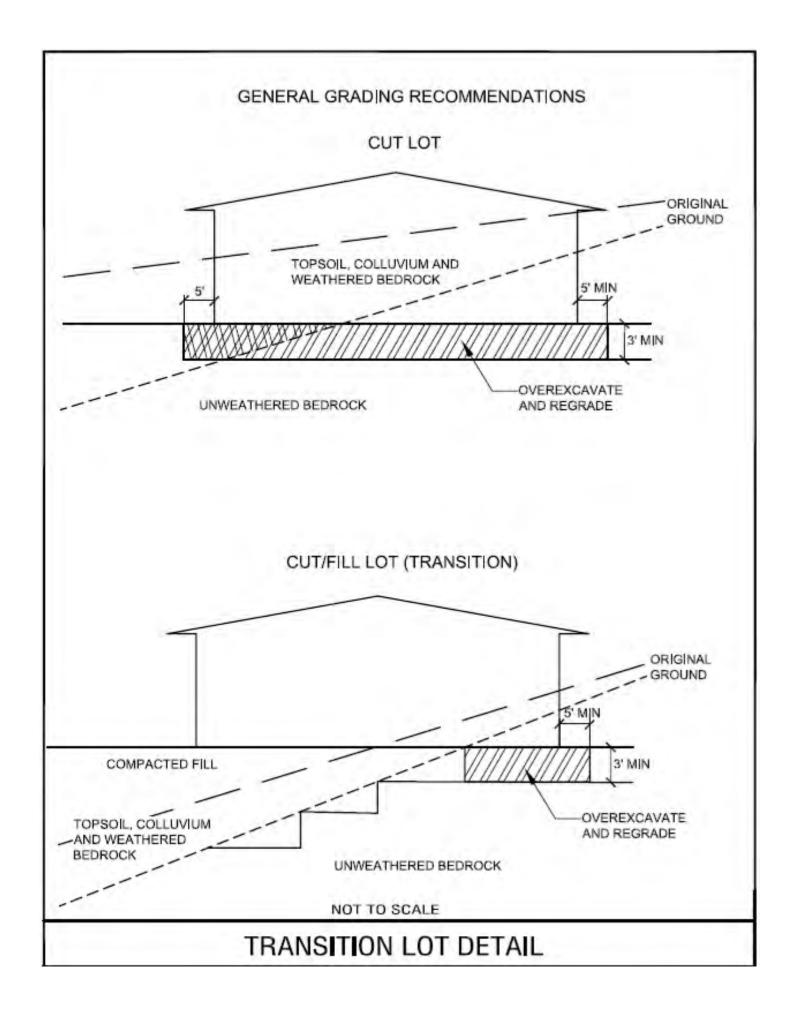


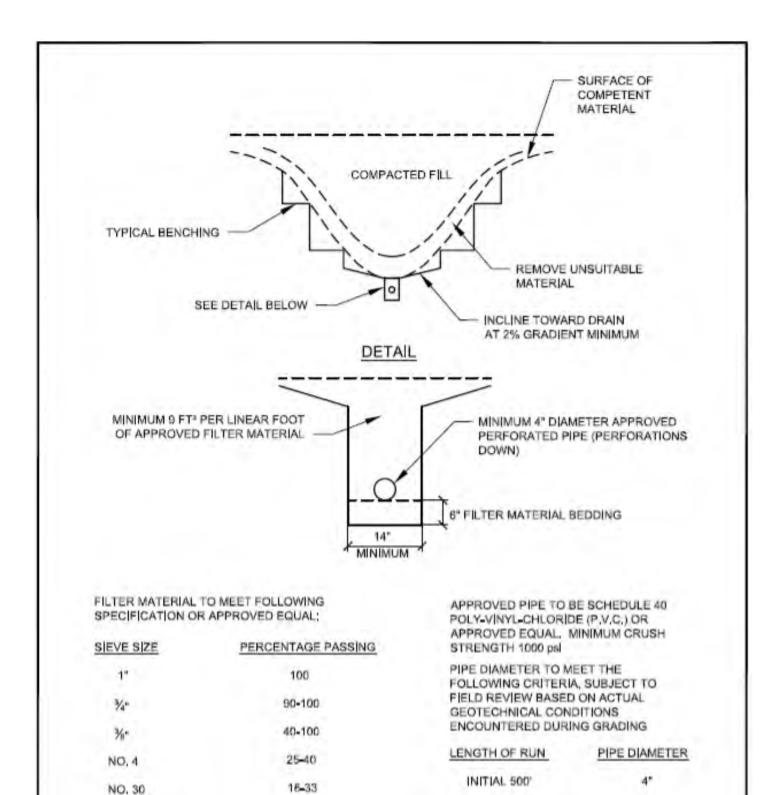












TYPICAL CANYON SUBDRAIN DETAIL

NOT TO SCALE

5-15

0-7

0-3

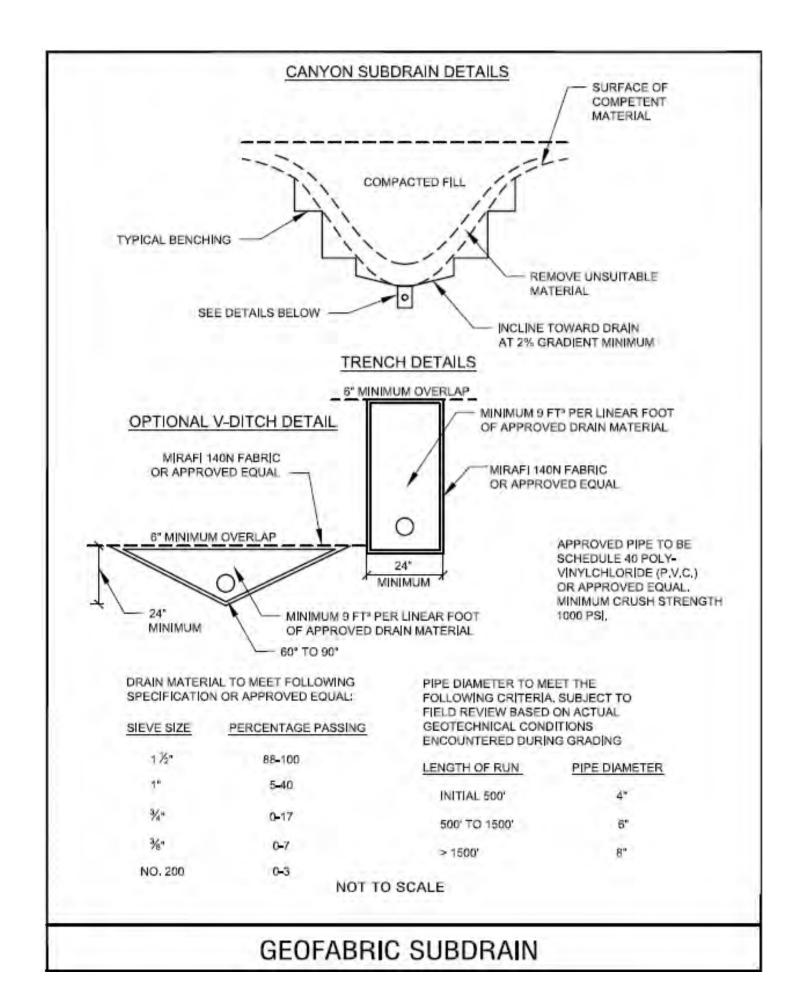
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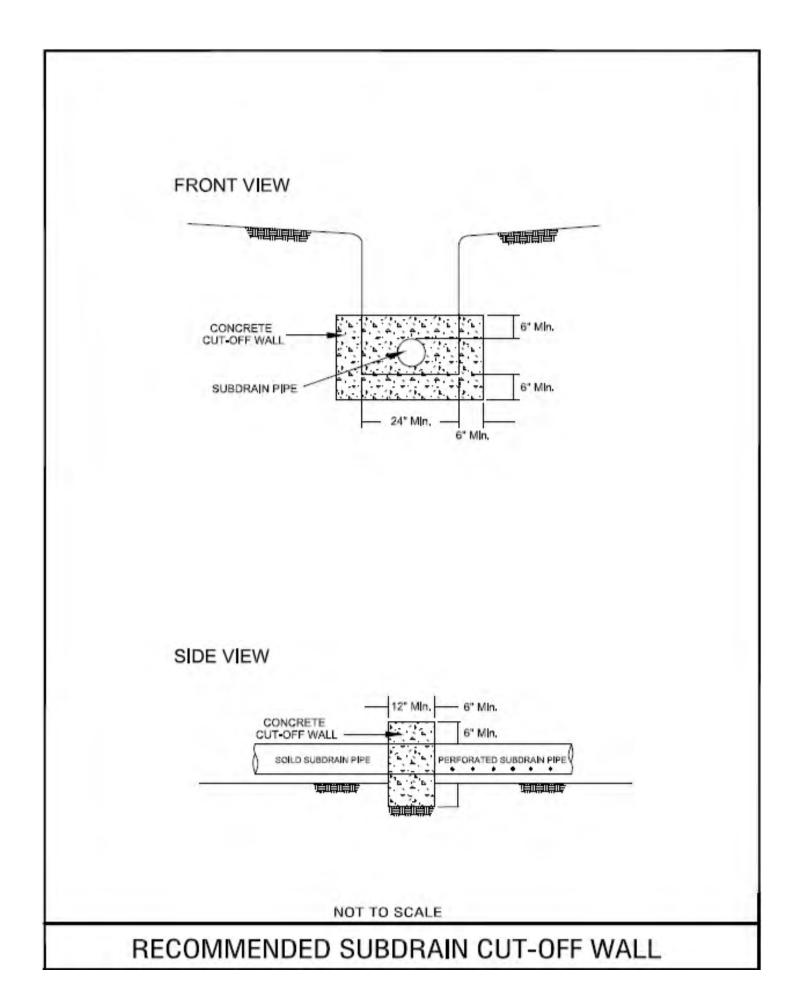
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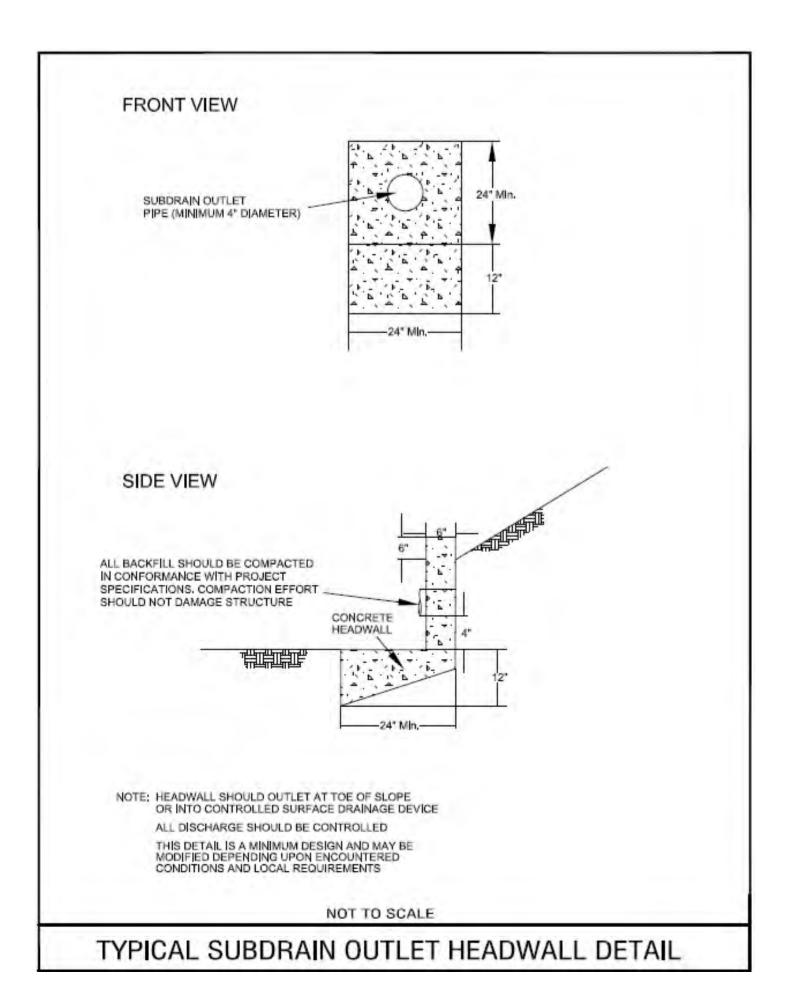
NO, 200

500' TO 1500'

> 1500"









APPENDIX E

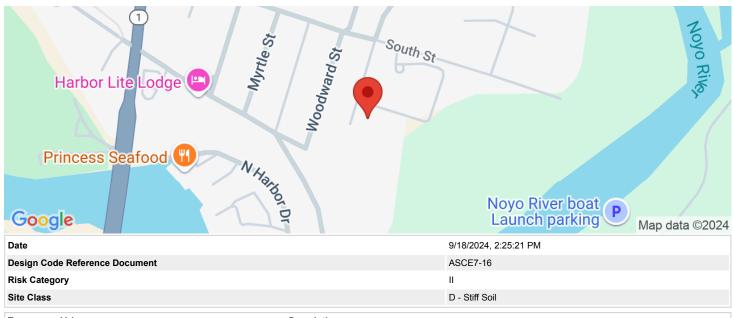
SEAOC/OSHPD U.S. Seismic Hazard Maps





860 Hazelwood St, Fort Bragg, CA 95437, USA

Latitude, Longitude: 39.4286097, -123.8020746



Туре	Value	Description
S _S	1.505	MCE _R ground motion. (for 0.2 second period)
S ₁	0.607	MCE _R ground motion. (for 1.0s period)
S _{MS}	1.505	Site-modified spectral acceleration value
S _{M1}	null -See Section 11.4.8	Site-modified spectral acceleration value
S _{DS}	1.003	Numeric seismic design value at 0.2 second SA
S _{D1}	null -See Section 11.4.8	Numeric seismic design value at 1.0 second SA

Туре	Value	Description
SDC	null -See Section 11.4.8	Seismic design category
Fa	1	Site amplification factor at 0.2 second
F_{v}	null -See Section 11.4.8	Site amplification factor at 1.0 second
PGA	0.654	MCE _G peak ground acceleration
F_{PGA}	1.1	Site amplification factor at PGA
PGA_{M}	0.719	Site modified peak ground acceleration
T_L	12	Long-period transition period in seconds
SsRT	1.868	Probabilistic risk-targeted ground motion. (0.2 second)
SsUH	2.075	Factored uniform-hazard (2% probability of exceedance in 50 years) spectral acceleration
SsD	1.505	Factored deterministic acceleration value. (0.2 second)
S1RT	0.777	Probabilistic risk-targeted ground motion. (1.0 second)
S1UH	0.871	Factored uniform-hazard (2% probability of exceedance in 50 years) spectral acceleration.
S1D	0.607	Factored deterministic acceleration value. (1.0 second)
PGAd	0.654	Factored deterministic acceleration value. (Peak Ground Acceleration)
PGA_UH	0.821	Uniform-hazard (2% probability of exceedance in 50 years) Peak Ground Acceleration
C _{RS}	0.9	Mapped value of the risk coefficient at short periods
C _{R1}	0.892	Mapped value of the risk coefficient at a period of 1 s
C_V	1.401	Vertical coefficient

DISCLAIMER

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Corporate Office:

1050 Melody Lane, Suite 160 Roseville, California 95678

Ph: 916.742.5096

<u>AllerionConsulting.com</u>

Paoli, Diana

From: Jacob Patterson < jacob.patterson.esq@gmail.com>

Sent: Friday, May 9, 2025 3:33 PM

To: City Clerk

Cc: Whippy, Isaac; Marie Jones

Subject: Public Comment -- 5/12/25 CC Mtg., Item No. 7A, Hazelwood Senior Apartments

City Council & Staff,

First, I am not sure why the public comments from the Planning Commision hearing were not included among the agenda materials, we usually include them for more significant development projects like this one since they may have relevant information and are part of the administrative record for permit reviews. You should read through them in addition to any new written comments provided for the City Council hearing on this project. The concerns raised in those written comments are not otherwise included in your materials if they weren't addressed by the PC so you are being asked to make a decision with incomplete information.

I reviewed the agenda materials and want to suggest an additional special condition. We should require the developer to install conduit to the property line to allow for our new broadband internet fiber to be connected to the building so future residents can have access to the service. If we don't do that for bigger projects like this, the utility itself will have to pay for the much-more-extensive trenching, etc., to connect the building to our network. They will already be including other conduit for utility connections so it only makes sense to add it up-front rather than having to come back later and install it ourselves. The future installation of the service drops are concerning and could lead to significantly increased project expenses that we want to avoid. These types of details are handled in future construction documents anyway that are reviewed by staff and the building department so adding the requirement isn't particularly burdensome. Apartment complexes like this one are likely to be the more challenging and expensive service drops so every penny the City utility can save is good.

On a separate matter (although I care less about this topic than the broadband conduit), I recommend requiring a backup power supply for safety reasons. The developer has installed these at other similar developments and the topic was briefly discussed by the Planning Commission, but not actually addressed. You should add this requirement so elevators are available in emergency instances for evacuation purposes or even for utility outages that occur. This is a common sense safety issue, IMO, which is why other jurisdictions have required generators. I think either generators or backup batteries are appropriate and whichever one the developer wants to install is fine with CDD Director approval.

--Jacob

Paoli, Diana

From: Jacob Patterson < jacob.patterson.esq@gmail.com>

Sent: Friday, May 9, 2025 3:58 PM

To: City Clerk

Cc: Whippy, Isaac; Marie Jones

Subject: Public Comment 2 -- 5/12/25 CC Mtg., Item No. 7A, Hazelwood Senior Apartments

City Council & Staff,

One more thing I forgot to mention, although I don't think it alters the ultimate recommendation, is that the following statement in the staff report is not accurate but Marie probably doesn't know that:

Package Desalination Plant. The City has already constructed and <u>currently operates</u> a package desalination system which allows the City to pump brackish water from the Noyo River during high tides and low stream flows, which significantly increases the time periods in which the City can collect water while reducing the negative impact of water withdrawal during extreme drought conditions (low water flow on the river). The desalination system can process up to 144,000 gallons per day in drought conditions, which is quite significant as total water demand in a drought year is about 550,000 gallons per day. With the package desalination plant, the City can serve this project without withdrawing additional water during low flow conditions when the tide is out, which is the only time period with pumping limitations. Instead, the City can withdraw more water during high tides when the water is brackish and when there are no impacts on fish. Additionally, the City can withdraw water during high tides and store it in the raw water pond for future treatment thereby ensuring adequate water availability even when there are multiple extremely low tides in a row during any given time period.

In actuality, even if this was true in the past, our small desal unit is offline and has been offline for quite some time. When the water treatment plant was being upgraded, it never got reinstalled. In fact, it doesn't even work, I think because we failed to operate it frequently enough and the membranes dried out and need to be replaced. For some reason that doesn't make sense to me, we haven't done this. It really should be repaired and reattached to our system and operated frequently enough (even when we don't need the extra treated water) to keep it properly-maintained and operational. I think it is a shame that this state-funded equipment is just being stored at the City Yard. We should probably look into getting it back online so it is ready and available for use if we need it.

--Jacob



City of Fort Bragg

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

Text File

File Number: 25-88

Agenda Date: 5/12/2025 Version: 1 Status: Business

In Control: City Council File Type: Staff Report

Agenda Number: 8A.

Receive Report and Consider Adopting Resolution of the Fort Bragg City Council Authorizing Submittal of an Application to the California Department of Housing and Community Development for funding under the HOME Investment Partnerships Program; and if Selected, the Execution of a Standard Agreement, and Amendments Thereto, and of Any Related Documents Necessary to Participate in the HOME Investment Partnerships Program



CITY COUNCIL STAFF REPORT

TO: City Council DATE: May 12, 2025

DEPARTMENT: Economic Development Department

PREPARED BY: Lacy Sallas, Grants Coordinator

PRESENTER: Lacy Sallas, Grants Coordinator; Cameron Johnson, AMG Associates

AGENDA TITLE:

Receive Report and Consider Adopting City Council Resolution Authorizing Submittal of an Application to the California Department of Housing and Community Development for Funding Under the HOME Investment Partnerships Program; and If Selected, the Execution of a Standard Agreement, Any Amendments Thereto, and of Any Related Documents Necessary to Participate in the HOME Investment Partnerships Program

RECOMMENDATION

Adopt a resolution authorizing submittal of an application to the California Department of Housing and Community Development for funding under the HOME Investment Partnerships Program; and if selected, the execution of a Standard Agreement, any amendments thereto, and of any related documents necessary to participate in the HOME Investment Partnerships Program.

BACKGROUND

The State HOME program provides grants and loans to assist cities, counties and nonprofit community housing development organizations to create and retain affordable housing. HOME activities typically include housing rehabilitation, new construction, and rehabilitation for both single-family and multi-family projects. All activities must benefit low-income renters, homebuyers, or homeowners. HOME funds that are awarded to jurisdictions are generally paid out on a reimbursement basis, after eligible use and documentation of expenditures is approved by HCD. HOME income limits for project and program beneficiaries (that is, residential renters and homeowners) are the same as Community Development Block Grant (CDBG) income limits. Cities such as Fort Bragg that do not receive HOME funds directly from the Federal Department of Housing and Urban Development (HUD) are eligible to apply for competitive HOME funding from the State Department of Housing and Community Development.

On July 8, 2024, City Council received a preliminary report regarding a potential partnership with a developer, AMG Associates (AMG), to construct an affordable senior housing project. At that time, the Council requested to receive a presentation with more detail regarding the potential project before committing to submittal of an application for funding.

On December 30, 2024, the California Department of Housing and Community Development (HCD) released the Notice of Funding Availability (NOFA) for apporiximately \$35 million in federal funds for the HOME Investment Partnerships Program (HOME). The funding for this NOFA is from the Departement's Fiscal Year 2024 (FY24) HOME allocation from the US Department of Housing and Urban Development (HUD). As announced on Januray 14, 2025, and amended in the NOFA on February 11, 2025, the deadline was extended from March 24, 2025 to May 22, 2025, to allow more time for communities, devleopers, and tribes to apply for assistance.

During this time, the developer has been working to complete the planning phase of the project, in order to present a full picture to the City Council and the public before the Council considers partnering on an application. Prior to discussing this item of business, the City Council will have considered approval of the necessary entitlements and conducted a public hearing to solicit public input on the matter. Now, the City Council may consider whether to commit City resources to partner on a HOME IPP application to help fund construction of the project.

DISCUSSION AND ANALYSIS

Eligible activities under the FY24 HOME NOFA are as follows:

Project Activities:

- Multifamily Rental Projects (new construction, acquisition only, and/or rehabilitation with or without acquisition); and
- First-Time Homebuyer ("FTHB") Projects (subdivision development)

Program Activities:

- First-Time Homebuyer ("FTHB") Programs, including infill new construction programs where feasible;
- Owner-Occupied Rehabilitation ("OOR") Programs; and
- Tenant-Based Rental Assistance ("TBRA") Programs

Funding limits under the FY24 HOME NOFA are as follows:

CHDOs may apply for up to \$4,5000,000 for a multifamily rental Project and up to \$75,000 for CHDO operating costs, for a total maximum request of \$4,575,000.

Developers may apply for up to \$4,500,000 for a Project. Developers are not eligible for reimbursement of administrative costs or Project-related soft costs. Prior to issuing the Award letter, the Department will evaluate the financial feasibility of each Project and may, as necessary for Project feasibility or to prevent over subsidizing

a Project in accordance with 25 C.C.R. § 8300 et seq., decrease the HOME award amount.

State Recipients (excluding Developers) may apply for up to \$4,500,000 for a multifamily rental Project, up to \$50,000 for administrative costs, and up to \$50,000 for Project-related soft costs, for a maximum total request of \$4,600,000. Please note that Project-related soft costs are included in the maximum per-unit-subsidy limit.

For State Recipient Applicants, maximum award limits apply only to the amount of HOME funds requested through this NOFA and do not include any HOME Program Income (PI) the Applicant proposes to use.

The proposed project, construction of affordable senior housing, qualifies for HOME funding as a Mulifamily Rental Project, and the City qualifies for HOME funding as a State Recipient. As a new construction Multifamily Renal Project, the proposed project would be subject to a State affordability period of 55 years and a Federal affordability period of 20 years.

As a note, the City applied for a Tenant Based Rental Assistance Program under the FY22-23 HOME NOFA, and that application is currently pending. The pending FY22-23 Program application does not affect and will not be affected by submittal of a Multi-Family Rental Project application for funding for the senior housing project.

The proposed project has a total anticipated budget of \$25,000,000.00, that will be financed through a combination of a HOME loan, low income housing tax credits, and permanent financing. The proposed HOME application would be a low interest multi-year loan that would be paid back by the developer to the City. The City would retain the repaid funds in the City's Housing Trust Fund which can then be used for other housing projects. The proposed HOME application is for a total of \$4,600,000. Of that total, \$4,500,000 will fund the loan to the developer; \$50,000 will fund project-related soft costs, such as compelation, review, and execution of loan documents and affordability covenants; and \$50,000 will fund administrative costs of the HOME program, such as annual reporting, funds request, and financial management.

Proposed HOME Budget				
Loan to Developer	\$4,500,000			
Project-related Soft Costs	\$50,000			
Administrative Costs	\$50,000			
Total	\$4,600,000			



The proposed project, the Hazelwood Senior Apartments, is a 49-unit senior housing new construction project located on 2.99 +/- acres of land identified as APN 018-210-29. With a mix of 41 one-bedroom units (613 gross sq. ft.) and 8 two-bedroom units (802 gross sq. ft), the proposed project will target seniors earning up to 30-60% of the area median income for Mendocino County. The Project will provide 75 parking stalls, inclusive or guest parking. Each unit will have at least 1 covered parking space.

The newly constructed units will be apartments in 1 three-story residential building. The type of construction will be wood frame supported by perimeter foundations with concrete slab flooring. This type of construction will allow the building to conform to the natural terrain with only minor amounts of grading. The exterior will be a combination of hardipanel and shake siding with Class A composite roof shingles and stone veneer accents. Architectural accents will be incorporated, providing an aesthetically appealing exterior that blends with the character of the surrounding neighborhood and the community of Fort Bragg. The development will meet Title 24 energy efficiency standards. Minimum construction standards will be adhered to in order to assure that a quality family housing development is provided.

The buildings will be oriented appropriately throughout the site with the intent to create a community concept for families to enjoy while remaining social and active. The development will include a 2,367 sq. ft. community building with a common kitchen, exercise room, laundry facility, and business center. Additionally, the development will include covered picnic tables with BBQs and pergolas made from non-combustible material, a bocce ball court, a community garden with raised planter beds, and a fenced dog park. An on-site resident manager will provide assistance and management while residing in a two-bedroom manager's unit.

Within the units, tenants will enjoy standard features such as refrigerators, exhaust fans, dishwashers, disposals and ranges with ovens. All units feature an outdoor patio or balcony Page 4

and storage space. The design of these apartments will adhere to all necessary requirements to satisfy Section 504 as well as any additional mandates that the local jurisdiction deems appropriate.

AMG's current estimates score this project at 1324 out of the 1550 maximum possible points. Historically speaking, 1324 is a winning score and has been for the last several funding cycles, and we are therefor optiminstic about our success. HCD is expected to release the award list on July 7, 2025. If awarded, AMG would submit for 9% tax credits around March of 2026, and break ground by Fall or Winter of 2026.

Staff recommends partnering with the developer on an application for HOME IPP funding, as this project supports many housing-related goals set by the City's current Housing Element and strategic planning 2024-2027 documents (discussed below and more fully in the Staff Report attached to item 7A). As no other developers have requested that the City partner on a HOME IPP application, there are no other projects competing for City Council consideration at this time.

Should the City Council wish to pursue an application for funding for this project, they must adopt of a resolution authorizing submittal of the application and execution of a subsequent Standard Agreement, including any documents necessary for participation in the HOME program. If the proposed resolution is adopted, AMG staff will prepare all application documents, and City staff will complete application documents requiring City information or approval. Although AMG will prepare and complete as much of the application as they are able, there is still a significant portion of the application that will require City staff to dedicate time. AMG and City staff will work together to ensure all required documents and information are submitted to HCD prior to the application deadline.

FISCAL IMPACT/FUNDING SOURCE

If the proposed resolution is adopted, the fiscal impact will be negligible. AMG staff will complete the bulk of application forms, but City staff will need to spend time preparing necessary forms prior to application submittal, and entering the application in eCivis (HCD's grants management portal). AMG has agreed to allow the City to recoup staff hours spent on the HOME application by charging the hours to the project's Developer Deposit Account (DDA).

If the application is successful and funds are awarded, staff time spent on project-related tasks and grant administration (reporting, funds requests, etc.), will be funded by the grant's Project-related Soft Costs and Administration funds on a reimbursement basis. The City will realize additional financial benefit in the future, as repaid loan funds may be utilized for future housing projects as allowable.

ENVIRONMENTAL ANALYSIS:

This project was found to be statutorily exempt from CEQA pursuant to section 15332 - Class 32 InFill Development Projects and 15192 Infill Housing Development.

The project has not yet cleared NEPA review. If the project is awarded HOME funds, it will have to undergo successful NEPA clearance before those funds are to be made available.

STRATEGIC PLAN/COUNCIL PRIORITIES/GENERAL PLAN CONSISTENCY

This project aligns with the following goals from the City's Strategic Plan 2024-2028+:

Goal 1: Invigorate Economic Opportuntiy and Community Vibrancy:

Goal 1E: Develop affordable and market-rate housing that is accessible for every arc of residents' lifetime experiences including Fort Bragg's permanent and temporary workforce, students, retirees, and newcomers who want to share our rich cultural and natural home.

Goal 5: Fund our Future with Finanical and Fiscal Resoponsiblity:

Goal 5B: Identify strategic partnerships to share investments and costs through a variety of models.

The State HOME mission is to assist cities, counties, developers, including Native American Entities, and nonprofit community housing development organizations (CHDOs) to create and retain affordable housing. This mission is consistent with the four broad primary goals of the City's 2019 Housing Element:

The primary goals of the 2019 Fort Bragg Housing Element are to encourage, facilitate, support and help fund:

- 1. New market rate and affordable housing that serves our residents and businesses in Fort Bragg;
- 2. New affordable housing that serves our community's special needs populations;
- 3. Preservation of our existing housing stock; and
- 4. New housing that meets our Regional Housing Needs Allocation.

This project is consistent with all Coastal General Plan policies. The project is supported by and helps implement many housing policies of the Coastal General Plan and the City's Housing Element, as described briefly below and more fully in the Staff Report attached to Item 7A:

Goal H-2 Provide a range of housing, including single-family homes, townhouses, apartments, and other housing types to meet the housing needs of all economic segments of the community.

Policy H-2.7 Infill Housing: Encourage housing development on existing infill sites in order to efficiently utilize existing infrastructure.

The project includes studios and two- and one-bedroom apartments on an infill site.

Policy H-3.2 Encourage Senior Housing: Allow senior housing projects to be developed with density bonuses and flexible parking standards were found to be consistent with maintaining the character of the surrounding neighborhood consistent with the requirements of Policy H-3.5.

The proposed project would provide 48 affordable apartments for seniors.

Policy H-3.9 Housing for the Disabled: Continue to facilitate barrier-free housing in new development.

The project includes forty-nine ADA accessible residential units.

Policy H-4.1 Equal Housing Opportunity: Continue to facilitate nondiscrimination in housing in Fort Bragg.

This project will provide housing units without discrimination based on race, gender, sexual orientation, marital status, or national origin.

COMMUNITY OUTREACH

On February 24, 2025, the City Council conducted a legally noticed public hearing to discuss and consider preapproval of incentives.

On April 30, 2025, the Planning Commission conducted a legally noticed public hearing to discuss entitlements.

On May 12, 2025, the City Council will have conducted a legally noticed public hearing to discuss entitlements.

COMMITTEE REVIEW AND RECOMMENDATIONS

On July 8, 2024, City Council received a preliminary report on this potential project. At that time, the Council requested to receive a presentation with more detail regarding the potential project before committing to an application for funding.

On February 24, 2025, the City Council adopted a resolution providing preliminary preapproval of inclusionary housing incentives for the project.

On April 30, 2025, the Planning Commission considered the project and adopted a resolution recommending that the Council approve entitlements as amended.

On May 12, 2025, prior to receiving this presentation, the Council will have held a public hearing and considered approving the entitlements for this project.

ALERNATIVES:

Alternative 1: Do not adopt the resolution approving the application and request further information to be presented at a future City Council meeting before reconsidering the item. In order to meet the FY24 HOME deadline, the Council would need to schedule a special meeting prior to May 21, 2025.

Alternative 2: Do not adopt the resolution approving the application. This will result in the project being unfunded by FY24 HOME, which could cause the project to halt. As the City does not have another developer requesting partnership on a HOME application at this time, there would be no opportunity for the City to apply for a HOME project under the HOME IPP FY24 NOFA. Under this alternative, the City would not receive repaid loan funds to be used for future housing activities.

ATTACHMENTS:

- 1. Resolution
- 2. HOME Investment Partnerships Program Notice of Funding Availability FY24

NOTIFICATION:

Affordable Housing "Notify Me' subscriber list

RESOLUTION NO.____-2025

RESOLUTION OF THE FORT BRAGG CITY COUNCIL AUTHORIZING SUBMITTAL OF AN APPLICATION TO THE CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT FOR FUNDING UNDER THE HOME INVESTMENT PARTNERSHIPS PROGRAM; AND IF SELECTED, THE EXECUTION OF A STANDARD AGREEMENT, ANY AMNEDMENTS THERETO, AND OF ANY RELATED DOCUMENTS NECESSARY TO PARTICIPATE IN THE HOME INVESTMENT PARTNERSHIPS PROGRAM

WHEREAS, the California Department of Housing and Community Development (the "Department") is authorized to allocate HOME Investment Partnerships Program ("HOME") funds made available from the U.S. Department of Housing and Urban Development ("HUD"). HOME funds are to be used for the purposes set forth in Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, in federal implementing regulations set forth in Title 24 of the Code of Federal Regulations, part 92, and in Title 25 of the California Code of Regulations commencing with section 8200; and

WHEREAS, on December 30, 2024, and as amended on February 11, 2025, the Department issued a Notice of Funding Availability announcing the availability of funds under the HOME program (the "NOFA"); and

WHEREAS, in response to that HOME NOFA, the City of Fort Bragg, a municipal corporation (the "Applicant"), wishes to apply to the Department for, and receive an allocation of, HOME funds; and

NOW, THEREFORE, BE IT RESOLVED that, in response to the above-referenced HOME NOFA, the Applicant shall submit an application to the Department to participate in the HOME program and for an allocation of funds not to exceed four million six hundred thousand dollars (\$4,600,000.00) for the following activities and/or programs:

A 49-unit affordable senior housing project

To be located in Fort Bragg, Mendocino County, California.

BE IT FURTHER RESOLVED that, if the application for funding is approved, then the Applicant hereby agrees to use the HOME funds for eligible activities in the manner presented in its application as approved by the Department in accordance with the statutes and regulations cited above. The Applicant will also execute a Standard Agreement, any amendments thereto, and any and all other documents or instruments necessary or required by the Department or HUD for participation in the HOME program (collectively, the required documents).

BE IT FURTHER RESOLVED that Applicant authorizes Jason Godeke, Mayor of the City of Fort Bragg, or their designee(s) to execute, in the name of the Applicant, the HOME Standard Agreement.

BE IT FURTHER RESOLVED that the Applicant authorizes Jason Godeke, Mayor of the City of Fort Bragg, or their designee(s) to execute, in the name of the Applicant, all other required documents.

	regular meeting of the City Council of the City ay 2025, by the following vote:
AYES: NOES: ABSENT: ABSTAIN: RECUSED:	
ATTEST:	Jason Godeke Mayor
Diana Paoli City Clerk	

GAVIN NEWSOM. Governor

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

651 Bannon Street, Suite 400 Sacramento, CA 95811 www.hcd.ca.gov



December 30, 2024 February 11, 2025

MEMORANDUM FOR: ALL POTENTIAL APPLICANTS

FROM: Jenny Cho, Deputy Director

Division of Federal Financial Assistance

SUBJECT: HOME Investment Partnerships Program (HOME)

Amended 2024 Notice of Funding Availability

On January 14, 2025, the California Department of Housing and Community Development (HCD) announced that near-term deadlines would be extended to aid fire-impacted communities in recovery and rebuilding. This includes an extension to the application deadline for HOME projects and programs until May 22, 2025, to allow more time for communities, developers, and tribes to apply for assistance.

The California Department of Housing and Community Development (Department or HCD) is pleased to announce the release of this Notice of Funding Availability (NOFA) for approximately \$35 million in federal funds for the HOME Investment Partnerships Program (HOME). Funding for this NOFA is from the Department's Fiscal Year 2024 (FY24) HOME allocation from the U.S. Department of Housing and Urban Development (HUD), plus unencumbered funds and Program Income from previous years' allocations. (Note that the amount of funding available may change due to the factors listed on page 7, Section I (A) of this NOFA). This funding provides loans or grants to eligible HOME Applicants serving households with low- and very low-incomes, defined as at or below 80 percent (80%) of Area Median Income (AMI), and at or below 50 percent (50%) of AMI, respectively. This NOFA is subject to state and federal HOME regulations.

The Department will target 20 percent (20%) of the HOME funding for Eligible Applicants that meet the definition of a Native American Entity as set forth and provided in this NOFA. The Department and HOME Program team will provide comprehensive technical assistance to Native American Entities throughout the application process and during implementation of project or program activities.

NOTE: In an effort to improve access and equity within the HOME Program, the Department has called attention to tribal-specific information within this NOFA in green font. However, Native American Entity Applicants are encouraged to carefully read through all NOFA contents and application materials thoroughly, not exclusively the green font portions.

The HOME funds provided through this NOFA will be awarded on a competitive basis to State Recipients, Community Housing Development Organizations (CHDOs), and Developers, as defined in this NOFA. HOME funds awarded to Native American Entities will be on an over-the-counter ("OTC") application basis, as set forth in this NOFA. Funding may be used for the following eligible uses:

Project Activities

- Multifamily Rental Projects (new construction, acquisition only, and/or rehabilitation with or without acquisition); and
- First-Time Homebuyer ("FTHB") Projects (subdivision development)

Program Activities

- First-Time Homebuyer ("FTHB") Programs, including infill new construction programs where feasible;
- Owner-Occupied Rehabilitation ("OOR") Programs; and
- Tenant-Based Rental Assistance ("TBRA") Programs

To be considered for HOME funding, Applicants must submit a complete application for each HOME project activity and/or program activity through a main application (and a sub-application for each program activity, if applicable), with required documentation via the eCivis Grants Management System ("GMS") Portal only. The Department will begin accepting applications received through the eCivis GMS Portal on January 24, 2025. For cities, counties, CHDOs, and Developers, each completed application package must be submitted no later than 5:00 P.M. Pacific Daylight Time (PDT) on March 24, May 22, 2025.

For Native American Entity Applicants (whether a Federally Recognized Tribe or Non-Federally Recognized Tribe), application packages may be submitted on a continuous, OTC basis until **5:00 P.M. PDT on September 24, 2025.**

Timeline

NOFA Release	December 30, 2024
Webinars	January/February 2025
Competitive application submittal period for cities, counties, CHDOs, and Developers	From January 24, 2025, through March 24 , May 22, 2025, 5:00 P.M. PDT
OTC application submittal period for Native American Entities (NAE-FRTs and NAE-NFRTs)	From January 31, 2025, through September 24, 2025, 5:00 P.M. PDT, or until the available funds are exhausted, whichever occurs first.

All activities in this NOFA are subject to the availability of funds and continuing U.S. Department of Housing and Urban Development ("HUD") and legislative authority.

Applications

Applicants are strongly encouraged to set up their profiles and upload attachments and

documents in the eCivis GMS Portal located at https://portal.ecivis.com/ early to ensure successful submissions prior to the application deadline. If Applicants experience trouble logging into the portal or have questions on how to complete the online application, please contact the Department at HOMENOFA@hcd.ca.gov.

Assistance setting up a profile, submitting an application, and managing awards through the eCivis GMS portal is available under the Training and Technical Assistance tab on the Department's HOME website at https://www.hcd.ca.gov/grants-and-funding/programs-active/home-investment-partnerships-program. Links to the eCivis GMS Portal, supplemental application forms, regulations, and program information are available at https://www.hcd.ca.gov/grants-and-funding/programs-active/home-investment-partnerships-program.

The Department will hold a series of webinars in January 2025 to review the NOFA and application process. A list of webinar dates, times, and how to register is available on the Department's HOME website at https://www.hcd.ca.gov/grants-and-funding/programs-active/home-investment-partnerships-program.

Additionally, one-on-one technical assistance appointments will be offered during the application period to assist Applicants with questions regarding the application and application process. Applicants seeking technical assistance may email HOMENOFA@hcd.ca.gov to schedule an appointment. The Department will not accept applications through personal, postal, and/or shipment deliveries, facsimiles, email, walk-in, or any other forms of delivery other than the eCivis GMS Portal.

To receive HOME NOFA FAQs and other program information and updates, please be sure to subscribe to the federal programs email list at https://www.hcd.ca.gov/contact-us/email-signup.

Please direct any questions regarding this NOFA to the HOME Program at: <u>HOMENOFA@hcd.ca.gov</u>.

Attachments

HOME INVESTMENT PARTNERSHIPS PROGRAM (HOME)

2024 Notice of Funding Availability



Gavin Newsom, Governor State of California

Tomiquia Moss, Secretary Business, Consumer Services and Housing Agency

Gustavo Velasquez, Director California Department of Housing and Community Development

651 Bannon Street, Suite 400, Sacramento, CA 95811

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HOME INVESTMENT PARTNERSHIPS PROGRAM (HOME) NOTICE OF FUNDING AVAILABILITY

I. Overview

A. Notice of Funding Availability

The California Department of Housing and Community Development (Department) is pleased to announce the release of this 2024 Notice of Funding Availability (NOFA) for approximately \$35 million in Fiscal Year 2024 (FY24) federal funds for the HOME Investment Partnerships Program (HOME).

This HOME NOFA provides funding for housing project activities and housing program activities in "non-entitlement jurisdictions" (listed in Appendix A), which are jurisdictions and unincorporated areas that do not receive HOME funding directly from HUD. These HOME funds will be used to benefit residents of non-entitlement jurisdictions and are specifically designed to assist low-income households by providing affordable housing. All eligible HOME activities must benefit low-income renters, homebuyers, or homeowners.

The amount of funding available through this NOFA may vary depending on several factors, including, but not limited to, the Department's administrative determination of need, changes in legislation directing the Department to make additional funds available, new emergency allocations of funding, or newly available funding from the disencumbrance of previous awards. If additional funding becomes available, the Department may continue evaluating the list of eligible Applicants and make awards up to the additional funding amount available or release an additional NOFA to announce the targeted purpose of the funds.

These funds may be used in conjunction with other local, state, and federal rental housing programs to assist the same units in the proposed Project development, not to exceed the HOME Program maximum per-unit subsidy limits and the actual development cost of the unit. All requirements must be met for each funding source, and, if in conflict, the most restrictive programs' requirements apply. It is the Applicant's responsibility to review all applicable regulations and/or guidelines which may be amended from time to time for every funding source anticipated to be used in the development of the Project.

All HOME costs must be: (1) necessary, (2) reasonable, (3) contain no duplication of benefit, (4) not be used to supplant local or state resources, (5) free from fraud, and (6) an eligible use of HOME funds.

The funds available in this NOFA will be used to meet the following statewide goals in accordance with the Department's 2020-2024 Consolidated Plan and the Department's 2024-2025 Annual Action Plan, as the same may be amended from time to time, serving low-income households earning at or below 80 percent (80%) of Area Median Income (AMI) and very low-income households earning at or below 50 percent (50%) of AMI:

- Increase the supply of affordable rental housing;
- Expand homeownership opportunities and improve existing housing;

- Address and prevent homelessness; and
- Provide recovery assistance for natural disaster survivors

NOTE: In an effort to improve access and equity within the HOME Program, the Department has called attention to tribal-specific information within this NOFA in green font. However, Native American Entity Applicants are encouraged to carefully read through all NOFA contents and application materials thoroughly, not just the green font portions.

B. Timeline

The following table summarizes the anticipated HOME Program timeline. The Department reserves the right to modify the projected timeline at any time. Any changes to the timeline will be communicated through the Department's HOME Listserv (https://www.hcd.ca.gov/contact-us/email-signup).

Table 1 – Timeline for Competitive Applicants		
NOFA Release	December 30, 2024	
eCivis application portal opens	January 24, 2025	
	January 14, 2025 – Rental Projects, and FTHB Projects	
Webinars	January 16, 2025 – Program Activities	
Competitive application due date for cities, counties, CHDOs, and Developers	March 24, May 22, 2025, by 5:00 P.M. Pacific Daylight Time (PDT)	
Anticipated Award Announcements		
Program Activities	July 7, 2025	
Project Activities with 9% tax credits	December 7, 2025*	
Project Activities with 4% tax credits or with no tax credits	December 7, 2025*	
	*Based on volume, these dates may change.	

Table 2 – Timeline for Native American Entity Applicants		
NOFA Release	December 30, 2024	
eCivis application portal opens	January 31, 2025	
Webinar (specifically for Native American Entity Applicants)	January 21, 2025 – Rental Projects and FTHB Projects January 23, 2025 – Program Activities	
OTC application due date for Native American Entities (NAE-FRTs and NAE- NFRTs)	September 24, 2025, by 5:00 P.M. PDT, or until the available funds are exhausted, whichever occurs first.	
Anticipated Award Announcements		
Program Activities	Continuous	
Project Activities with 9% tax credits	Continuous	
Project Activities with 4% tax credits or with no tax credits	Continuous	

C. Authorizing Legislation and Regulation Authority

This NOFA should be read in conjunction with the following regulations, statutes, and plans, which establish state and federal HOME requirements, as the same may be amended from time to time:

- State HOME Regulations (25 California Code of Regulations "C.C.R." § 8200 et seq.) https://www.hcd.ca.gov/grantsfunding/active-funding/home/docs/State-HOME-Regulations-eff-1-1-2017-FINAL.docx investment-partnerships-program
- State Uniform Multifamily Regulations ("UMRs") (25 C.C.R. § 8300 et seq.) https://www.hcd.ca.gov/grants-and-funding/uniform-multifamily-regulations
- Federal HOME Investment Partnerships Act Statutes at Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S. Code "U.S.C." 12701 et seq. https://www.hud.gov/sites/documents/19576 HOMELAWS.PDF
- Federal HOME Regulations (24 Code of Federal Regulations "C.F.R." Part 92)
 https://www.hudexchange.info/programs/home/home-laws-and-regulations/

- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200)
 https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1
- State of California 2024-2025 Annual Action Plan https://www.hcd.ca.gov/policy-and-research/plans-and-reports#:~:text=Annual%20Action%20Plan%202021-2022%20%E2%80%93%20This%20is%20the%20first%20of

All regulatory references are to the state and federal HOME regulations unless otherwise noted.

Other helpful resources, including HUD Community Planning and Development (CPD) Notices, Policy Memos, and other HUD Policy Guidance for the HOME Program can be found at https://www.hudexchange.info/programs/home/.

Several of the terms used in the HOME NOFA have specific meanings defined by state and/or federal HOME regulations. When reviewing this NOFA and the application forms, carefully review the regulations for further defined terms. State HOME definitions are found in 25 C.C.R. § 8201 and 8217 and federal HOME definitions are found in 24 C.F.R. § 92.2.

If state or federal statutes or regulations, or other laws, policies, or procedures governing HOME or its funding are modified by Congress, HUD, the Legislature, or the Department prior to completion of work to be done pursuant to awards made in connection with this NOFA, the changes may become effective immediately and apply to funded activities.

Any inconsistencies between this NOFA and state or federal HOME regulations will be resolved in favor of applicable regulations, unless a waiver or modification was approved by the Director in accordance with AB 1010 (Chapter 660, Statutes of 2019). In those instances, the waiver or modification will prevail when not in conflict with the federal HOME regulations.

The Department reserves the right at its sole discretion to suspend, amend, and/or supplement the provisions of this NOFA from time to time. If such action occurs, the Department will notify interested parties through the Department's HOME Listserv (https://www.hcd.ca.gov/contact-us/email-signup).

Native American Entities

The state requirements set forth in this HOME NOFA are subject to Assembly Bill 1010 (Chapter 660, Statutes of 2019) ("AB 1010") which is set forth in Health and Safety Code (HSC) § 50406(p), which provides: (a) where the provisions of tribal law, tribal governance, tribal charter, or difference in tribal entity or legal structure would cause a violation or not satisfy the requirements of the HOME NOFA, said requirements may be modified as necessary to ensure Program compatibility; and (b) where the provisions of tribal law, tribal governance, tribal charter, or difference in tribal entity or legal structure or agency create minor inconsistencies (as determined by the Director of the Department or a duly authorized designee thereof) with the requirements set forth in the HOME NOFA, the Department may waive said requirements, as deemed necessary, to

avoid an unnecessary administrative burden. Matters set forth or otherwise provided for in the HOME NOFA that may be modified or waived include, without limitation, threshold scoring requirements and any other matter set forth in HSC § 50406(p)(2).

Native American Entity Applicants, whether federally recognized or non-federally recognized, are accordingly encouraged to discuss any such potential modifications or waivers and their options in that regard at or during an optional pre-application technical assistance meeting. Native American Entity Applicants should be aware that AB 1010 and the recent legislative change in AB 1878 (Reg. Sess. 2024) allows for the Native American Entity Applicants to apply for a request to modify or waive state HOME statutory and regulatory requirements, or guidelines. Neither AB 1010 or AB 1878 apply to federal HOME statutory and regulatory requirements; however, there may be other federal laws or federal doctrines that could provide a basis for a possible modification of some federal requirements for Native American Entity Applicants. An example is where a Native American Entity has its own Tribally Determined Wage, in which case Davis-Bacon wage requirements are not applicable. While AB 1010 requests can be processed at any time, Native American Entity Applicants are encouraged to begin the AB 1010 waiver request process before their application is submitted in order to allow time for the Department to review and make a legal decision on the request.

The Department urges Native American Entity Applicants to discuss possible waiver and modification requests during technical assistance sessions. AB 1010 waiver and modification request data can be accessed at the Department webpage under "Resources" (https://www.hcd.ca.gov/policy-and-research/native-american-tribal-affairs).

D. Application Submission Process

The Department will accept applications submitted via the eCivis application portal under this NOFA. Application acceptance and evaluation is subject to the state and federal regulations and the terms outlined in this NOFA. It is the Applicant's responsibility to ensure that the submitted application is clear, complete, and accurate.

Electronic Application Submission Process

All Applicants must create an eCivis Profile prior to completing an application. Once the profile is created, the Applicant must complete an application via the eCivis GMS Portal. Application forms are available on the eCivis GMS Portal, including the Rental Housing Supplemental Application, which is also available on the HOME website at https://www.hcd.ca.gov/grants-and-funding/programs-active/home-investment-partnerships-program.

NOTE: Applications for project activities and program activities are scored and ranked separately. Application requirements include the following:

 Project Activities. One main application must be submitted for each project activity. Program Activities. One main application must be submitted, along with a sub-application for each additional desired program activity.

All applications (including all required sub-applications) must be uploaded to the eCivis GMS Portal no later than the deadlines specified in Section I (B) Timeline of this NOFA.

The Department will not accept applications through personal, postal, shipment deliveries, facsimiles, email, walk-ins, or any other forms of delivery other than the eCivis GMS Portal.

Applicants that do not meet the filing deadline requirements will not be eligible for funding. Applications must be on the Department's current forms and cannot be altered or modified by the Applicant. Excel forms must be in Excel format, not converted to a PDF document.

The Department may request additional clarifying information from third-party sources, such as local government entities or the Applicant, but this is entirely at the Department's discretion to determine if the Department has authority to make an award. Upon the Department's request, the Applicant shall be given five (5) business days, from the date of staff notification, to submit said documents to clarify the application. The third-party sources shall certify that all evidentiary documents deemed to be missing from the application had been executed, and were in the third-party source's possession, on or prior to, the application filing deadline. For example, an appraisal that existed prior to the application filing deadline may be accepted by the Department as clarifying information.

If the Department still deems the application incomplete, or it fails to provide the minimum requirements, the Applicant may appeal the determination following the guidance in Section IV (E) Appeals of this NOFA.

Disclosure of Application

Information provided in the application will become a public record available for review by the public, pursuant to the California Public Records Act (Chapter 1473, Statutes of 1968) (PRA). As such, any materials provided will be disclosable to any person making a request under this Act. The Department cautions Applicants to use discretion in providing information not specifically requested, including, but not limited to, bank account numbers, personal phone numbers, and home addresses. By providing this information to the Department, the Applicant is waiving any claim of confidentiality and consents to the disclosure of submitted material upon receipt of a PRA request.

Concurrent Applications

Due to the unique challenges of the current funding environment, the Department allows Applicants to pursue funding from more than one Department funding program. Separate concurrent applications to other HCD program funding sources are permitted under this HOME NOFA. Applicants, however, MUST disclose all Department applications under review and/or applications

anticipated to be submitted, regardless of who is applying for funding (e.g., city, county, Developer, sponsor, etc.).

The HOME Program has strict federal commitment and expenditure deadlines; therefore, if an Applicant submits any other funding applications to the Department after the HOME NOFA application due date, Applicant must notify HOME Program staff via the HOME NOFA mailbox (HOMENOFA@hcd.ca.gov). If Applicants are competitive for a HOME award, the Department will consult with Applicants to determine the best funding scenario for Project feasibility while balancing cost containment. If the Project receives a state program award after the HOME NOFA application due date, HOME NOFA Applicants may be asked to accept a reduction of any Department-administered state program award by the amount of any HOME Project award.

E. Definitions

"Applicant" is any eligible State Recipient, CHDO, Developer, or Native American Entity which submits an application to the Department to operate Programs or develop or rehabilitate Projects using HOME funds within a specified jurisdictional boundary, in accordance with 25 C.C.R. § 8201 and 8204 and HSC § 50896. A Developer of a Project shall not act as administrative subcontractor for the activity.

"At Risk of Homelessness" means the same as defined under the federal Continuum of Care Program at 24 C.F.R. § 578.3, as may be amended and renumbered from time to time.

"Awardee" means the eligible Applicant (and, if applicable, the Co-Applicant) that has been awarded funds from the Department under the HOME Program, and that will be held responsible for compliance with and performance of all HOME requirements.

"Choice-Limiting Actions" means an action that may have an adverse impact on the environment or limit the choice of reasonable alternatives. A Choice-Limiting Action may include, but is not limited to, executing a purchase and sale agreement, signing a lease agreement, real property acquisition, rehabilitation, repair, demolition, disposition, or new construction. For the purposes of environmental review, the Project is the aggregation of all activities that are required to build the Project and must be included in the scope of the environmental review. Even if HOME funds are used to pay for only a portion of the overall Project, Awardees and Subrecipients must be aware of activities that are considered Choice-Limiting Actions, because taking such actions before the completion of the HUD Environmental Review process can automatically disqualify the project from receiving federal funds. Activities listed at 24 C.F.R. § 58.35(b) that are Categorically Excluded Not Subject To 24 C.F.R. § 58.5 (e.g., Tenant-Based Rental Assistance, provision of services) are not Choice-Limiting Actions.

"Developer" means any legal entity, including Native American Entities (Native American Entities-Federally Recognized Tribes and Native American Entities-

Non-Federally Recognized Tribes), that will provide or arrange for design, financing, and construction services in connection with a housing Project as set forth in 25 C.C.R. § 8201(i). A nonprofit organization, formed as a special purpose entity in compliance with 25 C.C.R. § 8313.2, by a Non-Federally Recognized Tribe (NAE-NFRT) as defined herein, may be considered a Developer if the NAE-NFRT satisfies all other Developer eligibility requirements.

"Enforceable Funding Commitment" means a letter or other document, in form and substance satisfactory to the Department, which evidences an enforceable commitment of funds or a reservation of funds by a Project funding source, and which contains the following:

- The name of the Applicant;
- The Project name;
- The Project site address, assessor's parcel number, or legal description;
 and
- The amount, interest rate (if any), and terms of the funding source.

The Enforceable Funding Commitment may be conditioned on certain standard underwriting criteria, such as appraisals, but may not be generally conditional. Examples of unacceptable general conditions include phrases such as "subject to senior management approval," or a statement that omits the word "commitment," but instead indicates the lender's "willingness to process an application" or indicates that financing is subject to loan committee approval of the Project.

Note: Contingencies in commitment documents based upon the receipt of lowincome housing tax credits do not count as committed for purposes of gaining points in this scoring category.

"Homeless" or "Homelessness" means the same as defined under the federal Continuum of Care Program at 24 C.F.R. § 578.3, as may be amended and renumbered from time to time. "Homeless" includes "Chronically Homeless" and "Homeless with a Disability."

"Homeownership" means ownership in fee simple title of a 1- to 4-unit dwelling or condominium unit, or equivalent form of ownership approved by HUD.

- (1) The land may be owned in fee simple, or the homeowner may have a 99-year ground lease.
 - (i) For housing located in the insular areas, the ground lease must be 40 years or more.
 - (ii) For housing located on Native American Lands as defined in 25 C.C.R. § 8201(y)(1), the ground lease must be 50 years or more.
 - (iii) For manufactured housing, the ground lease must be for a period at least equal to the applicable period of affordability in 24 C.F.R. § 92.254.

"Local Agency" means a city, county, city and county, or a Native American Entity that is a duly constituted governing body of an Indian Reservation or Rancheria, in accordance with HSC § 50077.

"Local Public Entity" means any county, city, city and county, Native American Entity that is a duly constituted governing body of an Indian Reservation or Rancheria, redevelopment agency organized pursuant to Part 1 (commencing with section 33000) of Division 24, or housing authority organized pursuant to Part 2 (commencing with section 34200) of Division 24, in accordance with HSC § 50079.

"Native American Entity" ("NAE") means an "Indian Tribe" or a "Tribally Designated Housing Entity" that is any of the following: a) Applicant meets the definition of Indian Tribe under Section 4103(13)(B) of Title 25 of the United States Code; b) Applicant meets the definition of Tribally Designated Housing Entity under 25 U.S.C. 4103(22); or c) If Applicant is not a federally recognized tribe as identified above, Applicant is either: (1) Listed in the Bureau of Indian Affairs Office of Federal Acknowledgment Petitioner List, pursuant to 25 C.F.R. Part 83.1; or (2) An Indian Tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of consultation pursuant to GC Section 65352.3, and 3) has formed and controls a special purpose entity in compliance with 25 C.C.R. § 8313.2.

"Native American Entity – Federally Recognized Tribe ("NAE-FRT") means any Tribal Government which is a federally recognized tribe as defined at 25 U.S.C. section 4103(13)(B) and includes a duly constituted governing body of an Indian Reservation or Rancheria as Health and Safety Code section 50077 and 50079; or is a Tribally Designated Housing Entity under 25 U.S.C. section 4103(22).

A NAE-FRT may apply as a State Recipient or Developer for HOME Funds.

"Native American Entity – Non-Federally Recognized Tribe" ("NAE-NFRT") means any Tribal Government which is an Indian Tribe located in California that is not a federally recognized tribe and is either: (1) listed in the Bureau of Indian Affairs Office of Federal Acknowledgment Petitioner List, pursuant to 25 C.F.R. Part 83.1, and has formed and controls a special purpose entity in compliance with 25 C.C.R. § 8313.2; or (2) listed on the contact list maintained by the California Native American Heritage Commission for the purposes of consultation pursuant to Government Code (GC) § 65352.3, and (3) has formed and controls a special purpose entity in compliance with 25 C.C.R. § 8313.2.

A NAE-NFRT may apply as only a Special Purpose Entity Developer for HOME funds for project activities.

"Native American Lands" means real property located within the State of California that meets the following criteria: (1) is trust land for which the United States holds title to the tract or interest in trust for the benefit of one or more tribes or individual Indians, or is restricted Indian land for which one or more tribes or individual Indians holds fee title to the tract or interest but can alienate or encumber it only with the approval of the United States; and the land may be leased for housing development and residential purposes under federal law; or

- (2) lands outside the jurisdiction of tribal government owned or co-owned by a Native American Entity in accordance with 25 C.C.R. § 8201(y).
- "Native American Entity (NAE) Service Area" means the area where the Project is located within the Native American Lands and includes lands outside the NAE tribal government jurisdiction up to 100 miles from the boundary of the NAE trust or restricted land as defined at 25 U.S.C. 2201 that is within non-entitlement jurisdictions.
- "Project" means a site or sites together with any building (including a manufactured housing unit) or buildings located on the site(s) that are under common ownership, management, and financing and are to be assisted with HOME funds as a single undertaking. The Project includes all the activities associated with the site and building. For program activities, such as First-time Homebuyer (FTHB), Owner-Occupied Rehabilitation (OOR), and Tenant-Based Rental Assistance (TBRA), "Project" means assistance to one or more families.
- "Project Commitment" means the date the state has executed a Standard Agreement with an Awardee that includes the date and signature of each person signing the agreement, and that meets the minimum requirements of a Standard Agreement as defined in 24 C.F.R. § 92.504(c).

If the Department or the Awardee is providing HOME First-time Homebuyer (FTHB) Assistance to a family to acquire single-family housing, the Department or Awardee and the family must have an executed written agreement under which the HOME assistance will be provided, and the property title must be transferred to the family or purchaser within six months of the agreement date.

If the Department or Awardee is providing HOME assistance to a family in the form of Tenant-Based Rental Assistance (TBRA), the Department or the Awardee must have an executed rental assistance agreement with the owner or the tenant in accordance with the provisions of 24 C.F.R. § 92.209.

For State Recipient Awardees, Project Commitment means the date when the written agreement is executed by the Awardee and the Developer(s) of the Project.

"Project Completion" means that all necessary title transfer requirements and construction work have been performed; the Project complies with HUD's requirements, including the property standards at 24 C.F.R. § 92.251; the final drawdown of HOME funds has been disbursed for the Project; and the Project Completion information has been entered into HUD's disbursement and information system. For tenant-based rental assistance, Project Completion means the final drawdown has been disbursed for the Project. The Department may also require a recorded Notice of Completion, Certificate of Occupancy, and/or evidence of stabilized rents to demonstrate Project Completion. Pursuant to 24 C.F.R. § 92.502(d), Project Completion must occur within 120 days of final disbursement of funds.

"Special Needs Population(s)" means the same as defined in the Multifamily Housing Program guidelines: people with disabilities; At Risk of Homelessness; individuals with substance use disorders; frequent users of public health or mental

health services, as identified by a public health or mental health agency; individuals who are fleeing domestic violence, sexual assault, or human trafficking; individuals who are experiencing Homelessness and individuals experiencing Chronic Homelessness; homeless youth as defined in California Government Code § 129571(e)(2); families in the child welfare system for whom the absence of housing is a barrier to family reunification, as certified by a county; individuals exiting from institutional settings or at risk of placement in an institutional setting; older adults in need of supportive services; or other specific groups with unique housing needs as determined by the Department. "Special Needs Populations" do not include seniors unless they otherwise qualify as a Special Needs Population.

"Special Purpose Entity" means the legal entity or combination of legal entities with continuing control of the HOME Project that meets the requirements of 25 C.C.R. § 8313.2.

"State Recipient" means a "unit of general local government" designated by the state to receive HOME funds, in accordance with 24 C.F.R. § 92.201(b)(2) and 25 C.C.R. § 8201(ii), including NAE-FRTs.

NOTE: HUD has opined in a HUD letter to the Department dated March 16, 2016, that NAE-FRTs are considered a "unit of general local government" and thus eligible for HOME funds as a State Recipient. The Department, upon request, will produce a copy of the HUD letter dated March 16, 2016.

"Subrecipient" means a public agency or nonprofit organization selected by the Department to administer a portion of the state HOME Program to produce affordable housing, provide down payment assistance, or provide tenant-based rental assistance. Per 24 C.F.R. 92.2, a public agency or nonprofit organization that receives HOME funds solely as a Developer or owner of a housing project is not a Subrecipient.

NOTE: HUD has opined in a HUD letter to the Department dated March 16, 2016, that the definition of "public agency" is construed broadly to mean "governmental entity" and thus includes NAE-FRTs to be eligible for HOME funds as a Subrecipient.

II. Program Requirements

The following is provided as only a summary and is not to be considered a complete representation of the entirety of the eligibility, threshold, or other requirements or terms and conditions of the HOME Program.

A. Eligible Applicants

1. State Recipients, as defined by this NOFA, including NAE-FRTs

To meet the definition of an eligible State Recipient, Applicants must meet the following criteria:

a. Have not been designated as a HOME Participating Jurisdiction by HUD;

- b. Are not participants in an Urban County Agreement with a county that is designated as a Participating Jurisdiction;
- c. Are not participants in a HOME Consortium; and
- d. Are proposing project or program activities that will be located or carried out in the Applicant's defined service area. Generally, this will be within the Applicant's city limits, a county's unincorporated area, or on or within 100 miles of Native American Lands as defined in 25 C.C.R. § 8201(y)(1) and within non-entitlement jurisdictions.

NOTE: NAE-FRTs must carry out program activities within the defined NAE Service Area. NAE-FRTs must carry out project activities located within the state HOME Program's non-entitlement jurisdictional boundaries, which includes Native American Lands located within California.

Eligible city and county jurisdictions for 2024 federal HOME funds are listed in Appendix A. If a jurisdiction is not listed in Appendix A and is seeking a determination of eligibility by the Department, the jurisdiction must submit a copy of the consortium or urban county agreement indicating that the jurisdiction is not a participant of a FY 2024-2025 HOME consortium or Urban County Agreement. The agreement must be submitted no later than April 16, 2025, to the Department at HOMENOFA@hcd.ca.gov.

When a State Recipient partners with a Developer for a project activity, the State Recipient must document its own experience implementing local, state, or federal funding for affordable housing (creation or preservation of) and/or community development projects. The Developer is the entity that the Department relies upon for experience and capacity and must control the Project during acquisition (site control), development, and occupancy. Developers must satisfy all other eligibility requirements detailed in this NOFA including, but not limited to, experience and capacity requirements.

NOTE: Developer experience can be used to meet the minimum experience requirements for only one Developer application in this NOFA round. Developers may not submit separate HOME applications under the name of another entity over which they exercise control, as a way to get around the one application limit. A Limited Partnership (LP) is not considered an eligible Applicant/Awardee but may be the ultimate borrower under specific circumstances. If an eligible Applicant intends to create a LP, please consult with HOME staff prior to submitting an application.

- 2. <u>Eligible CHDOs (State-certified Community Housing Development</u> Organizations (CHDOs) as defined by 25 C.C.R. § 8201(f))
 - a. CHDO Applicants must meet all the requirements found at 24 C.F.R. § 92.2 at the time of application submittal and be certified by the Department prior to any project activity or program activity funding award through this NOFA.

- b. CHDO Applicants are required to submit through the eCivis GMS Portal the following documents required to complete the certification review prior to, or as part of, the application package:
 - (1) A copy of the letter from the Internal Revenue Service demonstrating exemption under Section 501(c)(3) or (4) and evidence of good standing from the California Franchise Tax Board dated no more than 12 months prior to the date Applicant applies for certification.
 - (2) A copy of the organization's financial statements dated no more than 12 months prior to the date Applicant applies for certification.
 - (3) A copy of the organization's bylaws, containing at a minimum, the governing board composition, the fulfillment and maintenance of the 1/3 low-income representation requirement found in 24 C.F.R. § 92.2, description of the manner in which board members are selected, evidence of purpose of the organization that complies with the requirement in 24 C.F.R. § 92.2, and disclosure of relationships with for-profit individuals and/or entities, if any, as they relate to the governance of the organization.
 - (4) A copy of the organization's articles of incorporation and any amendments.
 - (5) A copy of Certificate of Status from the California Secretary of State dated no more than 12 months from the date of application of certification.
 - (6) A description of the formal process used to solicit advice from lowincome beneficiaries in decisions regarding design, citing, development, and management of affordable housing.
 - (7) A plan that describes tenant participation in management decisions for rental projects and the proposed fair lease and grievance procedures pursuant to 24 C.F.R. § 92.303.
 - (8) A list of current staff members responsible for HOME activities, with resumes. If staff do not have capacity, a commitment to hire an experienced consultant and a training plan must be submitted with the application for certification. For its first year of operating as a CHDO, an organization may satisfy this requirement through a contract with a consultant who has housing development experience to train appropriate key staff of the organization.
 - (9) Evidence of the Applicant's history serving the community where the HOME assisted housing will be located.
 - (10) A list of current board members, their occupations, and the names of their employers.
 - (11) A document that demonstrates to the satisfaction of the Department that any and all audit findings will have been resolved prior to receiving Department funding.

- (12) Evidence the CHDO has not been debarred or suspended from participation in federal or state housing or community development projects or programs.
- (13) Board Member Certifications completed and signed by each Board Member.
- c. Projects being funded through this NOFA with the CHDO set-aside are required to be "owned, developed, or sponsored" by an eligible state certified CHDO. "Owned, developed, and sponsored" are defined at 24 C.F.R. § 92.300 as:
 - (1) Owner: Rental housing is "owned" by the CHDO if the CHDO is the owner in fee simple absolute of multifamily or single-family housing (or has a long-term ground lease meeting the requirements of 25 C.C.R. § 8316) for rental to low-income families in accordance with 24 C.F.R. § 92.252. If the housing is to be rehabilitated or constructed, the CHDO hires and oversees the Developer that rehabilitates or constructs the housing. At minimum, the CHDO must hire or contract with an experienced Project manager to oversee all aspects of the development, including obtaining zoning, securing non-HOME financing, selecting a Developer or general contractor, overseeing the progress of the work, and determining the reasonableness of costs. The CHDO must own the rental housing during development and for a period at least equal to the period of affordability. If the CHDO acquires housing that meets the property standards in 24 C.F.R. § 92.251, the CHDO must own the rental housing for a period at least equal to the period of affordability.

This option is available to CHDOs with experience and capacity to own and operate affordable rental housing but without the experience or capacity to develop the Project. This option is not available if the Project is owned by a limited partnership entity (see Sponsor paragraph below).

(2) <u>Developer</u>: The CHDO may act as Developer if the CHDO is the owner of multifamily or single-family housing in fee simple absolute (or has a long-term ground lease meeting the requirements of 25 C.C.R. § 8316) and the Developer of new housing that will be constructed or existing substandard housing that will be rehabilitated for rent to low-income families in accordance with 24 C.F.R. § 92.252. To be the Developer, the CHDO must be in sole charge of all aspects of the development process, including obtaining zoning, securing non-HOME financing, selecting architects, engineers, and general contractors, overseeing the progress of the work, and determining the reasonableness of costs. At a minimum, the CHDO must own the housing during development and for a period at least equal to the period of affordability specified in 24 C.F.R 92.252.

This option is not available if the Project is owned by a limited partnership entity (see Sponsor paragraph below).

- CHDOs are not allowed to act as Developer in Projects where the CHDO does not have a long-term ownership interest and contractual relationship with the Project owner (i.e., a Development Services Agreement) to develop the Project.
- (3) <u>Sponsor</u>: 24 C.F.R. Part 92 provides two explanations of what it means to "sponsor" a HOME-assisted rental housing Project.
 - a) A CHDO "sponsors" a Project when the property is "owned" or "developed" by:
 - An affiliated subsidiary of the CHDO, which is wholly owned by the CHDO;
 - A limited partnership of which the CHDO or its wholly owned affiliated subsidiary is the <u>sole</u> general partner; or
 - A limited liability company of which the CHDO or its wholly owned affiliated subsidiary is the <u>sole</u> managing member.
 - b) A CHDO may "sponsor" a Project in situations where the CHDO owns the property (in fee simple absolute), develops the housing, and agrees to convey the housing to a different private nonprofit organization at a predetermined point in time after Project Completion. The nonprofit to which the Project will be conveyed does not need to be a CHDO but must be identified and approved by the Department prior to Project Commitment of HOME funds. Additionally, this nonprofit cannot be created by a governmental entity. If for any reason the Project is not transferred to this nonprofit, the CHDO remains liable for the HOME funds and Project for the term of the affordability period.
 - c) If awarded HOME funds, CHDOs must obtain all necessary permanent Project financing, including the permanent financing for the required period of affordability, and must execute a Standard Agreement with the Department pursuant to 25 C.C.R. § 8217(b)(1).
- d. CHDO FTHB Projects and Infill New Construction site control and ownership requirements:
 - (1) Housing for homeownership is "developed" by the CHDO if the CHDO is the owner (in fee simple absolute) and developer of new housing that will be constructed or existing substandard housing that will be rehabilitated for sale to low-income families in accordance with 24 C.F.R. § 92.254.
 - (2) Pursuant to 24 C.F.R. § 92.300(a)(6)(i), to be the "developer," the CHDO must arrange financing of the Project and be in sole charge of construction. The CHDO may provide direct homeownership assistance (e.g., down payment assistance) when it sells the housing to low-income families and the CHDO will not be considered a subrecipient. The HOME funds for down payment assistance shall not be greater than 10 percent (10%) of the total amount of HOME funds awarded for development of the housing.

- (3) The state or the State Recipient must determine and set forth in its written agreement with the CHDO the actual sales prices of the housing or the method by which the sales prices for the housing being developed will be established.
- (4) Prior to award, CHDOs must be certified to serve the jurisdiction in which the Project is located, and the jurisdiction must be eligible to receive state HOME assistance funds.

3. Eligible Developers, as defined by this NOFA

The Developer applying for the HOME funding is the entity that the Department relies upon for experience and capacity and must control the Project during acquisition (site control), development, and occupancy. Developers must satisfy all other eligibility requirements detailed in this NOFA including, but not limited to, experience and capacity requirements.

Developers may partner with a State Recipient Applicant in addition to submitting one application on its own, however both applications must not be for the same Project.

NAE-NFRTs may apply for HOME funds only as Developers and are not eligible to apply as State Recipients or CHDOs. NAE-NFRTs applying as Developers may apply only for project activities.

NOTE: Developer experience can be used to meet the minimum experience requirements for only one Developer application in this NOFA round. Developers may not submit separate HOME applications under the name of another entity over which they exercise control as a way to get around the one application limit. A Limited Partnership (LP) is not considered an eligible Applicant/Awardee but may be the ultimate borrower under specific circumstances. If an eligible Applicant intends to create a LP, please consult with HOME staff prior to submitting an application.

B. Additional HOME Eligibility Criteria

1. Minimum Expenditure Requirement for Program Activities (50 Percent Rule)

Pursuant to 25 C.C.R. § 8204(b), Applicants with current HOME Program activities contracts for which the expenditure deadline established in the contract(s) has not yet passed shall be ineligible to apply for a program activity unless the Applicant has expended at least 50 percent (50%) of the aggregate total of program funds originally awarded by this NOFA's applicable application due date.

Potential Applicants with no current HOME Program activities contracts are not affected by this rule.

"Expended Funds" are the total of all valid Administrative and Project Drawdown Requests (PDRs) or, for TBRA, future commitments on Project Set-up Reports received by the Department by the NOFA application deadline. Additionally, for FTHB and OOR, a valid PDR is limited to the amount needed for reimbursement of actual expenses for work that has been completed (Work Completed). Work Completed varies by activity as follows:

- a. FTHB activity: escrow has closed, as evidenced by a final HUD Settlement Statement.
- b. OOR activity: construction completed and inspected.
- c. TBRA activity: rental payment assistance amount multiplied by the number of months in the individual tenants' TBRA agreements, to the extent those funds are available in existing TBRA grants.
- 2. Applicants must be in good standing with the State of California and all agencies and departments thereof. For example, if an Applicant is a business entity, such entity must be qualified to do business in California and currently in good standing with the California Secretary of State and the California Franchise Tax Board.

C. Eligible Activities (Pursuant to 24 C.F.R. § 92.205(a))

- 1. <u>Project Activities</u> Eligible HOME project activities are as follows:
 - a. Rental Projects
 - Rental New Construction Projects funds are provided to develop a specific multifamily Project on a specific site by a specific Developer. Rental new construction Projects may be with or without acquisition of the property; or
 - (2) <u>Rental Rehabilitation Projects</u> funds are provided to rehabilitate a specific rental Project on a specific site by a specific Developer, with or without acquisition of the property; or
 - (3) <u>Rental Acquisition Projects</u> funds are provided to acquire a specific rental Project that meets all HOME requirements including property standards.

Applicants requesting project activities funding for a rental Project consisting of multiple sites must be in compliance with 25 C.C.R. § 8303(b).

b. First-Time Homebuyer (FTHB) Projects

Construction financing must include the following:

- (1) New construction or acquisition/rehabilitation/conversion to develop homes on specific site(s).
- (2) All (100 percent) of the HOME investment rolls over to permanent financing to provide mortgage assistance to eligible first-time homebuyers when the units are sold to eligible homebuyers.

NOTE: Rental and FTHB Projects with multiple sites must have common ownership and financing.

- 2. <u>Program Activities</u> Eligible HOME Program Activities are as follows:
 - a. First-Time Homebuyer (FTHB) Program
 - Acquisition-only Down Payment Assistance funds are awarded to HOME-eligible Applicants to provide individual loans to homebuyers to purchase modest dwellings selected from the open market.

NOTE: CHDOs are ineligible for this activity.

- (2) <u>Infill New Construction</u> funds are awarded to eligible State Recipients or CHDOs to provide assistance for the new construction of dwellings on scattered sites, with no more than four dwellings per vacant site, subject to the following requirements:
 - Pursuant to federal National Environmental Policy Act (NEPA) requirements, an environmental assessment (EA) will be required, regardless of the funding source, if there are more than four units developed within 2,000 feet of one another.
 - Pursuant to the HOME NOFA, to be considered an Infill New Construction program the Applicant must assume the role of Developer, own the property during construction, and sell the home to an eligible homebuyer within nine (9) months of Project Completion. All dwellings must be situated on land where site control is established through fee simple, leasehold, or another manner approved in writing by the Department, and be affixed to a permanent foundation at the time of construction closing. Please note, Section II (A) and Section IV (A) of this NOFA further specify site control requirements for Infill New Construction Projects.

Pursuant to 25 C.C.R. § 8207, the FTHB primary mortgage loan must be fully amortized and have a fixed interest rate that does not exceed the current market rate by more than 100 basis points (1%), based on the Freddie Mac 30-year Fixed Rate Mortgage rate at https://www.freddiemac.com/pmms.

b. Owner-Occupied Rehabilitation (OOR) Program

Funds are provided to HOME-eligible Applicants to assist individual homeowners whose primary residence needs repairs, improvements, or reconstruction necessary for correction of any health and safety deficiencies, and to meet locally adopted standards used for rehabilitation Projects.

"Reconstruction" means demolition and rebuilding on the same residential lot. This includes homes destroyed by natural causes if

HOME funds are committed within 12 months of the date of destruction.

c. Tenant-Based Rental Assistance (TBRA) Program

Funds are provided to HOME Applicants to provide rent subsidies and/or security deposits to eligible households. The minimum term of rental assistance to an eligible household is six months; however, the tenant must be initially offered a one-year lease. TBRA funds may be used to assist tenants to reside in any state HOME-eligible jurisdiction within the county where the TBRA funds were awarded. TBRA funds awarded to NAE-FRTs must be used to assist tenants with housing within the NAE Service Area of the NAE-FRT Applicant.

For example, TBRA funds awarded to the City of Winters can also be used for units located in West Sacramento, Woodland, and the unincorporated areas of Yolo County, since these jurisdictions are state HOME eligible within Yolo County, but they may not be used in Davis, which is not state HOME eligible.

D. Ineligible Use of Project Funds

Pursuant to 24 C.F.R. § 92.214, federal HOME funds cannot be used for several items, including, but not limited to:

- 1. Initial deposits to replacement reserves as required by 25 C.C.R. § 8309. Therefore, in a Project where HOME is the only source of financing, or if other funding sources cannot pay for these costs, the Developer must pay them;
- Providing tenant-based rental assistance for the special purposes of the existing Section 8 program;
- 3. Providing non-federal matching contributions required under any other federal program; and
- 4. Applicants may not charge servicing, origination, or other fees for the purpose of covering costs of administering the HOME Program (e.g., fees on low-income families for construction management or for inspections for compliance with property standards) (see 24 C.F.R. § 92.206(d)(6) and § 92.207), with exceptions referenced in 24 C.F.R. § 92.214(b)(1).

In accordance with the Department's 2024-2025 Annual Action Plans, HOME funds may not be used to pay for the cost to refinance existing Project debt.

Pursuant to 24 C.F.R. § 92.206(a)(4), HOME funds cannot pay for the costs associated to construct or rehabilitate laundry and/or other community facilities located in separate buildings containing no residential units. In addition, any community facilities must be for the exclusive use of the residents and their guests.

Pursuant to 24 C.F.R. § 92.206 (b)(2)(vi), federal HOME funds cannot be used to refinance single family or multifamily housing loans made or insured by any federal program, including CDBG.

Additionally, HOME funds cannot provide a duplication of benefit or supplant any other federal, state, or local funds previously committed to the Project.

For further ineligible uses of HOME funds, refer to 24 C.F.R. § 92.214.

E. Activity Combination and Limits

<u>State Recipients</u> (excluding Developers and CHDOs) may apply for multiple eligible activities as follows:

- 1. One rental Project and one FTHB Project; or
- 2. One rental Project and any combination of eligible program activities; or
- 3. One FTHB Project and any combination of eligible program activities, except for a FTHB program.

CHDOs may apply for multiple eligible activities as follows:

- 1. One rental Project and one FTHB Project; or
- 2. One rental or FTHB Project and one FTHB program activity for infill new construction.

<u>Developers</u> (not applying through a State Recipient) may submit one application pursuant to this NOFA.

This application may consist of only one eligible activity as follows:

- 1. One rental rehabilitation Project, with or without acquisition; or
- 2. One rental new construction Project, with or without acquisition.

NOTE: Using both HOME FTHB project activity funds and HOME FTHB program activity funds for the same Project is not permitted.

F. Allocation of Funding

To promote equitable distribution of HOME Program funds, funding made available by this NOFA will be allocated in accordance with the state regulations and funding targets cited below, to the extent eligible applications are submitted to the Department.

Table 3 - Allocation of Funding		
Funding Targets and Statutory Set-Asides (not including the Department's administrative costs)	Amount	
CHDO Set-Aside		
Pursuant to 24 C.F.R. § 92.300(a), the Department will allocate 15 percent (15%) of total funds available for housing to be owned, developed, or sponsored by CHDOs.	\$ 5,273,980	
Program Activities Funding Target	\$ 14,454,611	
Pursuant to 25 C.C.R. § 8212.1, the Department will allocate 40 percent (40%) of total funds available for program activities.		
Rental Projects Funding Target	\$ 19,923,923	
Pursuant to 25 C.C.R. § 8212.1, the Department will allocate 55 percent (55%) of total funds for rental Projects.		
First-Time Homebuyer Projects Funding Target	\$ 1,757,993	
Pursuant to 25 C.C.R. § 8212.1, the Department will allocate 5 percent (5%) of total funds available for FTHB Projects.		
Rural Areas Funding Target	\$ 17,579,932	
Pursuant to 25 C.C.R. § 8212 (b)(3), the Department will reserve a minimum of 50 percent (50%) of total funds available for Rural areas as defined in the HSC § 50199.21.		
Native American Entity Funding Target	\$ 7,031,973	
The Department will target 20 percent (20%) of total funds available for Native American Entity Applications (as either State Recipients or Developers).		
Please note, NAE-NFRTs cannot apply for HOME funds as State Recipients.		

25 C.C.R. § 8213(d) specifies that in the event there are insufficient monies to fund an Applicant's entire program activities funding request, the Applicant may be offered a lower amount of funding. The lower amount of

funding may be offered only if the funding is sufficient to complete a portion of the application activities, which, if evaluated separately, would have been awarded. If the amount of funding available is insufficient, the available funds may be allocated to another feasible program activities application.

If applications from Native American Entities total less than the funding target, the portion not awarded will roll over to the competitive portion of the NOFA for all other Applicants.

If the NOFA results in insufficient applications to meet a state statutory setaside or funding target, the portion of the funding target not awarded will roll over to fund other competitive Applications. For example, if applications received for the program activities funding target are undersubscribed, the Department may use the funds of the remaining program activities target to award applications received for project activities.

If the NOFA results in insufficient applications to award all available funds, the Department reserves the right to reopen the application submission period on an OTC first come, first served basis, through the date of the next NOFA release, or until the available funds are exhausted, whichever occurs first.

G. Activity Funding Amounts and Limits

<u>CHDOs</u> may apply for up to \$4,5000,000 for a multifamily rental Project and up to \$75,000 for CHDO operating costs, for a total maximum request of \$4,575,000.

<u>Developers</u> may apply for up to \$4,500,000 for a Project. Developers are not eligible for reimbursement of administrative costs or Project-related soft costs.

Prior to issuing the Award letter, the Department will evaluate the financial feasibility of each Project and may, as necessary for Project feasibility or to prevent over subsidizing a Project in accordance with 25 C.C.R. § 8300 et seq., decrease the HOME award amount.

<u>State Recipients</u> (excluding Developers) may apply for up to \$4,500,000 for a multifamily rental Project, up to \$50,000 for administrative costs, and up to \$50,000 for Project-related soft costs, for a maximum total request of \$4,600,000. Please note that Project-related soft costs are included in the maximum per-unit-subsidy limit.

For State Recipient Applicants, maximum award limits apply *only* to the amount of HOME funds requested through this NOFA and do not include any HOME Program Income (PI) the Applicant proposes to use. Applicants are encouraged to use HOME PI on hand and any HOME (PI) that the Applicant intends to use for the project activity must be included in the application budget. For example, if an Applicant has \$1,000,000 of HOME PI on hand and intends to use this PI as a funding source for the current HOME application's project activity, the HOME PI and grant combined amount must be included in the loan to the Developer. In this

case, the HOME award amount may exceed the maximum award limit by \$1,000,000.

NOTE: The total combined amount of HOME funds requested (including the HOME grant/loan amount plus any PI proposed for the project) is subject to the HOME maximum per-unit subsidy limits.

Homebuyer Project Loan Limits:

- Down Payment assistance cannot exceed the percentage indicated in the Applicant's approved First Time Homebuyer Guidelines of the proposed unit sales price plus closing costs. Applicants will need to consider the income levels of the pool of potential participants to determine the amount of HOME funds needed to complete the project and ensure each beneficiary is provided HOME down payment assistance based on need and remain within the HOME Program maximum per-unit subsidy limits.
- The HOME Program maximum per-unit subsidy limits and the HOME Homeownership Value Limits apply. All loan amounts will be verified by a subsidy layering analysis, and loan amounts will be reduced if the amount requested exceeds what is needed.

Project Activity Funding Limits

Table 4 - Funding Limits by Project Activity		
Rental new construction or rehabilitation with or without acquisition	\$4,500,000	
FTHB Projects	\$2,000,000	
CHDO Operating Grant*	\$75,000	
Administrative Grant*	\$50,000	
Project-Related Soft Costs Grant*	\$50,000	

^{*}See Section II (K) and (L) of this NOFA for guidance.

Minimum Amount of Funds per Project

The minimum amount of HOME funds that must be invested in a rental or homeownership housing Project is \$5,000 per HOME-assisted unit in the Project. For example, a homeownership housing Project with 30 units, of

which 15 units are HOME-assisted, requires a minimum HOME investment of \$75,000.

This requirement does not apply to TBRA funding.

Maximum Amount of Funds per Project

The maximum amount of HOME funds invested in a Project, direct beneficiary assistance, and Project-related soft costs, shall not exceed the lower of:

- a. HOME Program maximum per-unit subsidy limits, established by HUD (at the time of application), under 24 C.F.R. § 92.250; or
- b. Pursuant to 24 C.F.R. § 92.205(d)(1), only the actual HOME-eligible development costs of the assisted units may be charged to the HOME Program. If the assisted and non-assisted units are comparable in terms of size, features, and number of bedrooms, the actual cost of the HOME-assisted units can be determined by prorating the total HOME eligible development costs of the Project so that the proportion of the total development costs charged to the HOME Program does not exceed the proportion of the HOME-assisted units in the Project. If the assisted and non-assisted units are not comparable, the actual costs may be determined based on a method of cost allocation; and
- c. The amount of HOME funds invested in a Project (when combined with other financing and assistance), must accomplish the following:
 - i. Enable the Project as proposed to be developed and operate in compliance with all HOME requirements, including the subsidy-layering requirement at 24 C.F.R. § 92.250. For more information, see HUD CPD Notice 15-11: Requirements for the Development and Implementation of HOME Underwriting and Subsidy Layering Guidelines
 - ii. For rental Projects, achieve a debt-service coverage ratio in accordance with 25 C.C.R. § 8310.

The current income and rent limits (at the time of application) must be used in these calculations. They are located on the Department's website at: https://www.hcd.ca.gov/grants- and-funding/income-limits/state-and-federal-income-rent-and-loan-value- limits. The current HOME Program maximum per-unit subsidy limits are also incorporated into the application forms required to be completed when responding to this NOFA.

FTHB and OOR activities are also subject to the HOME Homeownership Value Limits (at the time of application), also located on the same website.

A Project may receive only one HOME award as a result of this NOFA. This prohibits the combination of awards to a State Recipient, Developer, and/or CHDO on the same Project.

Pursuant to 24 C.F.R. § 92.250, before committing funds to a Project, the Department must evaluate the project in accordance with the UMRs and will not

invest any HOME funds, in combination with other governmental assistance, than is necessary to provide affordable housing. HOME Projects may not receive more subsidy than what is required to make them financially feasible.

Program Activities Funding Limits

Maximum: \$1,000,000 (including general administrative costs and Project-related soft costs). Minimum: \$500,000. Applies to HOME-eligible Applicants for all program activities, subject to the following chart:

Table 5 – Program Activities Funding Limits Based on HOME Expenditure Rate* Achieved		
Aggregate Expenditure Rate for Applicant's Recent Program Activities Contracts	Maximum Application Amount	
(16-HOME, 18-HOME, and 19-HOME)		
75 percent or more	\$1,000,000	
50 – 74.99 percent	\$700,000	
0 – 49.99 percent	\$500,000	

^{*}See "Expended Funds" definition in this NOFA's Section II (B) (1).

NOTE: Applicants that did not have any of these HOME Program activities contracts may apply for up to \$500,000

Successful Applicants (Awardees) will be evaluated quarterly to determine if their progress and rate of expenditure is reasonable. The Department may disencumber all or a portion of the grant if there is an unreasonably low rate of expenditure, as determined by the Department in its sole discretion.

H. Program Income and Recaptured Funds

Federal regulations at 24 C.F.R. § 92.503 require all Program Income (PI) and Recaptured Funds (RF) to be used in accordance with HOME regulations only for HOME-eligible activities, and PI funds on hand must be maintained in an interest-bearing account. Interest earned on those funds is considered PI. To avoid de-committing appropriated grant funds from a specific Project, HOME PI may be accumulated throughout the current reporting period (state fiscal year) but must be committed to a Project in the next state fiscal year. Approval from the Department is required prior to the use of all HOME PI and RF.

The PI received during the current reporting period, as well as PI anticipated to be received in the next state fiscal year, must be reported to the Department in accordance with HUD's reporting requirements. Additionally, Applicants must identify how the funds will be used (name the project or program activity, and the intended beneficiary type) to ensure

timely use of PI funds. All PI must be reported in the HOME Annual Performance Report to the Department.

NOTE – New to this NOFA: The Department encourages Applicants to use HOME PI for their proposed project or program activity. Applicants may request approval to use HOME PI on hand through this NOFA by including the amount of PI for the proposed project or program activity in the Application Budget. HOME PI is <u>not</u> subject to the award limits as noted above (G. Activity Funding Amounts and Limits).

I. Periods of Affordability

All Projects that receive HOME funds are subject to federal affordability requirements at 24 C.F.R. § 92.252 and 24 C.F.R. § 92.254 for a specific number of years, as specified in the following two tables. This term is referred to in this NOFA as the "Federal Affordability Period" and includes all federal affordability requirements under 24 C.F.R. § 92.252 and 24 C.F.R. § 92.254.

All Projects that receive HOME funds are also subject to state affordability requirements at 25 C.C.R. § 8208 for a specific number of years, as specified in the table below. This term is referred to in this NOFA as the "State Affordability Period." Projects on Native American Lands as defined by 25 C.C.R. § 8208(y)(1) require a 50-year affordability period.

The requirements of the "Federal Affordability Period" and the "State Affordability Period" run concurrently. For example, if a county Applicant proposes a new construction rental Project, the "Federal Affordability Period" for the Project will be 20 years. However, the Project will also be required to abide by the "State Affordability Period" for an additional 35 years, totaling 55 years.

Table 6 –Affordability Periods for Rental Housing		
Housing Activity	State Affordability Period	Federal Affordability Period
Rehabilitation or acquisition of existing housing; per-unit amount of HOME funds under \$15,000	Development on fee land – 55 years Development on Native American Lands [25 C.C.R. § 8208(y)(1)] – 50 years	5 years
Rehabilitation or acquisition of existing housing; per-unit amount of HOME funds \$15,000 - \$40,000		10 years
Rehabilitation or acquisition of existing housing; per-unit amount of HOME funds over \$40,000; or rehabilitation involving refinancing		15 years
New construction or acquisition of newly-constructed housing		20 years

Table 7 – Affordability Periods for Homebuyer Assistance		
Homebuyer Assistance HOME Amount Per-Unit	State and Federal Affordability Periods	
Under \$15,000	5 years	
\$15,000 - \$40,000	10 years	
Over \$40,000	15 years	

J. Forms of Assistance

HOME Loans

HOME assistance shall be in the form of deferred payment loans to be repaid at the maturity date of the Promissory Note to local HOME accounts controlled by eligible Applicants or the state's local HOME account, except for the uses of funds specifically defined under HOME grants below.

Loans provided to homebuyers must meet the requirements set forth in 25 C.C.R. § 8205(C)(1)(A), including, but not limited to, the following terms:

- Loans financed from the CHDO set-aside pursuant to 24 C.F.R. § 92.300(a)(1) shall comply with the financing provisions as required for the following activities:
 - Land acquisition for first-time homebuyer projects shall bear zero interest.
 - Loans to first-time homebuyers shall bear a simple interest rate of 3 percent per annum, computed from the date the Deed of Trust is recorded on the property. Interest and principal payments shall be deferred for the term of the loan. Commencing on the 11th anniversary of the recordation date, an amount equal to 10 percent of the accrued interest shall be forgiven each year, such that on the 20th anniversary of the recordation date, all interest will have been forgiven if the borrower is in compliance with the requirements stated in the Department's loan documents.

HOME Grants

Pursuant to 25 C.C.R. § 8205(c)(2), HOME assistance must be provided in the form of a grant for relocation payments, lead-based paint hazard evaluation and reduction activities, and TBRA. HOME assistance may be provided in the form of a grant for rehabilitation activities performed under an OOR program, if necessary to complete the project when the total of all project indebtedness equals or exceeds the projected after rehabilitation appraised value. The grant amount for OOR activities is limited to 25 percent (25%) of the applicable HOME Program maximum per-unit subsidy limit for the Project. This amount is in addition to any grant funds currently permitted for relocation, lead-based paint remediation, and Project-related soft costs

for the Project.

HOME assistance may be provided as a grant to eligible State Recipients to cover Project-related soft costs. Project-related soft costs are further detailed in this NOFA, 24 C.F.R. § 92.206(d), and HUD CPD Notice 06-01: Admin and Soft Costs, Community Development Expenses under HOME and American Dream Downpayment Initiative, except that customary closing costs for home acquisition activities may be included as either a loan or part of the grant funding for Project-related soft costs.

NOTE: All Project-related soft costs associated with an OOR Project must be included in the 24 percent (24%) funding maximum available for Project-related soft costs and may not be passed along to the homeowner.

HOME funds for Project-related soft costs cannot be drawn down before HOME funds for activity costs are drawn down. If the activity is not completed, and a Project Completion Report for the full amount drawn down is not filed, all HOME funds for that Project, including Project-related soft costs, must be repaid to the Department.

Project-related expenses for NEPA environmental review, and architectural and engineering and other professional services incurred within the 24 months prior to the Project Commitment of funds, may be reimbursed at the sole discretion of the Department after execution of the Standard Agreement. On a case-by-case basis, the Department may, in writing and in its sole discretion, permit reimbursement for other eligible expenses incurred after the date of the Award letter, and prior to the effective date of the Standard Agreement, upon the written request of the Applicant.

K. Administrative and CHDO Operating Funds

The following limits apply to the amount of administrative and CHDO operating funding that Applicants may receive. Project Developers shall not act as administrative subcontractors for the same HOME-funded project activity and are not eligible for Project administrative costs.

Pursuant to 24 C.F.R. § 92.208(a), CHDO operating funds may cover reasonable and necessary costs for the operation of the CHDO. Such costs include salaries, wages, and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; equipment; materials; and supplies.

Project Activities

State Recipients eligible to receive administrative funds may request up to \$50.000 for administrative costs.

CHDOs may request up to \$75,000 in CHDO operating funding. This includes FTHB Projects.

Developers are not eligible to apply for administrative funds or Projectrelated soft costs. All administrative costs must be reasonable, and Applicant must have detailed records to demonstrate costs are eligible for reimbursement.

Program Activities

All program activities Applicants may request up to 2.5 percent (2.5%) of the amount requested for administration, with the exception of TBRA activities. TBRA Applicants will be provided up to 10% for general administrative costs, based on actual costs incurred. CHDOs undertaking a FTHB program activity may receive CHDO Operating funds in lieu of administrative funds at the same 2.5 percent (2.5%) rate.

All administrative costs must be reasonable, and Applicant must have detailed records to demonstrate costs are eligible for reimbursement. Actual eligible expenses must be incurred to draw down these funds.

L. Project-Related Soft Costs

Project Activities

Eligible State Recipients of rental and homebuyer Projects may receive up to \$50,000 to pay for specific eligible Project-related soft costs, previously referred to by the Department as "Activity Delivery Costs" (ADCs). Funding for Project-related soft costs are provided in the form of a grant and not part of the Project loan amount.

For a description of the types of expenses which may be charged as Project-related soft costs see 24 C.F.R. § 92.206(d)(6), 92.206(f)(2) and HUD CPD Notice 06-01: Admin and Soft Costs, Community Development Expenses under HOME and American Dream Downpayment Initiative. Examples of Project-related soft costs include, but are not limited to:

- Preparation of work write-ups, work specifications, and cost estimates or review of these items if an owner has had them independently prepared;
- Project underwriting;
- Construction inspections and oversight;
- Project document preparation;
- · Costs associated with a Project-specific environmental review;
- Costs associated with informing tenants or homeowners about relocation rights or benefits;
- Costs to provide information services such as affirmative marketing and fair housing information to prospective homeowners and tenants as required by 24 C.F.R. § 92.351; and
- Staff and overhead costs, such as preparing work specifications, loan processing, inspections, and other services related to assisting potential owners, tenants, and homebuyers.

Project-related soft costs must be included in the development budget, regardless of whether the funding is a loan or grant. Developers and CHDOs are not eligible for Project-related soft costs.

Program Activities

Standard Agreements will automatically allow the use of up to the maximum amount of Project-related soft costs for each specific program activity. Funding draw requests for Project-related soft costs are made only on a reimbursement basis for actual costs incurred by a State Recipient as follows:

- 1. Up to 24 percent (24%) of the HOME loan/grant amount for OOR and for the rehabilitation component of acquisition with rehabilitation.
 - Project-related soft costs for owner-occupied rehabilitation projects may exceed the 24 percent (24%) limit if documentation of actual eligible costs is provided to the Department with the Project set-up. Documentation must be of actual eligible costs; consultant billings, without documentation of underlying actual costs, are not adequate.
- 2. Up to 6.5 percent (6.5%) of the total acquisition cost for FTHB activities.
- 3. Up to 5 percent (5%) of the HOME TBRA payment, per household, for unit inspections and income determinations.

III. State and Federal Requirements

A. Property Standards and Physical/Capital Needs Assessments

Pursuant to 24 C.F.R. § 92.251, as applicable, and as may be amended by HUD, housing that is acquired, constructed or rehabilitated with HOME funds must meet all applicable local codes and standards at the time of Project Completion.

Projects involving rehabilitation must comply with the Department's HOME/NHTF Multifamily Rehabilitation Standards. Pursuant to 25 C.C.R. § 8309(b) and 24 C.F.R. § 92.251(b)(1)(ix), the Department requires rental rehabilitation Project applications to submit a third-party physical/capital needs assessment and a Replacement Reserve Study (RRS) with a 20-year forecast.

Projects involving new construction must comply with the requirements of 25 C.C.R. § 8300 *et seq.* and 24 C.F.R. § 92.251(a), including, but not limited to, requirements related to accessibility, disaster mitigation, written cost estimates, construction contracts and documents, construction progress inspections, and broadband infrastructure.

B. Timeframes for Use of Funds

Awardees of HOME funds are subject to progress deadlines and expenditure deadlines that are defined in the federal regulations and specified in the Standard Agreement.

Project Activity Deadlines

Table 8 - HOME Project Activity Deadlines		
Project Commitment of HOME Funds (see Section I (E) of this NOFA for definition of Project Commitment)	Within 24 months from award date	
All non-HOME funding sources committed to the Project	Within 24 months from award date	
Construction Loan Closing	Within 12 months from Project Commitment execution date (in accordance with 24 C.F.R. § 92.2)	
Project Completion and Expenditure Deadline	Within 4 years from Project Commitment of HOME funds	

Program Activities Deadlines

Table 9 - HOME Program Activity Deadlines		
Project Commitment of HOME Funds (see Section I (E) of this NOFA for definition of Project Commitment)	Within approximately 90 days from Award Date	
Expenditure Deadline	Within 3 years of Standard Agreement execution date	

For project activities, if an Awardee fails to meet one or more of the deadlines outlined in the 25 C.C.R. § 8217(b) and described in this NOFA, a performance penalty will be imposed during the scoring on all future applicable HOME applications. It will also result in performance penalties being imposed on future HOME application(s) submitted by the Applicant, as well as application(s) submitted by the Project's Developer, owner, and managing general partner within five (5) years of the award announcements of this NOFA.

All program activities funding must be expended by the deadlines established in the Standard Agreement. In addition to the final expenditure deadline, the Standard Agreement may also contain interim expenditure deadlines (e.g., 75% of funding must be expended by a specific date). Awardees must ensure that work is completed well in advance of this deadline to ensure funds are fully expended prior to the expenditure deadline.

Exceptions will be considered, at the sole discretion of the Department, if the Applicant provides clear and indisputable evidence that delays were beyond the reasonable control of the borrower and/or the Applicant, or the Department was responsible for the delay, and the Department has the flexibility to do so within federal regulations.

C. Match Requirements

Generally, HOME funds must be matched by nonfederal resources. HOME match requirements are waived for applications pursuant to this NOFA, however, the Department continues to track all match funds in project activities and program activities.

All eligible HOME match funding that Applicants obtain due to their activity's need for other funding shall continue to be reported in the Project Set-up and Completion Reports so that the Department can bank any additional match and continue to waive the match. Match sources include funding derived from below-market rate loans (even if these loans are not repaid to the HOME local account), state Low Income Housing Tax Credits, property tax waivers, bond financing, fee waivers, grants, and other sources. The Department will review all Project Set-up and Completion Report forms to ensure that all reportable match funding has been included. For a HOME match calculation tool, see the Department's HOME webpage under Resources. The HOME Contract Management Manual also contains additional information and resources on match, see http://www.hcd.ca.gov/grants-funding/active-funding/home/cmm.shtml.

D. Transition Reserve Policy

Projects must be in compliance with the Department's Pooled Transition Reserve Policy Administrative Memorandum dated January 3, 2023, (Administrative Notice Number 22-08) and amended on August 8, 2023, (Administrative Notice Number 23-01), that implements statutory changes made under Senate Bill 948 (Chapter 667, Statutes 2022) applicable to Health and Safety Code § 50468, as may be amended from time to time, and any other related Department Transition Reserve Policy administrative memoranda that the Department may adopt, as applicable.

E. Annual Monitoring Fees for Multifamily Projects

Pursuant to 24 C.F.R. § 92.214(b)(1)(i), the Department will charge fees to cover the cost of ongoing monitoring and physical inspection of HOME Projects during the state period of affordability. The state HOME Program will charge these fees as described below.

Developer and CHDO Projects

The Department charges an annual monitoring fee as follows:

Table 10 – Estimated 2025 Monitoring Fees		
Number of HOME Units	Annual Fee	
12 or fewer	\$ 6,447	
13 to 24	\$10,491	
25 to 36	\$12,740	
37 to 48	\$13,113	
49 to 60	\$15,681	
61 or more	\$18,358	

To cover inflation, this annual monitoring fee is projected to increase annually at 3 percent (3%) following the Department's analysis of actual costs for monitoring. These annual monitoring fee amounts are subject to change before the formal commitment of HOME funds (Standard Agreement execution date). Financial assumptions in the HOME application shall be based on the rate that will be effective at the time of initial occupancy.

Annual monitoring fees are mandatory payments. The first payment shall be prorated based upon the total number of days after permanent closing within the first fiscal year of Project operation.

Lump sum payments for monitoring fees made from development funds are not allowed for HOME Projects. Payments must be made annually pursuant to the Regulatory Agreement.

State Recipient Projects

Pursuant to 24 C.F.R. § 92.214(b), State Recipients may also charge their borrowers annual monitoring fees to cover the actual ongoing costs to monitor and conduct physical inspections, as described below:

- 1. The monitoring fee charged may be less than, but not exceed, the amount charged for state CHDO and Developer Projects;
- 2. The monitoring fee shall be specifically stated in the State Recipient's loan documents with the borrower;
- The monitoring fee shall be based on the State Recipient's analysis of actual costs for monitoring the Project and must be approved by the Department; and

4. Ten percent (10%) of the annual monitoring fee received for the Project by the State Recipient must be paid to the Department to cover the Department's monitoring costs. For more guidance on establishing a monitoring fee, see HOMEfires Vol. 14, No. 2: Guidance on Establishing a HOME Monitoring Fee. Please note: HUD's requirements for calculating a monitoring fee differ from the state's UMR requirements.

Native American Entity Projects

Pursuant to this NOFA, the Department waives monitoring fees for Native American Entity Projects during the state period of affordability.

IV. Application Review

A. Minimum Application Requirements (Threshold)

Applications for HOME Projects are required to meet the minimum requirements outlined in this NOFA, 25 C.C.R. § 8200 *et seq.*, and 24 C.F.R. Part 92. Applications must meet the following minimum requirements at the time of application in order to move forward to the rating and ranking process:

- 1. The Applicant must submit a complete application in a format made available by the Department by the deadline specified in this NOFA and pursuant to 25 C.C.R. § 8211, and the application forms provided by the Department must not be altered or modified;
- 2. The Applicant is eligible to apply for funding, in accordance with any of the following:
 - 25 C.C.R. § 8204; or
 - Listed on Appendix A of the NOFA; or
 - Meets the definition of an eligible Applicant in this NOFA (State Recipient, CHDO, or Developer)
- All other criteria and matters set forth within the NOFA shall also govern the Native American Entity target, unless and except to the extent expressly provided to the contrary by terms set forth within this NOFA;
- 4. The Applicant must propose at least one eligible activity pursuant to 25 C.C.R. § 8205 (other than administration);
- 5. The Applicant must propose an eligible use of funds pursuant to 25 C.C.R. § 8205 and 8210;
- The Applicant must have no unresolved audit findings pursuant to 25 C.C.R. § 8204(a)(1)(D)(ii) and (2)(C)(i);
- 7. The Applicant must demonstrate its capacity for carrying out activities assisted with HOME funds. Awardees entering into a Standard Agreement with the Department must have capacity, cannot be shell entities, and cannot contract out for capacity (with limited exceptions for new CHDOs see Eligible Applicants CHDOs in the NOFA's Section II);

- 8. Cities, counties, and local public housing authorities must provide documentation satisfactory to the Department that they comply with the submittal requirements of cost principles and audit requirements at 2 C.F.R. § 200.512. Any outstanding findings contained in the audit report may impact the ability of the Department to grant an award through this NOFA;
- The Applicant and any member of its program or project team must not be on the list of debarred contractors at https://www.sam.gov/SAM/ pursuant to 25 C.C.R. § 8204(a)(1)(D)(iii) and 8204(a)(2)(C)(ii);
- 10. The Applicant's requested total amount of funds for both administrative activity-specific costs and Project-related soft costs does not exceed the limits identified in the NOFA;
- 11. CHDO applications must contain procedures for ensuring effective Project control pursuant to 24 C.F.R. § 92.300(a)(1) and 25 C.C.R. § 8204(a)(2)(D);
- 12. There is no pending or threatened litigation that could affect implementation of the proposed Project; and
- 13. When applying for project activities, the Applicant (not the ultimate borrower) must demonstrate documented site control of the Project at the time of application. Site control is subject to the HOME funding award as required by 25 C.C.R. § 8212(a)(6)(B), 25 C.C.R. § 8303, and 24 C.F.R. Part 92, including but not limited to, demonstrating site control by one of the following:
 - Fee title, which, for tribal trust land, may be evidenced by a title status report (TSR) or an attorney's opinion regarding chain of title and current title status;
 - A leasehold interest on the Project property with provisions that enable the lessee to make improvements on and encumber the property, provided that the terms and conditions of any proposed lease shall permit, prior to loan closing, compliance with all Program requirements, including compliance with 25 C.C.R. § 8316;
 - An option to purchase is obtained, conditioned on the responsible entity's determination to proceed with, modify, or cancel the Project based on the results of a subsequent environmental review, and the receipt of an Authority to Use Grants Funds ("AUGF") from the Department for State Recipient Projects and from HUD for Developer and CHDO Projects. The cost to secure the site control document can be only a nominal portion of the purchase price;
 - A Purchase Agreement, Disposition and Development Agreement (DDA), Option to Lease, or Exclusive Right to Negotiate is obtained, but this agreement cannot be conditioned on NEPA/California Environmental Quality Act (CEQA) clearance or any other federal requirement; or

 A conditional purchase contract may be used for an existing single-family home (1 to 4 units) or an existing multifamily residential Project in some limited circumstances, even when federal funds have already been contemplated.

NOTE: For more details on required and prohibited provisions of agreements consistent with NEPA, see HUD CPD Notice 98- 01: Layering Guidance for HOME Participating Jurisdictions When Combining HOME Funds with Other Governmental Subsidies; HUD CPD Notice 15-09: Requirements for Committing HOME Funds; and HUD Memo: Guidance on Operations and Conditional Contracts for Purchase of Real Property for Environmental Reviews Conducted by a Responsible Entity under 24 C.F.R. Part 58.

General HUD rules state that Purchase Agreements are acceptable if federal funds are not contemplated. Applicants are cautioned to make sure that the Purchase Agreement or DDA is open-ended or is of sufficient duration that it does not need to be extended after the HOME application is submitted.

HUD has ruled that if a Purchase Agreement/DDA expires after the HOME application is submitted, and before the AUGF is executed, the execution of an extension would be a Choice-Limiting Action (renewal prior to expiration is acceptable). The application also should ensure the Purchase Agreement/DDA has other contingencies, such as a permanent financing contingency, so that the seller cannot legally compel an individual to purchase the site prior to receiving the AUGF.

For more information on conditional purchase contracts, see <u>HUD Memo:</u>
<u>Guidance on Operations and Conditional Contracts for Purchase of Real</u>
<u>Property for Environmental Reviews Conducted by a Responsible Entity under</u>
24 C.F.R. Part 58.

B. Scoring and Ranking

After meeting the threshold requirements, applications will be scored as follows. The Department will score, rank, and fund applications based on a review of eligible activities for which funds are requested. Each application must be submitted using Department forms and contain all information required pursuant to 25 C.C.R. § 8211(c)(d). Scoring for Projects is subject to the appeal process described in Section IV (E) of this NOFA. Each project activity or combination of program activities will be evaluated and ranked separately.

In the case of a tie score, the application demonstrating the highest jurisdictional poverty level will be funded first. If CHDOs and/or Developers are applying from the same jurisdictional area, the Project with lower average rents (expressed as a percentage of area median income) will be funded first.

Applications will be funded in descending order based on points earned. Applications that qualify for CHDO, FTHB Project, and Rural targets will be funded first, based on their scores as necessary to meet the minimum set-asides and funding targets.

Once the set-asides and targets have been achieved, remaining applications will be funded within their respective allocations pursuant to 25 C.C.R. § 8212.1, based on scores relative to all other applications, with the highest-scoring applications funded first.

All scoring factors and evaluation requirements are listed in Appendix D and any applicable Supplemental Applications.

C. Rental Project Scoring and Notification

Once rental Project application scoring is complete, the Department will email the authorized representative and contact person listed in the application describing the scores and facts upon which those scores were determined.

D. Project Activity Feasibility Review

In accordance with 25 C.C.R. § 8212(a)(6), 25 C.C.R. § 8310, and 24 C.F.R. § 92.250(b), the Department will perform underwriting analysis to substantiate the Project is financially feasible for at least 20 years, as well as cost allocation and subsidy layering analyses to determine the appropriate amount of the HOME award.

When making its feasibility determinations, the Department will:

- Examine all the sources and uses of funds for the Project (including any operating cost assistance, operating cost assistance reserve, or projectbased rental assistance that will be provided to the Project); and
- Assess the current market demand in the neighborhood the Project will be located, the experience of the Applicant team, the amount and quality of the Applicant team's employees, the financial capacity of the Applicant team, and firm written financial commitments for the Project.

To determine the Project's feasibility and sustainability, the Department will review the Project Sources and Uses Form. When completing the application form, Applicants should be sure to include all known and potential Project costs, including, but not limited to, the following:

- Site development costs
- Local development costs
- Local government approvals
- Project market study
- Elevation above a floodplain
- Relocation
- Environmental remediation
- Mitigation of environmental conditions and hazards
- Any other factors that may impact the Project costs and/or schedule

If an Applicant proposes to develop site(s) formerly used for agricultural, industrial, manufacturing, or commercial purposes, or the site is situated on, adjacent to or near rail yards, airports, dumpsites, or other potentially contaminated properties, whether abandoned or operating, the Department may require Phase II environmental site assessment, or other soil assessment or testing. If an Applicant proposes to develop site(s) within a 100-year floodplain, the Department requires a HUD 8-step Floodplain Analysis. If not submitted with the application, these reports will be required after award as part of the NEPA process.

If the Applicant has any indication that these conditions may exist, the Department highly recommends that Applicants complete an assessment, soil sampling, or other appropriate testing methodology, prior to submitting the application. The results should be submitted as part of the application documentation, and any additional costs the Project may incur must be included in the Project budget and Sources and Uses Form.

Failure to include these items can increase the Project costs such that the Project is unfeasible, resulting in being noncompetitive for an award. For this reason, it is incumbent upon the Applicant to present verifiable and documented information in the application to prevent any unknown or uncertain Project costs.

E. Appeals

1. Basis of Appeals

- a. Applicants may appeal the Department's written determination that an application is incomplete, has failed threshold review, or has otherwise been determined to provide an insufficient basis for an award (including point scoring and tie breaker).
- b. At the sole discretion of the Department, the Department's written determination may include a request for clarifying and/or corrective information. For purposes of this section, "clarifying information" includes information and/or documentation that resolves ambiguities in any application materials that will inform the Department's threshold, scoring and feasibility determinations.
- c. Applicants do not have the right to appeal a decision of the Department relating to another Applicant's application (e.g., eligibility, award).
- d. Any request to appeal the Department's decision regarding an application shall be reviewed for compliance with this NOFA. All decisions rendered shall be made by the Branch Chief or his/her designee. The decision shall be final, binding, and conclusive, and shall constitute the final action of the Department.
- e. The appeal process provided herein applies solely to decisions of the Department made pursuant to this NOFA.

2. Appeal Process and Deadlines

a. Process: To file an appeal, Applicants must submit to the Department, by the deadline set forth below, a written appeal which states all relevant facts,

arguments, and evidence upon which the appeal is based. Furthermore, the Applicant must provide a detailed reference to the area or areas of the application that provide clarification and substantiation for the basis of the appeal. No new or additional information will be considered if this information would result in a competitive advantage to an Applicant. Once the appeal is submitted to the Department, no further information and/or materials may be accepted or considered. Appeals are to be submitted to the Department at <a href="https://doi.org/10.1001/journal.org/10.1001/jour

b. Filing Deadline: Appeals must be received by the Department no later than five (5) business days from the date of the Department's threshold review or initial score letters, as applicable, representing the Department's decision made in response to the application.

V. Award Announcements and Contracts

A. Award Announcements

Subject to the availability of funds, the Department intends to send award letters by July 2025 for program activities and by December 2025 for project activities for all successful Applicants.

Updates on planned awards and contract status will be provided through the Department's Listserv system. To be added to this list, go to https://www.hcd.ca.gov/contact-us/email-signup, scroll down, and select Federal Programs.

B. Contracts

Awardee(s) must enter into a Standard Agreement with the Department. The Standard Agreement contains all the relevant state and federal requirements, as well as specific information about the award and the work to be performed. The Standard Agreement includes deadlines that are consistent with state and federal HOME regulations.

Failure to meet these deadlines is considered a material breach of the Standard Agreement.

NOTE: The Standard Agreement may be delayed if the Awardee does not timely provide the Department with all required entity resolutions and other entity documentation (e.g., bylaws, articles of incorporation, 501(c)(3) certification, certificate of good standing, limited partnership agreement), in form and content acceptable to the Department in its sole discretion, which evidences that the Awardee has the legal authority to contract with the Department.

The Standard Agreement must be executed by the Awardee(s) within 90 days of receipt. Failure to execute and return the Standard Agreement(s) to the Department within 90 days may result in award cancellation. The Awardee(s) must remain a party to the Standard Agreement for the full term of the Standard Agreement; removal of the Awardee(s) is prohibited unless the Department

provides approval in advance.

Native American Entity Awardees must provide the Department with risk mitigation provision(s) in the Department's Standard Agreement, and all other Department loan and/or grant transaction documents, including but not limited to, a lease rider and a Declaration of Restrictive Covenant (or Regulatory Agreement). The Native American Entity may accomplish the purpose of the risk mitigation provisions by executing and referencing a separate instrument that the Native American Entity would agree to resolve any disputes under the contract through risk mitigation provisions. The risk mitigation provisions are an alternative to "limited waiver of sovereign immunity," and they may operate like a limited waiver of sovereign immunity provided the necessary language is included in the Department's Standard Agreement and all other Department loan and/or grant transaction documents. The risk mitigation provisions also provide the Department with an opportunity to resolve and enforce any of the terms and conditions of the Standard Agreement and the Department's loan and/or grant transaction documents through an informal process and/or in Tribal, State, or Federal Court.

In the Department's Standard Agreement and loan and/or grant transaction documents, the Department may require the following risk mitigation remedies that include, but are not limited to: adding an arbitration (dispute resolution) provision, whereas the Native American Entity would agree to resolve any disputes through an arbitration process;

- Restructuring the draw-down of funds with conditions that must be met for each disbursement (e.g., satisfaction of specific performance milestones; or receipts for eligible expenses);
- ii. Requiring Native American Entities to provide insurance with the Department as a named beneficiary to cover the risks attendant to an unenforceable agreement and/or use restriction;
- iii. Receiving technical assistance throughout the program/project lifecycle. The Department aims to provide technical assistance to Native American Entity applicants in the earlier stages of the award process to ensure that they are clearly informed of program requirements. Examples include, but are not limited to:
 - Calculating rent and assistance amounts;
 - Compliance with applicable fair housing laws; and
 - Compliance with tenant screening and selection requirements
- iv. Incurring negative points or disqualification from future Departmental funds for violating fundamental program requirements such as affordability term, levels, occupancy, and habitability standards; and
- v. Requiring a robust capacity assessment as an essential part of the application review, demonstrating the Recipient has sufficient prior experience, or a partner/contractor with experience, to be successful managing the Project.

VI. Federal and State Overlays

All activities funded with HOME funds and/or HOME PI are required to comply, where applicable, with HUD's federal "overlay" requirements found in 24 C.F.R. § 92.350, et seg. of the HOME Final Rule.

Failure to comply with state or federal overlays could result in significant Project cost increases, rejection of the HOME application, and/or loss of points in current or future HOME funding rounds. Projects must comply with all applicable state and federal laws, including, but not limited to:

- a. National Environmental Policy Act (NEPA);
- b. California Environmental Quality Act (CEQA);
- c. State and federal (Davis-Bacon) prevailing wage;
- d. URA Acquisition and Relocation;
- e. Equal Opportunity and Fair Housing;
- f. Affirmative Marketing;
- g. Section 504 of the Rehabilitation Act of 1973;
- h. Fair Housing Act (including accessibility and design requirements);
- i. Americans with Disabilities Act, where applicable;
- j. Section 3 (employment of low-income persons);
- k. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. Part 200;
- I. Build America, Buy America Act; and
- m. Tenant protections and selection practices pursuant to 24 C.F.R. § 92.253.

National Environmental Policy Act (NEPA) & HUD Environmental Review Requirements (contained in 42 U.S.C. §§ 4321-4347 and the implementing regulations at 24 C.F.R. Part 58)

After Applicant has submitted the HOME application to the Department, and before the NEPA Authority to Use Grant Funds (AUGF) has been issued, the Applicant and any participant in the development process must not engage in any Choice-Limiting Actions as defined in this NOFA and at 24 C.F.R. 58.22. All Choice-Limiting Actions on the site or on behalf of the project by anyone after the HOME application has been submitted to the Department and before the AUGF is issued will disqualify an Applicant's Project from receiving any HCD federal funds – not only for this HOME NOFA round, but future NOFA rounds.

Thus, Applicants must take great caution before proceeding with project activities.

NOTE: Pursuant to HUD's NEPA regulations, certain activities are not considered Choice-Limiting Actions regardless of when they are carried out. These activities include, but are not limited to, such things as: environmental and

other studies; resource identification and development of plans and strategies; submitting funding applications, inspections and testing for hazards or defects; purchase of insurance; payment of principal and interest on loans made or obligations guaranteed by HUD; and assistance for improvements that do not alter environmental conditions and are necessary to address the effects from disasters or imminent threats to public safety. For more information on activities not considered Choice-Limiting Actions, see 24 C.F.R. § 58.22.

For all new construction Projects and substantial rehabilitation Projects, compliance with NEPA is evidenced by an AUGF. HUD issues the AUGF for CHDO and Developer Projects, and the Department issues the AUGF for State Recipient Projects. For rehabilitation Projects not requiring an AUGF, state approval of the environmental documentation is still required prior to taking any Choice-Limiting Actions. For a thorough explanation of the NEPA process, see the Department's Environmental Review webpage at https://www.hcd.ca.gov/grants-and-funding/environmental-review.l

The Department encourages commencement of the NEPA Environmental Assessment (EA) process as soon as possible, but no later than receipt of the Award letter. For rental Projects, Project reports often require additional analysis of environmental impacts.

Submit general questions regarding Choice-Limiting Actions, or the level of environmental assessment required of the Project, to NEPA@hcd.ca.gov prior to taking any action concerning the proposed HOME Project.

The application must disclose all known environmental hazards, and, if awarded, the Department must be fully informed of all environmental issues. Failure to do so will be considered a material misrepresentation and result in a performance point penalty for all members of the development team for future HOME applications with the Department.

NOTE: The Department is unable to give legal advice regarding a specific Project or program. If an Applicant has specific questions regarding a Choice-Limiting Action, or environmental laws that may affect the Project or program, the Department recommends that the Applicant consult with a legal advisor or professional consultant prior to taking any actions on the Project. Applicants understand and agree that they are solely responsible for their decisions with respect to Choice-Limiting Actions, or potentially Choice-Limiting Actions, and the Department shall have no liability therefor.

California Environmental Quality Act

By execution of this Agreement, the Applicant is also subject to the provisions of the California Environmental Quality Act (CEQA). Applicant assumes responsibility to fully comply with CEQA's requirements regarding the work performed.

For Projects located on Native American Lands as defined by 25 C.C.R. § 8201(y)(1), the Department will be the lead agency and will prepare any exemption documentation for all other Projects subject to CEQA.

Federal Prevailing Wage Requirements (Davis-Bacon)

Federal prevailing wages must be paid on Projects involving site development, construction, and/or rehabilitation with 12 or more HOME-assisted units.

The HOME Applicant and the construction contractor must ensure that the Davis-Bacon wage requirements as well as state prevailing wage laws are followed, where applicable. The Sources and Uses Form submitted with the HOME application will be examined to ensure that prevailing wage costs have been considered (state and federal, if applicable). CHDOs are required to hire an outside consultant to act as a Labor Standards Coordinator. If the HOME Applicant does not have existing staff to monitor federal labor standards, hiring an outside labor consultant is highly recommended.

For Projects located on Native American Lands as defined by 25 C.C.R. § 8201(y)(1) and if the HOME Applicant has adopted a Tribally Determined Wage (TDW) in accordance with Tribal law, the HOME Applicant may apply its TDW in lieu of Davis-Bacon and the California prevailing wage law.

Homebuyer Self-Help Projects with 12 or more HOME-assisted units may be excluded from Davis-Bacon wage requirements if either of the following applies:

- a. Site development was completed before the HOME application, the use of HOME funds was not contemplated when the site development was completed, and there are no agreements or contracts for more than 11 HOME units. If the use of HOME was contemplated before the site development was completed, Davis-Bacon wages must be paid on the entire Project; or
- b. If the Self-Help families purchase finished lots and contract individually with the General Contractor for construction of their homes, and there are no other construction contracts or subcontracts that cover more than one unit.

Displacement, Relocation, and Acquisition Requirements

Relocation assistance must be provided if individuals and/or businesses will be temporarily relocated or permanently displaced as a result of a HOME-assisted Project. All Projects are required to comply, where applicable, with the Uniform Relocation Assistance and Real Property Acquisition Act (URA) and the Displacement, Relocation, and Acquisition requirements pursuant to 24 C.F.R. § 92.353. Specifically, federal relocation requirements extend back to the "initiation of negotiations" (ION). For more information on federal displacement, relocation, and acquisition requirements, see <a href="https://example.com/humanes/huma

Submit questions regarding ION determinations to HOMENOFA@hcd.ca.gov
This recommendation applies to all rental and FTHB Projects involving any relocation activities. An accurate determination is critical because relocation costs may be higher if an earlier ION date is necessary. Applications for tenant-occupied properties must have already provided the General Information Notice (GIN) to all tenants by the date of the ION.

The Sources and Uses form submitted with the application must adequately budget for relocation costs. Consistent with federal relocation requirements prohibiting economic displacement, if rents for existing tenants will increase, a transition reserve must be budgeted to maintain rents for existing tenants at the higher of 30 percent (30%) of their income at ION or the rent at the time of ION, not including regular increases in expenses, for as long as they live in the Project.

Homebuyer 90-Day Vacancy Rule: Relocation requirements will also be triggered if a FTHB proposes to purchase a home that has been occupied by a renter in the 90 days preceding the date of the purchase agreement. Exceptions to this rule can be made by the Department on a case-by-case basis with adequate third-party documentation that the tenant moved for reasons unrelated to the sale of the property, such as the tenant moving for another job.

Normally, relocation will not be triggered for OOR or TBRA programs. However, temporary relocation costs are an eligible HOME grant expense.

A relocation certification is required for all Projects including vacant site(s). Applicants that assert their Project does not require relocation must submit a detailed explanation, including supporting documentation, as to why relocation (of tenants, farms, businesses, etc.) is not required. The Department will review the documentation to determine whether a relocation plan is necessary. Relocation considerations include:

- Vacant land, which is land that is not developed or being used for agricultural purposes;
- Property vacated for the Project, then relocation applies; and
- Tenants include anyone who is living or storing their belongings on the property with the owner's consent, whether or not the "tenant" pays rent. Squatters are not tenants.

If relocation is not required, the Department will issue a Certification Regarding Non-application of Relocation Benefits and Indemnification Agreement ("Non-Relocation Certification"). This Non-Relocation Certification must be executed by the Applicant/borrower/sponsor prior to the Department executing the Standard Agreement, and as a condition thereof. The Non-Relocation Certification substantiates and certifies that there is no displacement including, but not limited to, the displacement or temporary relocation of tenants, businesses, and farms; therefore, no relocation is required. Submission of thorough and clear supporting information will lead to a more efficient review and decision.

The following are examples of supporting documentation for the Non-Relocation Certification:

- · Background information
- Project information
- Reports from professionals, such as appraisal or soils report

- Purchase information
- Mini relocation plan with pictures of the vacant land
- Summary relocation report
- Scope of Work from the general contractor
- Letter from the Project engineer stating the scope of work
- Sales contract evidencing the purchase of vacant land
- ALTA survey of (purchased) vacant land
- Property tax assessment for vacant land
- Photographic evidence of vacant land

Pursuant to 24 C.F.R. § 92.353(g) regarding "Displacement, Relocation and Acquisition: Appeals," a person who disagrees with the participating jurisdiction's determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person may be eligible, may file a written appeal of that determination with the jurisdiction. A low-income person who is dissatisfied with the jurisdiction's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

Projects located on Native American Lands, as defined in 25 C.C.R. § 8201(y)(1), may also be subject to the Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA) relocation requirements pursuant to 24 C.F.R. § 1000.14.

<u>Procurement Requirements for State Recipients Using Administrative Subcontractors</u>

State Recipients using administrative subcontractors paid with HOME Funds must follow, where applicable, a competitive Request for Qualifications (RFQ) or Request for Proposals (RFP) procurement process to select the administrative subcontractor. For information on this procurement process, see the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. Part 200.

Projects located on Native American Lands, as defined in 25 C.C.R. § 8201(y)(1), may also be subject to NAHASDA procurement requirements pursuant to 24 C.F.R. § 1000.26.

Continuing Compliance Responsibilities

The Awardee must collect and report data upon execution of the Regulatory Agreement until the final Project Completion Report is accepted in the federal disbursement and information system. Annual performance reports must be submitted to the Department during the entire affordability period pertaining to the outcomes of the program, pursuant to the Regulatory Agreement provisions.

Local government Applicants must comply with the requirements of 2 C.F.R. Part 200.

Applicants/Awardees are responsible for disclosing all changes to the Project after submitting the application. Such changes could include, but are not limited to, development team member changes, increased or decreased costs, intent to apply for additional funds, changed Project description, environmental issues, and/or Project timeline changes.

Questions regarding compliance with the submittal requirements can be directed to HOMENOFA@hcd.ca.gov.

Violence Against Women Act Requirements

Assurance of Compliance with the "Violence Against Women Reauthorization Act of 2022" (VAWA) (S.3623 - 117th Congress (2021-2022)) (as amended or reauthorized) Title VI - Safe Homes for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking – Sec. 601-603. See also 81 FR 80803, Nov 16, 2016.

VAWA provides housing protections for survivors of domestic and dating violence, sexual assault, and stalking when it comes to finding and keeping a home they can feel safe in. VAWA applies for all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation, and which must be applied consistently with all nondiscrimination and fair housing requirements. VAWA now expands housing protections to HUD programs beyond HUD's public housing program and HUD's tenant-based and project-based Section 8 programs. VAWA now provides enhanced protections and options for victims of domestic violence, dating violence, sexual assault, and stalking. During the performance of this Agreement, the HOME Recipient shall ensure that all requirements of VAWA are complied with, including but not limited to:

- Domestic Violence survivors are not denied assistance as an Applicant, or evicted or have assistance terminated as a tenant, because the Applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, and stalking.
- It will implement an 'emergency transfer plan', which allows for domestic violence survivors to move to another safe and available unit if they fear for their life and safety.
- 3) It will provide "Protections against denials, terminations, and evictions that directly result from being a victim of domestic violence, dating violence, sexual assault, or stalking, if the Applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy."
- 4) It will implement a 'Low-barrier certification process' where a domestic violence survivor need only to self-certify in order to document the domestic violence, dating violence, sexual assault, or stalking, ensuring

third party documentation does not cause a barrier in a survivor expressing their rights and receiving the protections needed to keep themselves safe.

Fair Housing and Tenants' Rights Protections

The Applicant/Awardee must comply with all applicable local, state, and federal laws, constitutions, codes, standards, rules, guidelines, and regulations, including, without limitation, those that pertain to accessibility, construction, health and safety, labor, fair housing, fair employment practices, affirmative marketing and outreach practices, nondiscrimination, and equal opportunity, where applicable.

To the furthest extent applicable and subject to federal preemption, the Applicant/Awardee must comply with all relevant laws, including, without limitation, the California Fair Employment and Housing Act (Gov. Code, § 12900 et seq.); the Unruh Civil Rights Act (Civ. Code, § 51); Government Code § 11135 (the prohibition of discrimination in state-funded programs); Government Code § 8899.50 (the duty to affirmatively further fair housing); California's Housing Element Law (Gov. Code, § 65583 et seq.); California Code of Regulations, Title 2, §§12264 – 12271 (legally permissible consideration of criminal history information in housing); Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.); the ADA of 1990 (42 U.S.C. § 12101 et seq.); the Fair Housing Act (FHA) and amendments (42 U.S.C. § 3601 et seq.); the Fair Housing Amendments Act of 1988; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794); the Architectural Barriers Act of 1968 (42 U.S.C. § 4151 et seq.); the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101 – 6107); and all federal and state regulations implementing these laws.

Federal Section 3 Rule

In 2020, HUD published a final rule (24 C.F.R. Part 75) ("Section 3"), which outlines requirements for creating economic opportunities for low and very low-income persons and eligible businesses. Section 3 requires recipients of certain HUD financial assistance (which includes HOME funds) to provide, to the greatest extent possible, job training and employment opportunities to low-and/or very low-income residents in connection with HOME Projects and activities in their neighborhoods.

Build America, Buy America Act (BABA)

On November 15, 2021, the Build America, Buy America Act (BABA) was enacted as part of the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117-58). BABA requires that all iron, steel, manufactured products, and construction materials used for federally funded infrastructure projects are produced in the United States, unless otherwise exempt or subject to an approved waiver. This requirement is known as the "Buy America Preference (BAP)" and the specific requirements are codified in 2 C.F.R. Part 184.

NOTE: For the purposes of BABA, housing is considered "infrastructure." Starting August 23, 2024, BABA applies to new awards of HOME funding.

The following language must be included in all contracts and agreements with Subrecipients, contractors, Developers and subgrantees, and in any procurement bid/contract documents to ensure BABA compliance by subgrantees, Developers and/or contractors:

The parties to this contract must comply with the requirements of the Build America, Buy America (BABA) Act, <u>41 U.S.C. 8301</u> note, and all applicable rules and notices, as may be amended, if applicable to the Grantee's infrastructure project.* Pursuant to HUD's Notice, "Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" (88 Financial Report 17001), any funds obligated by HUD on or after the applicable listed effective dates, are subject to BABA requirements, unless excepted by a waiver.

*The term "infrastructure project," in this context, is defined in <u>2 C.F.R. § 184.3</u> and means any activity related to the construction, alteration, maintenance, or repair of infrastructure (including buildings and housing) in the United States regardless of whether infrastructure is the primary purpose of the Project.

2 C.F.R. Part 184 and HUD's Notice CPD-23-12: CPD Implementation Guidance for the Build America, Buy America Act's Domestic Content Procurement

Preference as Part of the Infrastructure Investment and Jobs Act - HUD

Exchange provides further guidance on the implementation of BABA. Additional details on fulfilling the BABA requirements can be found on HUD's website Build America, Buy America Act - HUD Exchange.

VII. Other Terms and Conditions

A. Right to Modify or Suspend

The Department reserves the right, at its sole discretion, to suspend, rescind, amend, modify, or supplement the provisions of this NOFA at any time, including without limitation, the amount of funds available hereunder. If such an action occurs, the Department will notify all interested parties via a Listserv notice and will post the revisions to the Department website. Be sure to sign up for our Listserv at https://www.hcd.ca.gov/contact-us/email-signup by choosing "Federal Programs."

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

B. Incompatible Funding

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

C. Conflicts

In the event of any conflict between the terms of this NOFA and either applicable state or federal law or regulation, the terms of the applicable state or federal law or regulation (whichever is stricter) shall control. Applicants are deemed to have fully read and understand all applicable state and federal laws, regulations, and guidelines pertaining to the HOME Program, and understand and agree that the Department shall not be responsible for any errors or omissions in the preparation of this NOFA.

D. False, Fictitious or Fraudulent Claims

Warning: Any person who knowingly makes a false claim or statement to HUD or the Department in connection with this HOME NOFA may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729.

E. Detecting, Preventing, and Reporting Fraud

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

F. Combating Fraud

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

HUD cannot combat fraud alone; they rely on the Department and HOME NOFA Applicants to combat HOME Program fraud.

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

The HUD OIG Hotline number is **1-800-347-3735**. This is the primary means to submit allegations of fraud, waste, abuse, mismanagement, or Whistleblower related matters for the HOME Program to the OIG.

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

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

Fraud, waste and abuse in the HOME Program and its operation may be reported in one of the following four (4) ways:

By email to: hotline@hudoig.gov

By phone: Call toll free: 1-800-347-3735 By fax: 202-708-4829

By mail: U.S. Department of Housing & Urban Development

HUD OIG, Office of Investigation, Room 1200 Field Office

One Sansome Street, San Francisco, CA 94104

HUD OIG, Office of Investigation Suite 4070 Regional Office

300 North Los Angeles Street, Los Angeles, CA 90012

G. Whistleblower Protection Acts

(Federal Whistleblower Protection Act (5 U.S.C Section 2302(b)(8))

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

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

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

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

to state government that:

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

There are many ways to file a complaint:

1. By Telephone

Call the Whistleblower Hotline at (800) 952-5665 to file a complaint by talking to one of the State Auditor's employees. The hotline generally is staffed Monday through Friday from 8:00 A.M. to 5:00 P.M. If when called, the hotline is not being staffed, or staff is occupied with other calls, a voicemail message can be left requesting a return call.

2. By Mail or Facsimile

To file a complaint in writing, submit a letter to the State Auditor addressed as follows:

Investigations California State Auditor

P.O. Box 1019

Sacramento, CA 95812

Or the letter may be faxed to the State Auditor at (916) 322-2603.

As an alternative, a complaint form may be accessed electronically (which is available on the State Auditor website at auditor.ca.gov). To submit, print it out, and return it by mail or facsimile as stated above.

3. Online

Although the State Auditor does not accept complaints by email, complaints may be submitted online at https://www.auditor.ca.gov/whistleblower/.

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

- a. A clear and concise statement of what is being alleged to be improper activity and why it is believed to be improper.
- b. The name or other information that clearly identifies the person alleged to have acted improperly and the department where that person works.

- c. The names and contact information for any witnesses who can confirm the truth of the complaint.
- d. Copies of any documents that will support the complaint. (Do not submit original documents, as they cannot be returned.)

H. Cancellation and Defaults

If HCD is required to repay HUD for HOME funds invested in affordable housing because the Project failed to meet the required minimum period of affordability (pursuant to 24 C.F.R. § 92.252(e)), then the Applicant/Developer/Contractor must repay the same amount back to the Department upon demand.

Terminated Projects: If a HOME Project is terminated pursuant to 24 C.F.R. § 92.205 and the Department must repay any HOME funds invested in the Project to the Department's HOME Investment Trust Fund in accordance with 24 C.F.R. § 92.503(b), then Applicant/Sponsor/Developer/Borrower must repay that money back to the Department, so the Department is made whole.

I. Loan Closing Requirements

Sponsor must submit all Department Closing Checklist items well in advance of the anticipated construction loan closing, occupancy, and permanent loan closing dates.

Sponsors and Borrowers should allow at minimum 60 days after they have submitted to the Department the (i) final due diligence documents; and (ii) final signed transaction summary report for a loan to close. With the Department's current workload, the Department strongly recommends Sponsors and Borrower allow at minimum 90 days after submitting the final signed transaction summary for a HOME loan to close.

Failure by Sponsors and Borrowers to timely submit (i) the required due diligence documentation; and (ii) the final signed transaction summary will result in an unnecessary delay to the date when the Department loan will be able to close and may result in extra costs to Borrower. Sponsors and Borrowers are responsible to plan accordingly to ensure a timely closing.

VIII. List of Appendices

Appendix A: Eligible State HOME Jurisdictions

Appendix B: CHDO Certification Instructions

Appendix C: Community Needs Score

Appendix D: Scoring Factors

Paoli, Diana

From: Jacob Patterson < jacob.patterson.esq@gmail.com>

Sent: Friday, May 9, 2025 3:47 PM

To: City Clerk
Cc: Whippy, Isaac

Subject: Public Comment - 5/12/25 CC Mtg., Item No. 8A, Hazelwood HOME Application

City Council,

When I started reviewing this agenda item, I was leaning toward recommending against approving this application because I think the late timing of this request when we basically have to either approve it or deny it without a meaningful opportunity to dig into the details is not how I like to conduct the public's business. I like early, meaningful public and Council participation. You asked for more information before you wanted to make any decisions about supporting this funding and I don;t think you have received it, at least not enough of it. However, once I read this staff report, I changed my mind and encourage you to approve this HOME loan application for the following reasons:

- This is the only potential project that could use these funds and I think applying for it now won't impact our
 ability to apply for similar funding in the future for other projects.
- We get the loan proceeds back as they are repaid by the developer and they go into our housing trust fund. That is huge because we have even more flexibility in how to use those funds and we might even be able to use some to support our Community Land Trust efforts.
- Even if you didn't approve the permits (and I think you shouldn't have not because I am opposed to the project but because I support it and want our approval to be iron-clad and defensible and I think we need to fix a couple of planning oversights to ensure our approval stands since I expect it to be appealed and challenged just as your pre-mature approval of the Todd's Point apartment project was appealed), we should still apply for this funding because the apparent planning defects can be remedied and you can and should still approve the entitlements once that has been done.

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--Jacob



City of Fort Bragg

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

Text File

File Number: 25-143

Agenda Date: 5/12/2025 Version: 1 Status: Business

In Control: City Council File Type: Staff Report

Agenda Number: 8B.

Receive Report and Consider Resolution Of The Board of Directors Of The Fort Bragg Joint Powers Financing Authority Authorizing The Execution And Delivery Of The Installment Purchase Agreement With The City Of Fort Bragg Joint Powers Public Financing Authority And Assignment Of Payments Thereunder To Everbank, N.A., And Related Documents And Official Actions



FORT BRAGG JOINT POWERS FINANCING AUTHORITY STAFF REPORT

TO: Board of Directors of The Fort Bragg Joint Powers Financing

Authority

DATE: May 12, 2025

PREPARED BY: Isaac Whippy, Executive Director

PRESENTER: Isaac Whippy, Executive Director

AGENDA TITLE: CONSIDER ADOPTION OF A RESOLUTION OF THE BOARD OF DIRECTORS OF THE CITY OF FORT BRAGG JOINT POWERS FINANCING AUTHORITY APPROVING THE EXECUTION AND DELIVERY OF AN INSTALLMENT PURCHASE AGREEMENT WITH THE CITY OF FORT BRAGG, AND RELATED DOCUMENTS AND ADDITIONAL ACTIONS

RECOMMENDATION

Adopt the attached Resolution authorizing the issuance of debt by the City of Fort Bragg (the "City") through an Installment Purchase Agreement with the Fort Bragg Joint Powers Financing Authority (the "Authority") for the City's Broadband Utility project and approving the related financing documents that the Authority will be executing.

SUMMARY

This item is being brought to the Authority's Board of Directors for consideration as part of the process for the City's issuance of debt related to the City's Broadband Utility project. The City's item was previously presented to the City Council on April 28, 2025. For simplicity, the prior City Council staff report is included in Attachment 5, which has a detailed description of the project, financing structure, debt service costs, and summary of the pertinent legal documents. This can also be accessed at the link above. There have been no material changes to the financing structure. The costs of issuance have increased by about \$12,000 from the previous analysis (these are financed through the loan) given the finalization of fees for the various parties on the financing team, as well as an increase to the contingency budget. Any contingency funds that go unused will flow back to the City. New Good Faith Estimates that reflect this slight increase are included as Attachment 6, and are being included for transparency purposes as the prior Good Faith Estimates were properly presented to the City and were noted that they may increase.

AGENDA ITEM NO. 8B

While the structure remains largely the same, the JPA version of the Installment Purchase Agreement (the "IPA") includes minor technical updates necessary for implementation under the JPA framework. Per the City Attorney's review, as counsel to the Authority, these revisions do not constitute material changes to the previously approved terms. However, in the interest of transparency and to ensure Council/the Board and the public are fully informed, staff is presenting the item again with the updated IPA. The redlined version of the IPA clarifies these minor revisions and can be found in Attachment 4.

FISCAL IMPACT:

There is no financial impact to the FY 2025 budget. The first debt payment will occur in FY 2028 in an amount of \$524,653 and is expected to be paid by revenue of the new Broadband Enterprise. All costs of issuance will be financed through the 2025 IPA

GREENHOUSE GAS EMISSIONS IMPACT:

There is no impact to greenhouse gas emissions from approving the resolution.

ALTERNATIVE ACTION(S):

- 1. Do not adopt the resolutions.
- 2. Provide alternative direction to staff.

STRATEGIC PLAN/CONSISTENCY:

- 1. INVIGORATE ECONOMIC OPPORTUNITY AND COMMUNITY VIBRANCY
- 1 (D) Develop and maintain affordable and reliable high-speed fiber-optics infrastructure to support and attract diverse businesses, online education, and remote employment that will connect Fort Bragg to the world.
- Construct, manage, and maintain a municipal broadband utility that provides citywide access to underground networks with industry-leading speeds to provide secondary communications during emergencies and support businesses.

ATTACHMENTS:

Attachment 1: JPA Resolution

Attachment 2: JPA Installment Purchase Agreement (Clean)

Attachment 3: JPA Assignment Agreement (Clean)

Attachment 4: JPA Installment Purchase Agreement (Redline)

Attachment 5: Prior City Council Staff Report

Attachment 6: Good Faith Estimates

RESOLUTION NO.

RESOLUTION OF THE BOARD OF DIRECTORS OF THE FORT BRAGG PUBLIC FINANCING AUTHORITY APPROVING THE EXECUTION AND DELIVERY OF AN INSTALLMENT PURCHASE AGREEMENT WITH THE CITY OF FORT BRAGG, AND RELATED DOCUMENTS AND ADDITIONAL ACTIONS

WHEREAS, the Fort Bragg Public Financing Authority (the "Authority") is a joint exercise of powers agency duly organized and operating pursuant to Chapter 5 of Division 7 of Title 1 of the California Government Code (the "Act") and a joint exercise of powers agreement dated as of April 19, 1993 (the "Joint Powers Agreement"), between the City of Fort Bragg (the "City") and the former Fort Bragg Redevelopment Agency;

WHEREAS, the Authority was formed for the purpose of assisting the City in the financing of public capital improvements; and

WHEREAS, the City has or will receive certain government grants fund a portion of the costs to acquire, construct and improve the Service (collectively, the "Project"); and

WHEREAS, the City desires to fund the remaining portion of the costs necessary to complete the Project by entering into an Installment Purchase Agreement (the "2025 IPA") with the Authority; and

WHEREAS, pursuant to the 2025 IPA, the Authority has agreed to purchase the Project from the City with funds provided by EverBank, N.A. (the "Lender") pursuant to an Assignment Agreement (the "Assignment Agreement") by and between the Authority, as assignor, and the Lender, as assignee;

WHEREAS, pursuant to the 2025 IPA, the City will acquire the Project from the Authority and obligate itself to make installment payments in the amounts and on the dates set forth in Exhibit B attached to the 2025 IPA (the "Installment Payments");

WHEREAS, pursuant to the Assignment Agreement, the Authority will assign to the Lender substantially all of the Authority's rights, title and interest under the 2025 IPA; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of the Fort Bragg Public Financing Authority, as follows:

- **Section 1.** Recitals. The foregoing recitals are true and correct and the [Board] so finds and determines.
- **Section 2.** Authorization of Officers to Execute and Deliver the 2025 IPA. The Board hereby authorizes and directs the President, the Vice President, the Secretary, and the Treasurer of the Authority and their designees (the "Designated Officers"), for and in the name of the Authority, to approve, execute, and deliver the 2025 IPA, in substantially the form presented to the [Board] at this meeting, which such 2025 IPA is hereby approved, with such changes, insertions, revisions, corrections, or amendments as shall be approved by the officer or officers executing the document

for the Authority. The execution of the foregoing by a Designated Officer or Officers shall constitute conclusive evidence of such officer's or officers' and the [Board]'s approval of any such changes, insertions, revisions, corrections, or amendments to the respective forms of documents presented to the Board at this meeting.

Section 3. Authorization of Officers to Execute and Deliver Assignment Agreement. The form of the Assignment Agreement between the Authority and the Lender is hereby approved and each Authorized Officer acting alone, is hereby authorized and directed to execute and deliver the Assignment Agreement in the name of and on behalf of the Authority, in substantially the form and content now before this meeting, but with such changes, modifications, additions and deletions therein as shall be deemed necessary, desirable or appropriate by the Authorized Officer or Authorized Officers executing the same, such approval to be conclusively evidenced by the execution and delivery thereof by one or more of the Authorized Officers.

Section 4. General Authorization and Ratification. The Board hereby authorizes and directs the Designated Officers and other officers and agents of the Authority, and each of them individually, for and in the name of and on behalf of the Authority, to do any and all things and to execute and deliver any and all documents that they may deem necessary to assist the City in financing the Project including, but not limited to, any certificates, instructions, notices or other documents required by the 2025 IPA, the Assignment Agreement and otherwise to carry out, give effect to, and comply with the terms and intent of this resolution. All actions heretofore taken by such officers and agents that are in conformity with the purposes and intent of this resolution are hereby ratified, confirmed and approved in all respects.

Section 5. <u>Effective Date</u>. This resolution shall take effect immediately upon its passage.

PASSED AND ADOPTED this 12 th day of	of May, 2025, by the following vote:	
AYES:		
NOES:		
ABSTENTIONS:		
ABSENT:		
	APPROVED:	
	Jason Godeke, President	
ATTEST:		

Diana Paoli, Secretary
APPROVED AS TO LEGAL FORM:
Baron J. Bettenhausen, General Counsel

INSTALLMENT PURCHASE AGREEMENT

Dated as of May 1, 2025

by and between

CITY OF FORT BRAGG JOINT POWERS FINANCING AUTHORITY

and

CITY OF FORT BRAGG

Relating To

CITY OF FORT BRAGG \$7,879,810.41_____ 2025 INSTALLMENT FINANCING (BROADBAND SYSTEM)

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INSTALLMENT PURCHASE AGREEMENT

This INSTALLMENT PURCHASE AGREEMENT (this "Installment Purchase Agreement"), dated for convenience as of May 1, 2025, is by and between the CITY OF FORT BRAGG JOINT POWERS AUTHORITY, a joint exercise of powers authority duly organized and existing under the laws of the State of California (the "Authority"), and the CITY OF FORT BRAGG, a general law city duly organized and existing under the laws of the State of California (the "City").

WITNESSETH:

WHEREAS, pursuant to the provisions Article 12 (commencing with Section 53167) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, the City constitutes a local agency, as defined therein, and is authorized to provide broadband internet access service to the public (the "System"); and

WHEREAS, the City has applied for or is entitled to receive a grant(s) (as described further herein) (the "Government Grant") to fund a portion of the costs to acquire, design, construct and improve the System, as more specifically described in Exhibit A attached hereto and incorporated herein by reference (the "Project"); and

WHEREAS, the City desires to fund the portion of the costs necessary to complete the Project following receipt of the Government Grant by entering into this Installment Purchase Agreement, pursuant to which the Authority will sell the Project to the City as provided herein for \$7,879,810.41 and the City will acquire the Project from the Authority and obligate itself to make installment payments in the amounts and on the dates set forth in Exhibit B attached hereto (collectively, the "Installment Payments"); and

WHEREAS, each of the Authority and the City has duly authorized the execution of this Installment Purchase Agreement; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this Installment Purchase Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Installment Purchase Agreement;

NOW, THEREFORE, in consideration of the above premises and of the mutual agreements and covenants hereinafter contained and for other good and valuable consideration, the parties hereto agree as follows:

ARTICLE 1

DEFINITIONS AND EXHIBITS

SECTION 1.1. Definitions. All capitalized terms used in this Installment Purchase Agreement shall for all purposes hereof have the meanings set forth in this Section 1.1 or as hereinafter defined.

"Acquisition Amount" means \$7,879,810.41.

"Annual Debt Service" means, for any Fiscal Year, the sum of (1) the interest component of the Installment Payments and any other Parity Obligations during such Fiscal Year, assuming that all principal payments required to be made hereunder and under such other Parity Obligations are made as scheduled, plus (2) the principal component of the Installment Payments and principal amount due under any other Parity Obligations in such Fiscal Year, calculated as if such principal amounts were deemed to accrue daily during such Fiscal Year in equal amounts from, in each case, each date principal is to be paid under this Installment Purchase Agreement and under such other Parity Obligations to the next succeeding date that a principal payment is due hereunder and under such other Parity Obligations; provided, that the amount on deposit in a debt service reserve fund for any Parity Obligations on any date of calculation of Annual Debt Service shall be deducted from the amount of principal due at the final maturity of such Parity Obligations and in each preceding year until such amount is exhausted.

"Assignee" means EverBank, N.A., a national banking association, and its successors and assigns.

"Assignment Agreement" means the Assignment Agreement dated as of May 1, 2025, by and between the Authority and the Assignee.

"<u>Authorized Investments</u>" means any of the following, but only to the extent that the same are acquired at fair market value, which at the time of investment are legal investments under the laws of the State for the moneys proposed to be invested therein:

- (a) direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America;
- (b) obligations of any of the following federal agencies which obligations represent full faith and credit of the United States of America, including: (i) Export-Import Authority; (ii) Farm Credit System Financial Assistance Authority, (iii) Farmers Home Administration; (iv) General Services Administration; (v) U.S. Maritime Administration; (vi) Small Business Administration; (vii) Government National Mortgage Association (GNMA); (viii) U.S. Department of Housing & Urban Development (PHA's); (ix) Federal Housing Administration and (x) Federal Financing Authority;
- (c) senior debt obligations rated "Aaa" by Moody's and "AAA" by S&P issued by the Federal National Mortgage Association or the Federal Home Financing Mortgage Authority, senior debt obligations of other government-sponsored agencies, obligations of

the Resolution Funding Authority (REFCORP) and senior debt obligations of other government sponsored agencies;

- (d) U.S. dollar denominated deposit accounts, federal funds and banker's acceptances with domestic commercial banks (including the Assignee and its affiliates) which have a rating on their short term certificates of deposit on the date of purchase of "P-1" by Moody's and "A-1" or "A-1+" by S&P and maturing no more than 360 days after the date of purchase, provided that ratings on holding companies are not considered as the rating of the bank; provided however, that, for the avoidance of doubt, deposit accounts, federal funds and banker's acceptances of the Assignee or its affiliates shall also satisfy this provision;
- (e) commercial paper which is rated at the time of purchase in the single highest classification, "P-1" by Moody's and "A-1+" by S&P, and which matures not more than 270 days after the date of purchase;
- pre-refunded municipal obligations defined as follows: Any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and (i) which are rated, based upon an irrevocable escrow account or fund (the "escrow"), in the highest rating category of Moody's and S&P or any successors thereto; or (ii)(A) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or obligations described in paragraph (a) above, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (B) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to above, as appropriate;
 - (g) the Local Agency Investment Fund maintained by the State;
 - (h) the California Asset Management Program; and
 - (i) any other investments permitted by the Government Code of the State.

"Broadband" means communications network facilities that enable high-speed Internet access.

"Business Day" means any day other than a Saturday or Sunday or a day on which (i) banks located in Jacksonville, Florida, or San Francisco, California, are not required or authorized to remain closed, and (ii) the New York Stock Exchange is not closed; and (iii) neither the Authority nor the Federal Reserve Bank is closed.

"Capitalized Interest Fund" means the fund or account established and held by the Assignee for the benefit of the City into which certain proceeds of this Installment Purchase Agreement shall be deposited and administered pursuant to the Capitalized Interest Fund Agreement as described further in Section 3.10(b) hereof.

"Capitalized Interest Fund Agreement" means the Capitalized Interest Fund Administration Agreement dated as of May 14, 2025, among the City, EverBank, N.A. and the Assignee, relating to the administration of the Capitalized Interest Fund.

"<u>City</u>" means the City of Fort Bragg, a local agency duly organized and existing under the laws of the State of California.

"Closing Date" means May 14, 2025.

"Contract(s)" means any instrument pursuant to which a Parity Obligation is issued.

"Contract Payment Date" means any date on which Contract Payments are scheduled to be paid by the City under and pursuant to the Parity Obligations.

"Contract Payments" means the payments scheduled to be paid by the City under a Contract and pursuant to the Parity Obligations, which payments are secured by a pledge of Pledged Revenues.

"Costs of Issuance" means all items of expense directly or indirectly payable by or reimbursable to the City and related to the authorization, execution, sale and delivery of this Installment Purchase Agreement any Parity Obligations, including but not limited to any costs, fees and charges for preparation and execution of this Installment Purchase Agreement or any Parity Obligations and any other cost, charge or fee incurred in connection with the delivery of this Installment Purchase Agreement or such Parity Obligations.

"<u>Date of Taxability</u>" means the date from and for the interest component of the Installment Payments is subject to federal or State income taxation as a result of a Determination of Taxability.

"<u>Debt Service Reserve Fund</u>" means the fund or account established and held by the Assignee for the benefit of the City into which funds transferred by the City shall be deposited and administered pursuant to the DSRF Agreement as described further in Section 3.10 hereof.

"<u>Debt Service Reserve Requirement</u>" means, initially, an amount equal to the least of (a) Maximum Annual Debt Service; (b) 10% of the Acquisition Amount; and (c) 125% of the average annual Installment Payments hereunder.

"<u>Default</u>" means any event or circumstance which, following the applicable cure period or notice or both, results in an Event of Default.

"Default Rate" means a rate of interest equal to the Interest Rate set forth herein, plus 3.0%.

"<u>Determination of Taxability</u>" means and shall be deemed to have occurred on the first to occur of the following:

- (i) on the date when the City files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability shall have occurred;
- (ii) on the date when the Assignee notifies the City that it has received a written opinion from Special Counsel to the effect that an Event of Taxability has occurred, which notice shall be accompanied by a copy of such opinion of Special Counsel, unless, within 180 days after receipt by the City of such notification and copy of such opinion from the Assignee, the City shall deliver to the Assignee a ruling or determination letter issued to or on behalf of the City by the Commissioner or any Assistant Director of the Internal Revenue Service (or any other governmental official exercising the same or a substantially similar function from time to time) to the effect that, after taking into consideration such facts as form the basis for the opinion that an Event of Taxability has occurred, an Event of Taxability shall not have occurred;
- (iii) on the date when the City shall be advised in writing by the Commissioner or any Director of the Internal Revenue Service (or any other government official or agent exercising the same or a substantially similar function from time to time) that, based upon any review or audit or upon any other ground whatsoever, an Event of Taxability has occurred; or
- (iv) on that date when the City shall receive notice from the Assignee that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed the interest component of the Installment Payments as includable in the gross income of the Assignee due to the occurrence of an Event of Taxability;

provided, however, that no Determination of Taxability shall occur under paragraph (iii) or paragraph (iv) above unless the City has been afforded the opportunity, at its expense, to contest any such assessment, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined; provided further, however, that upon demand from the Assignee, the City shall reimburse the Assignee for any payments, including any taxes, interest, penalties or other charges, such Assignee shall be obligated to make as a result of the Determination of Taxability.

"<u>DSRF Agreement</u>" means the Debt Service Reserve Fund Administration Agreement dated as of May 14, 2025, by and among the City, EverBank, N.A. and the Assignee, relating to the administration of the Debt Service Reserve Fund.

"End User" means any individual or entity in the State that uses a broadband internet access service that is provided by the City.

"Event of Default" means any of the events of default as defined in Section 5.1.

"Event of Taxability" means a change in law or fact or the interpretation thereof, or the occurrence or existence of any fact, event or circumstance (including, without limitation, the taking of any action by the City, or the failure to take any action by the City, or the making by the City of any misrepresentation in this Installment Purchase Agreement or the certificate regarding federal arbitrage which has been executed and delivered by the City in connection with this Installment Purchase Agreement) which has the effect of causing the interest component of the Installment Payments to be includable, in whole or in part, in the gross income of the Assignee for federal income tax purposes.

"Environmental Laws" means any federal, state, or local law, rule or regulation now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, relating to health, safety, or the environment.

"<u>Federal Securities</u>" means any direct general non-callable obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), or obligations the timely payment of principal of and interest on which are directly guaranteed by the United States of America.

"Finance Director" means the City's finance director.

"<u>Financial Consultant</u>" means a person having the experience and qualifications necessary to review and make recommendations regarding the operation, management, marketing, improvement, condition or use of the System.

"<u>Financing Documents</u>" means this Installment Purchase Agreement and any and all other documents from time to time evidencing, securing, or delivered to the Authority in connection with, this Installment Purchase Agreement, including, but not limited to, the Project Fund Administration Agreement, the Capitalized Interest Fund Agreement and the DSRF Agreement.

"Fiscal Year" means each twelve-month period during the Term of this Installment Purchase Agreement, commencing on July 1 of any calendar year and ending on June 30 of the next succeeding calendar year, or any other twelve-month period selected by the City as its fiscal year period.

"Generally Accepted Accounting Principles" means generally accepted accounting principles in the United States, or those required of the regulatory agency having jurisdiction over the City.

"Governmental Authority" means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other person with authority to bind a party at law.

"Government Grant" means the Last Mile Federal Funding Account funding as more particularly described in that certain letter from the California Public Utilities Commission dated October 11, 2024.

"Gross Revenues" means all revenues, fees, income, rents, sale proceeds, and receipts received or earned by the City from or attributable to the ownership or operation of the System, including moneys received from the imposition of fees and charges to providers and end users, together with all interest earned by and profits derived from the sale of investments in the related funds thereof, minus non-cash patronage, non-cash income from subsidiaries and/or joint ventures, and grant income.

"Independent Certified Public Accountant" means an independent certified public accountant or any firm of certified public accountants selected by the City.

"Installment Payment Date" means each date upon which an Installment Payment is due and payable as set forth on Exhibit B hereto.

"Installment Payments" means all payments required to be paid by the City on any date under this Installment Purchase Agreement and pursuant to Section 3.2 and 3.5, including any prepayment thereof pursuant to Section 6.1 or 6.2.

"Installment Purchase Agreement" means this Installment Purchase Agreement, dated as of May 1, 2025, between the Authority and the City, as amended and supplemented.

"Interest Rate" means 4.85%, so long as no Event of Default or Event of Taxability has occurred and is continuing.

"Maintenance and Operation Costs" means the reasonable and necessary costs paid or incurred by the City for maintaining and operating the System, determined in accordance with Generally Accepted Accounting Principles, including all reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the System in good repair and working order, and including all administrative costs of the City that are charged directly or apportioned to the operation of the System, such as salaries and wages of employees, overhead, taxes (if any) and insurance premiums (including payments required to be paid into any selfinsurance funds), and including all other reasonable and necessary costs of the City or charges required to be paid by it to comply with the terms of this Installment Purchase Agreement or of any resolution authorizing the execution of any Parity Obligation or of such Parity Obligation, and fees and expenses of Independent Certified Public Accountants; but excluding in all cases (1) the principal and interest components of Installment Payments and Contract Payments, and payment of Subordinate Obligations, (ii) costs of capital additions, replacements, betterments, extensions or improvements which under Generally Accepted Accounting Principles are chargeable to a capital account, and (iii) depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles related to the System.

"Material Adverse Change" means an event or occurrence which adversely affects in a material manner (a) the assets, liabilities, condition (financial or otherwise), business, facilities or operations of the City or the System, (b) the ability of the City to carry out its business in the manner conducted as of the date of this Installment Purchase Agreement or Parity Obligations or to meet or perform its obligations under this Installment Purchase Agreement or Parity Obligations on a timely basis, (c) the validity or enforceability of this Installment Purchase Agreement or Parity Obligations, or (d) the exclusion of the interest component of the Installment Payments or Parity

Obligations, as applicable, from gross income for federal income tax purposes or the exemption of such interest for state income tax purposes.

"<u>Maximum Annual Debt Service</u>" means, as of any date of calculation, the largest Annual Debt Service during the period from the date of such calculation through the final Installment Payment Date of this Installment Purchase Agreement and the final Parity Obligations.

"Maximum Rate" means the maximum non-usurious interest rate that may, under applicable federal law and applicable State law, be contracted for, charged or received under such laws.

"Net Revenue Conversion Date" means the date on which the City files with the Assignee a Certificate of the City pursuant to Section 3.10(d) stating that the Coverage Test has been met.

"<u>Net Revenues</u>" means, for any period, an amount equal to all of the Gross Revenues received during such period, minus the amount required to pay all Maintenance and Operation Costs becoming payable during such period.

"<u>Parity Obligations</u>" means all other bonds, notes, financings, installment sale agreements, leases, or other obligations of the City payable from and secured by a pledge of and lien upon any of the Pledged Revenues incurred on a parity with the Installment Payments, issued in accordance with Section 4.14 hereof.

"<u>Pledged Revenues</u>" means (a) prior to the Net Revenue Conversion Date, the Gross Revenues of the System, and (b) from and after the Net Revenue Conversion Date, the Net Revenues of the System.

"<u>Project</u>" means the acquisition, design and construction of certain improvements to the System, as more particularly described on Exhibit A attached hereto.

"<u>Project Costs</u>" means, with respect to the Project, all costs of the acquisition and construction thereof which are paid from moneys on deposit in the Project Fund, including but not limited to:

- (a) all costs required to be paid to any person under the terms of any agreement for or relating to the acquisition and construction of the Project;
- (b) obligations incurred for labor and materials in connection with the acquisition and construction of the Project;
- (c) the cost of performance or other bonds and any and all types of insurance that may be necessary or appropriate to have in effect in connection with the acquisition and construction of the Project;
- (d) all costs of engineering, architectural services and other preliminary investigation expenses, including the actual out-of-pocket costs for site investigations, surveys, hazardous materials investigations, test borings, surveys, estimates, plans and specifications and preliminary investigations therefor, development fees, sales commissions, and for supervising construction, as

well as for the performance of all other duties required by or consequent to the proper acquisition and construction of the Project;

- (e) any sums required to reimburse the Authority or the City for advances made for any of the above items or for any other costs incurred and for work done, including but not limited to administrative costs of the Authority or the City, which are properly chargeable to the acquisition and construction of the Project; and
- (f) all financing costs incurred in connection with the acquisition and construction of the Project, including but not limited to delivery costs and other costs incurred in connection with this Installment Purchase Agreement and the financing of the Project.

"Project Fund" means the fund or account established and held by the Assignee for the benefit of the City into which the net proceeds of this Installment Purchase Agreement shall be deposited and administered pursuant to the Project Fund Agreement.

"<u>Project Fund Agreement</u>" means the Project Fund Administration Agreement, dated as of May 14, 2025, by and between the City and the Assignee relating to the administration of the Project Fund.

"Resolution of Issuance" means Resolution No. adopted on April 28, 2025.

"Revenue Fund" means the fund established under Section 3.9 and held by the City for the receipt and deposit of Revenues.

"Revenues" means all income, rents, rates, fees, charges and other moneys derived from the ownership or operation of the System, including, without limiting the generality of the foregoing, (1) all income, rents, rates, fees, charges, business interruption insurance proceeds or other moneys derived by City from the sale, furnishing and supplying of Broadband or other services, facilities, and commodities sold, furnished or supplied through the facilities of or in the conduct or operation of the business of the System, plus (2) the earnings on and income derived from the investment of such income, rents, rates, fees, charges, or other moneys, plus (3) the proceeds of any charges collected by City, but excluding in all cases customer deposits, connection fees, development impact fees or any other deposits or advances subject to refund until such deposits or advances have become the property of City.

"Special Counsel" means (a) Nixon Peabody LLP, or (b) any other attorney or firm of attorneys of nationally recognized expertise with respect to legal matters relating to obligations the interest on which is excludable from gross income for purposes of federal income taxation under Section 103 of the Tax Code.

"State" means the State of California.

"Subordinate Obligations" means all obligations of the City that are subordinate in priority and payment to the Installment Payments and payments required under Parity Obligations.

"System" means the facilities and property owned or to be owned or operated by the City in connection with the Broadband services of the City, together with all extensions thereof and improvements thereto hereafter acquired, constructed or installed by the City.

"<u>Taxable Date</u>" means the date as of which the interest components of the Installment Payments are first includable in gross income of the recipient thereof as a result of the occurrence of an Event of Taxability, as such date is established pursuant to either (a) a Determination of Taxability, or (b) an opinion of Special Counsel.

"<u>Taxable Period</u>" means the period for which the interest components of the Installment Payments become includable in the gross income of the recipient thereof, commencing on the Taxable Date.

"Taxable Rate" means 6.65%.

"<u>Tax Code</u>" means the Internal Revenue Code of 1986, as amended. Any reference herein to a provision of the Tax Code shall include all applicable temporary and permanent regulations promulgated under the Tax Code.

"<u>Term of this Installment Purchase Agreement</u>" or "<u>Term</u>" means the time during which this Installment Purchase Agreement is in effect, as provided in Section 3.4.

"Written Certificate" of the Authority or the City means, respectively, a written certificate, request or requisition signed in the name of the Authority or the City by its Authorized Representative. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

SECTION 1.2. Benefits of Installment Purchase Agreement Limited to Parties. Nothing contained herein, expressed or implied, is intended to give to any person other than the City and the Authority any right, remedy or claim under or pursuant hereto. Any agreement or covenant required herein to be performed by or on behalf of the City shall be for the sole and exclusive benefit of the Authority.

SECTION 1.3. Successor Is Deemed Included in all References to Predecessor. Whenever the City is named or referred to herein, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in the City, and all agreements and covenants required hereby to be performed by or on behalf of the City shall be assumed fully by and will bind and inure to the benefit of the successors thereof whether so expressed or not.

SECTION 1.4. Waiver of Personal Liability. No member of the City Council of the City and no officer, agent, or employee of the City, or of any department or agency thereof, shall be individually or personally liable for the payment of the principal of or interest on this Installment Purchase Agreement, but nothing contained herein shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law or hereby.

SECTION 1.5. Article and Section Headings, Gender and References. The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof. Words of any gender shall be deemed and construed to include all genders. All references herein to "articles," "sections" and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof; and the words "hereby," "herein," "hereof," "hereto," "herewith" and other words of similar import refer to this Installment Purchase Agreement as a whole and not to any particular article, section, subdivision or clause hereof.

SECTION 1.6. Partial Invalidity. If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of the City shall be contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof; but the Authority shall retain all the rights and benefits accorded to it under any applicable provisions of law.

SECTION 1.7. Exhibits. The following Exhibits are attached to, and by reference made a part of, this Installment Purchase Agreement:

Exhibit A: Description of the Project.

Exhibit B: Schedule of Installment Payments.

Exhibit C: Form of Assignee Letter.

Exhibit D: Form of Compliance Certificate of the City.

ARTICLE 2

REPRESENTATIONS, COVENANTS AND WARRANTIES

SECTION 2.1. Representations, Covenants and Warranties of the City. The City represents, covenants and warrants to the Authority as follows:

- (a) <u>Installment Purchase Agreement</u>. Each representation and warranty and all information set forth in this Installment Purchase Agreement and/or any other document submitted in connection with, or to induce the Authority to enter into this Installment Purchase Agreement, and the other Financing Documents is correct in all material respects as of the Closing Date.
- (b) <u>Due Organization and Existence</u>. The City is a general law city and local agency, duly organized and existing under the laws of the State, with full power and authority to enter into this Installment Purchase Agreement and the other Financing Documents and to conduct its business.
- (c) <u>Authorization</u>. The laws of the State authorize the City to enter into this Installment Purchase Agreement and the other Financing Documents and to enter into the transactions contemplated hereby, and to carry out its obligations under this Installment Purchase Agreement and the other Financing Documents, and the City Council of the City has duly authorized the

execution and delivery of this Installment Purchase Agreement and the other Financing Documents. This Installment Purchase Agreement and the other Financing Documents, when duly executed and delivered by the City shall constitute legal, valid and binding agreements of the City enforceable against the City in accordance with their respective terms.

- (d) <u>Conflicting Agreements</u>. Neither the execution and delivery of this Installment Purchase Agreement or the other Financing Documents nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the City is now a party or by which the City is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrances whatsoever upon any of the property or assets of the City, other than as set forth herein.
- (e) <u>Consents and Approvals</u>. All consents, approvals, authorizations, orders, licenses or permits of any Governmental Authority, legislative body, board, agency or commission having jurisdiction of the matter, that are required for the due authorization by, or that would constitute a condition precedent to or the absence of which would materially adversely affect the making or accepting of this Installment Purchase Agreement and the execution, delivery of and performance of any Financing Document by the City have been duly obtained (except for such approvals, consents and orders as may be required under the Blue Sky or securities laws of any state in connection with the offering and sale of this Installment Purchase Agreement, as to which no representation is made).
- (f) <u>Budgets; Full Disclosure</u>. All budgets, projections, feasibility studies, and other documentation submitted by the City to the Authority in connection with, or to induce the Authority to enter into, this Installment Purchase Agreement are based upon assumptions that are true and correct, and as of the Closing Date, no fact has come to light, and no event has occurred, that would cause any assumption made therein to be misleading or untrue. Neither this Installment Purchase Agreement nor other certificate, statement, agreement, or document furnished to the Authority in connection with this Installment Purchase Agreement (a) contains any untrue statement of a material fact, or (b) fails to state a material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which they were made, not misleading. The City is not aware of any Material Adverse Change that has not been disclosed in writing to the Authority.
- (g) <u>Accurate Financial Information</u>. Each submission of financial information or documents relating to the City will constitute a representation and warranty by the City that such information and documents (a) are true and accurate in all material respects, and (b) do not fail to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.
- (h) <u>System Condition</u>. The System is anticipated to (i) reasonably meet present demand in all material respects, (ii) be constructed in a good and professional manner, (iii) be in good working order and condition, and (iv) comply in all material respects with all applicable law, including, but not limited to, all Environmental Laws and the Government Grant.

- (i) Rate Matters. The City's rates for the provision of Broadband have been approved, if applicable, by any and all necessary governmental regulatory authorities, including, without limitation, each public service commission or public utilities commission that may have jurisdiction over the operations and rates of the City. Further, to the City's actual knowledge there is no pending or threatened proceeding before any Governmental Authority, the objective or result of which is or could be to materially reduce or otherwise materially adversely change any of the City's rates for the provision of Broadband services, or otherwise have a material adverse effect on the condition, financial or otherwise, operations, properties, or business of the System.
- <u>Litigation</u>. There is no action, suit, proceeding, inquiry or investigation at law or (i) in equity before or by any court, government agency, public board or body, is pending for which the City has been served or, to the City's actual current knowledge, threatened against the City: (i) in any way affecting the existence of the City or in any way challenging the respective powers of the several offices or the titles of the officials of the City to such offices; (ii) affecting or seeking to prohibit, restrain or enjoin the making, execution or delivery of this Installment Purchase Agreement or the other Financing Documents or the application of the proceeds of this Installment Purchase Agreement or the other Financing Documents; (iii) in any way contesting or affecting, as to the City, the validity or enforceability of this Installment Purchase Agreement or the other Financing Documents; (iv) in any way contesting the powers of the City or its authority with respect to the adoption of Resolution of Issuance, or the execution and delivery of this Installment Purchase Agreement or the other Financing Documents; or (v) in any way contesting or challenging the consummation of the transactions contemplated hereby or thereby or that might materially adversely affect the ability of the City to perform and satisfy its obligations under this Installment Purchase Agreement; nor to the best of the City's knowledge is there any basis for any such action, suit, proceeding, inquiry or investigation, wherein an unfavorable decision, ruling or finding would materially adversely affect the proceedings authorizing this Installment Purchase Agreement or the performance by the City of its obligations thereunder, or the authorization, execution, delivery or performance by the City of this Installment Purchase Agreement or the other Financing Documents.
- (k) <u>Valid and Binding Obligation</u>. This Installment Purchase Agreement and each of the Financing Documents is a valid and binding obligation of the City enforceable in accordance with its terms.
- (l) <u>Pledge and Other Liens</u>. The pledge in Section 3.10 of this Installment Purchase Agreement constitutes a lien on and a pledge of all Pledged Revenues and there are no other liens on the Pledged Revenues as of the Closing Date.
- (m) <u>Due Execution</u>. The City has duly authorized and executed this Installment Purchase Agreement and the other Financing Documents in accordance with the laws of the State.
- (n) No Default or Event of Non-Appropriation. The City is not in default and has not failed to appropriate funds required under the terms, conditions or provisions of any agreement or instrument to which the City has issued debt in the past ten years.
- (o) <u>Outstanding Parity Obligations</u>. As of the date of this Installment Purchase Agreement, there are no Parity Obligations.

- (p) <u>Environmental Laws</u>. The Project and the System are anticipated to be in full compliance with all applicable Environmental Laws.
- (q) <u>Sufficient Funds</u>. The City reasonably believes that sufficient funds can be generated by the System to make all Installment Payments and all other amounts required to be paid pursuant to this Installment Purchase Agreement.
- (r) <u>Financial Statements</u>. The City's audited financial statements for the period ended June 30, 2024, fairly present the financial condition of the City as of the date thereof and the results of operation for the period covered thereby. Except as has been otherwise disclosed to the Assignee as of the Closing Date, there has been no material change in the financial condition of the City since the date of said statements, that will in the reasonable opinion of the City materially impair its ability to perform its obligations under this Installment Purchase Agreement.
- <u>Information</u>. All information, reports and other papers and data furnished by the City to the Assignee were, at the time the same were so furnished, complete and accurate in all material respects, to the best of the City's knowledge, and were provided with the expectation that Assignee would rely thereon in entering into the within transaction. No fact is known to the City which has had or, so far as the City can now reasonably foresee, may in the future impair the City's ability to perform its obligations under this Installment Purchase Agreement, which has not been set forth in the financial statements previously furnished to the Assignee or in other such other information, reports, papers and data or otherwise disclosed in writing to the Assignee prior to the Closing Date. Any financial, budget and other projections furnished to the Assignee by the City or its or their agents were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair and reasonable in light of the conditions existing at the time of delivery of such financial, budget or other projections, and represented, and as of the date of this representation, represent the City's best estimate of the City's future financial performance. To the best of the City's knowledge, no document furnished nor any representation, warranty or other written statement made to the Assignee in connection with the negotiation, preparation or execution of this Installment Purchase Agreement contains any untrue or misleading statement of a material fact.
- (t) Role of Assignee. The City acknowledges that (i) the Assignee, as the assignee of the Authority under the Assignment Agreement, is acting solely for its own loan account and not as a fiduciary for the City or in the capacity of broker, dealer, placement agent, municipal securities underwriter or municipal advisor, (ii) the Assignee has not provided, and will not provide, financial, legal (including securities law), tax, accounting or other advice to or on behalf of the City or with respect to this Installment Purchase Agreement and the financing related thereto, and (iii) the Assignee has expressed no view regarding the legal sufficiency of its representations for purposes of compliance with any legal requirements applicable to any other party, or the correctness of any legal interpretation made by counsel to any other party with respect to any such matters.
- (u) <u>OFAC Status</u>. The City is not listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the U.S. Department of the Treasury's Office of Foreign Assets Control, and any successor thereto, the Secretary of the Treasury, or

included in any Executive Orders, that prohibits or limits the Assignee from making any advance or extension of credit to the City or from otherwise conducting business with the City.

SECTION 2.2. Representations, Covenants and Warranties of the Authority. The Authority represents, covenants and warrants to the City as follows:

- (a) <u>Due Organization and Existence</u>. The Authority is a joint powers authority duly organized and existing under California law.
- (b) <u>Authorization</u>. The Authority is authorized to enter into this Installment Purchase Agreement and the transactions contemplated hereby, and the Authority has duly authorized the execution and delivery of this Installment Purchase Agreement.
- (c) <u>No Violations</u>. Neither the execution and delivery of this Installment Purchase Agreement nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Authority is now a party or by which the Authority is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Authority.
- (d) <u>Litigation</u>. To the best knowledge of the Authority, there is no pending or threatened action or proceeding against the Authority or for which the Authority has received actual notice before any court or administrative agency which will materially adversely affect the ability of the Authority to perform its obligations under this Installment Purchase Agreement.
- (e) <u>Assignee Letter</u>. The Authority will cause the Assignee to deliver to the City a certificate or letter substantially in the form set forth in Exhibit C attached hereto, and will abide by all transfer restrictions herein and therein.

ARTICLE 3

TERMS OF AGREEMENT

SECTION 3.1. Purchase of Project and City. The Authority agrees to provide funds on the Closing Date solely through proceeds received from the Assignee pursuant to the Assignment Agreement (the initial deposits of which are more particularly described in Section 3.9 hereof) in the Acquisition Amount for the City to acquire property and easements which are necessary for the acquisition, construction and/or installation of the Project and for the acquisition, construction and/or installation of the Project. The Authority hereby appoints the City as its agent to carry out all phases of the acquisition, design construction, installation and/or equipping of the Project and the City, as agent of the Authority, assumes all rights, duties, responsibilities and liabilities of the Authority regarding the acquisition, design, construction, installation and/or equipping of the Project. Title to the Project, and each and every portion thereof shall vest in the City upon the acquisition, design and construction thereof; provided, however, the City shall be subject to the payment of Installment Payments as described under this Installment Purchase Agreement and any other amounts due hereunder, to the remedies of the Authority in the Event of Default as provided in Article 5 hereof. The City, as agent of the Authority, may enter into any

purchase order, construction management agreement, architecture or engineering contract or construction contract required for the design, acquisition, construction, installation and completion of the Project. The Authority hereby assigns to the City all rights and powers to enforce such purchase orders or contracts as are required for design, acquisition, construction, installation, purchase and completion of the Project, which enforcement may be by auction at law or in equity; provided that the assignment made by the Authority herein shall not prevent the Authority, or its assignee, from asserting any rights or remedies legally available to it. Any appointment of the City as agent of the Authority is limited solely to the extent required under applicable law to render enforceable this Installment Purchase Agreement and to enable the City to acquire, construct, own and operate the Project, but shall not operate to bind or obligate the Authority for any purpose whatsoever. The City shall not represent to any person that it is acting as agent for the Authority.

SECTION 3.2. Purchase of the Project by the City.

- (a) <u>Obligation to Pay</u>. The City hereby agrees to purchase from the Authority the Project at a purchase price equal to the Acquisition Amount together with interest on the unpaid principal balance of the Acquisition Amount, payable in Installment Payments, payable on each Installment Payment Date as set forth in Exhibit B.
- (b) <u>Rate on Overdue Payments</u>. If the City fails to make any of the payments required in this Section on or before the due date therefor, the Installment Payment in default shall continue as an obligation of the City until the amount in default shall have been fully paid and the City agrees to pay the same with interest thereon, to the extent permitted by law, from the due date thereof at the Default Rate, or, if lower, the Maximum Rate.
- (c) <u>Gross Up of Interest Rate Upon Determination of Taxability</u>. Notwithstanding the foregoing provisions of this Section, in the event a Determination of Taxability occurs, the City shall pay the Taxable Rate as interest components of the Installment Payments, to the Assignee from and after the date of demand by the Assignee therefor.
- (d) <u>Maximum Rate</u>. Anything herein to the contrary notwithstanding, the amount of interest payable hereunder for any Interest period shall not exceed the Maximum Rate.
- **SECTION 3.3. Substitution of the Project**. The City may substitute other property or components of the Project, but only if the City first obtains the consent of the Authority and the Assignee, and files with the Authority and the Assignee a statement of the City which:
 - (a) identifies the property, facilities or combination thereof, to be substituted and the components of the Project that they will replace; and
 - (b) states that the estimated costs of the substituted property, facilities or combination thereof is not less than the cost of the components of the Project being replaced;
 - (c) states that such substitution will not adversely affect Pledged Revenues or otherwise result in a Material Adverse Change; and

- (d) an opinion of Special Counsel shall be provided that confirms that such substitution shall not, in and of itself, cause the interest component of any Installment Payment to be federally taxable.
- **SECTION 3.4.** Term. The Term of this Installment Purchase Agreement shall commence on the Closing Date and shall end on the earlier of May 1, 2045, or the date upon which all Installment Payments and all other sums due to the Authority hereunder shall be paid in full or provision for such payment shall be made as provided in Section 6.1.
- **SECTION 3.5.** Payments Generally. The Authority has assigned its right to receive payments hereunder to the Assignee pursuant to the Assignment Agreement. Payments shall be made on or prior to each Installment Payment Date by wire to the Assignee in accordance with written instructions provided by the Assignee to the City. Any such written instructions shall be provided by the Assignee to the City at least five days prior to the first Interest Payment Date.
- **SECTION 3.6.** Taxes. Any payment by the City to the Authority will be made net of any taxes (other than income and similar taxes imposed on or measured by the Authority's overall net income). The City shall be responsible for the payment of all such taxes.
- **SECTION 3.7.** Conditions Precedent. The Authority's obligation to extend financing under this Installment Purchase Agreement is subject to the condition precedent that the Authority receive, in form and substance satisfactory to the Authority, each of the following:
 - (a) <u>Installment Purchase Agreement and Related Documents</u>. A duly executed copy of this <u>Installment Purchase Agreement</u> and all instruments and documents contemplated hereby and thereby, including the Project Fund Agreement, the Capitalized Interest Fund Agreement and the DSRF Agreement.
 - (b) <u>Evidence of Authorization</u>. Such certified board resolutions, certificates of incumbency, and other evidence that the Authority may require that this Installment Purchase Agreement, all instruments and documents executed in connection herewith have been duly authorized and executed.
 - (c) <u>Insurance</u>. Such evidence as the Authority may require that the City is in or will be compliance with Section 4.5 below.
 - (d) <u>Consents and Approvals</u>. Evidence as the Authority may require that all regulatory and other consents and approvals referred to in Section 2.1 have been obtained and are in full force and effect.
 - (e) <u>Opinions of Counsel</u>. The City shall provide an opinion of special counsel regarding the tax-exempt status of interest on the interest component of Installment Payments under federal tax laws (and, to the extent applicable, State laws).
 - (f) Opinion of City Attorney. An opinion of the City Attorney to the City to the effect that (A) the City is duly organized, validly existing, and in good standing under the laws of the State, (B) the City has duly received all requisite approvals and has the legal power to enter into and perform under the Financing Documents, (C) all proceedings of the

City necessary to be taken in connection with the authorization, execution, delivery and performance of the Financing Documents have been duly taken and all such authorizations are presently in effect, (D) the Financing Documents have been duly executed and delivered by the City and constitute the valid and binding obligations of the City enforceable against the City in accordance with their terms, except as enforceability may be limited: by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or affecting the rights of creditors generally and by general equitable principles which may limit the right to obtain the remedy of specific performance of obligations other than the obligation to pay money, and (E) the execution, delivery, and performance by the City of the Financing Documents does not and will not: (i) violate any provision of any law, rule or regulation, any judgment, order or ruling of any court or governmental agency, articles of organization, articles of incorporation, other charter documents, bylaws or operating agreement, as applicable, of the City, or any agreement, indenture, mortgage, or other instrument to which the City is a party or by which the City or any of its properties is bound; or (ii) be in conflict with, result in a breach of, or constitute with the giving of notice or passage of time, or both, a default under any such agreement, indenture, mortgage, or other instrument; and (F) no consent, permission, authorization, order or license of any governmental authority is necessary in connection with the execution, delivery, performance, or enforcement of the Financing Documents, except such as have been obtained and are in full force and effect; and (G) to the best of such counsel's knowledge, there are no actions, suits, or proceedings affecting the City or any of its assets pending or threatened before any governmental entity which: (i) if adversely decided could have a material adverse effect on the City's condition, financial or otherwise, operations, properties or business, or on its ability to perform its obligations under the Financing Documents; or (ii) seeks to rescind, terminate, modify, or suspend any consent, permission, authorization, order or license of any governmental authority referred to above.

- (g) <u>Opinion of City Attorney as Authority Counsel</u>. An opinion of the City Attorney acting in the capacity of counsel to the Authority in form and substance satisfactory to the Assignee.
 - (h) A tax certificate of the City.
- (i) The City has provided a certificate certifying that on the Closing Date each representation and warranty on the part of the City contained in this Installment Purchase Agreement is true and correct and no Event of Default, or event which would, with the passage of time or the giving of notice, constitute an Event of Default, has occurred and is continuing and no default exists under any other Parity Obligations, or under any other agreements by and between the City and the Assignee and certifying as to such other matters as the Assignee might reasonably request.
- (j) All proceedings taken in connection with the transactions contemplated by this Installment Purchase Agreement, and all instruments, authorizations and other documents applicable thereto, are satisfactory to the Assignee and its counsel.
- (k) No law, regulation, ruling or other action of the United States, the State of California or any political subdivision or authority therein or thereof shall be in effect or

shall have occurred, the effect of which would be to prevent the City from fulfilling its obligations under this Installment Purchase Agreement or the other Contracts.

- (l) The Assignee shall have been provided with the opportunity to review all pertinent financial information regarding the City, agreements, documents, and any other material information relating to the City or the Gross Revenues or any other component of the collateral securing the obligations of the City hereunder.
- (m) All information provided by the City to the Assignee is accurate in all material respects based on the best knowledge of the City, after due inquiry.
- (n) The Assignee shall have received such other certificates, approvals, filings, opinions and documents as shall be reasonably requested by the Assignee.
- (o) All other legal matters pertaining to the execution and delivery of this Installment Purchase Agreement shall be reasonably satisfactory to the Assignee.

SECTION 3.8. Nature of City's Obligations.

- (a) <u>Special Obligation</u>. The City's obligation to pay the Installment Payments is a special obligation of the City limited solely to the Pledged Revenues. Under no circumstances is the City required to advance moneys derived from any source of income other than the Pledged Revenues and other sources specifically identified herein for the payment of the Installment Payments, and no other funds or property of the City are liable for the payment of the Installment Payments.
- (b) Obligations Absolute. The obligations of the City to pay the Installment Payments from the Pledged Revenues and to perform and observe the other agreements contained herein are absolute and unconditional and are not subject to any defense or any right of setoff, counterclaim or recoupment arising out of any breach of the City or the Authority of any obligation to the City or otherwise with respect to the System, whether hereunder or otherwise, or out of indebtedness or liability at any time owing to the City by the Authority. Until such time as all of the Installment Payments have been fully paid or prepaid, the City:
 - (i) will not suspend or discontinue payment of any Installment Payments;
 - (ii) will perform and observe all other agreements contained in this Installment Purchase Agreement; and
 - (iii) will not terminate this Installment Purchase Agreement for any cause, including, without limiting the generality of the foregoing, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the System, sale of the System, the taking by eminent domain of title to or temporary use of any component of the System, commercial frustration of purpose, any change in the tax or other laws of the United States of America or the State of California or any political subdivision of either thereof or any failure of the Authority to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Installment Purchase Agreement.

(c) Protection of Rights. If the Authority fails to perform any such agreements on its part, the City may institute such action against the Authority as the City deems necessary to compel performance so long as such action does not abrogate the obligations of the City contained in the preceding subsection (b). The City may, however, at the City's own cost and expense and in the City's own name or in the name of the Authority prosecute or defend any action or proceeding or take any other action involving third persons which the City deems reasonably necessary in order to secure or protect the City's rights hereunder, and in such event the Authority will (upon reasonable notice, and at the sole expense of the City) cooperate fully with the City to the extent reasonably necessary and take such action reasonably necessary to effect the substitution of the City for the Authority in such action or proceeding if the City shall so request.

SECTION 3.9. Deposit of and Application of Funds. On the Closing Date, the Authority shall cause the Acquisition Amount to be deposited by the Assignee as follows:

- (a) \$6,930,000.00 shall be held by the Assignee for deposit into the Project Fund established by the Assignee to be applied by the City for Project Costs, pursuant to the Project Fund Agreement, and shall be invested in Authorized Investments or as otherwise set forth in the Project Fund Agreement.
- (b) \$199,269.42 shall be applied by the Assignee for the payment of Costs of Issuance on the Closing Date and shall be held uninvested until discharged by payment of invoices received by the Assignee.
- (c) \$750,540.99 shall be held by the Assignee for deposit into the Capitalized Interest Fund established by the Assignee to be applied by the Assignee pursuant to Section 3.10(b) and the Capitalized Interest Fund Agreement and shall be invested in Authorized Investments or as otherwise set forth in the Capitalized Interest Fund Agreement.

In addition, on the Closing Date, the Authority shall cause the Assignee to deposit into the Debt Service Reserve Fund established by the Assignee with funds transferred from the City to the Assignee in the amount of \$673,198.24 which and shall be invested in Authorized Investments or as otherwise set forth in the DSRF Agreement, and such Debt Service Reserve Fund shall be administered pursuant to this Installment Purchase Agreement and the DSRF Agreement.

SECTION 3.10. Revenue Fund; Pledge of Pledged Revenues; Debt Service Reserve Fund.

- (a) Revenue Fund; Receipt and Deposit of Pledged Revenues. There is hereby established a special fund known as the "City of Fort Bragg Broadband System Revenue Fund," which fund shall be held and maintained by the City so long as this Installment Purchase Agreement and any Parity Obligations are outstanding. The City shall deposit all Gross Revenues in the Revenue Fund promptly upon the receipt thereof, and shall apply amounts in the Revenue Fund solely for the uses and purposes set forth herein and in the Parity Obligation Documents. The City shall withdraw amounts on deposit in the Revenue Fund and apply such amounts at the times and for the purposes, and in the priority, as follows:
 - (i) following the Net Revenue Conversion Date (but only following the Net Revenue Conversion Date), all Maintenance and Operation Costs;

- (ii) all Installment Payments and any Parity Obligations;
- (iii) prior to the Net Revenue Conversion Date, all Maintenance and Operation Costs;
- (iv) to the Assignee the amount of any deficiency in the Debt Service Reserve Fund or in any reserve fund established for any Parity Obligations, the notice of which deficiency has been given to the City in accordance with this Agreement, the DSRF Agreement and the related Parity Obligation Documents, as applicable;
- (iv) any other payments required to comply with the provisions of any Parity Debt Documents, including Maintenance and Operation Costs prior to the Net Revenue Conversion Date; and
 - (vi) any other purposes authorized under subsection (c) of this Section.
- (b) <u>Payment of Installment Payments</u>. At least three (3) Business Days prior to each Installment Payment Date, the City shall withdraw from the Revenue Fund and transfer to the Authority an amount of Pledged Revenues equal to the aggregate amount of the Installment Payment when and as the same becomes due and payable; provided, however, that with respect to the following Payment Dates, the Bank shall transfer moneys from the Capitalized Interest Fund in the amounts set forth below for payment of interest component of Installment Payments due on the dates set forth below:

Payment Date	Amount
11/01/2025	\$177,284.79
05/01/2026	191,085.40
11/01/2026	191,085.40
05/01/2027	191,085.40
11/01/2025	177,284.79

provided, further, however, that with respect to any Payment Date after the exhaustion of the Capitalized Interest Fund, to the extent that the amount of Pledged Revenues are deficient to pay any Installment Payment, then the City shall notify the Authority and the Assignee immediately (and in any event, at least (2) two Business Days prior to any Installment Payment Date), and the Assignee shall withdraw, pursuant to the terms and provisions in the DSRF Agreement, on the applicable Installment Payment Date, from the Debt Service Reserve Fund the amount necessary to pay the Installment Payment then due.

(c) <u>Pledge of Pledged Revenues</u>. Prior to the Net Revenue Conversion Date, the Installment Payments shall be secured by a first pledge of and lien on all of the Gross Revenues. From and after the Net Revenue Conversion Date, the Installment Payments shall be secured by a first pledge of and lien on all of the Net Revenues. In addition, the Installment Payments are

secured by a pledge of all of the moneys from the investment of such moneys. The Installment Payments and all other Parity Obligations (if any) shall be equally secured by a pledge, charge and lien upon the Pledged Revenues and such other moneys without priority for series, issue, number or date and the payment of the interest on and principal of the Installment Payments shall be and are secured by an exclusive pledge, charge and lien upon the Pledged Revenues and such other moneys. So long as any amounts are due and owing hereunder, the Pledged Revenues and such other moneys may not be used for any other purpose; except as expressly permitted by this Section 3.10.

(d) <u>Determination of Net Revenue Conversion Date</u>. The pledge of and lien on the Gross Revenues for the security hereunder may be converted to a pledge of and lien on the Net Revenues, upon the occurrence of the following events (the "Coverage Test") as follows: the amount of Net Revenues received by the City during any three (3) consecutive Fiscal Years following the completion of the Project based on financial statements of the City for such Fiscal Years which have been audited in accordance with Section 4.1(a) are at least equal to 125% of the amount of Maximum Annual Debt Service.

In the event the City determines that the Coverage Test has been met at any time following the completion of the Project, the City may file with the Assignee a Certificate of the City which states such determination and identifies the calculations which demonstrate that the Coverage Test has been met. Upon the filing of such Certificate of the City with the Assignee, the pledge of Gross Revenues for the security of the Installment Payments shall be converted to a pledge of Net Revenues. In the event the amount of Gross Revenues in any Fiscal Year following the Net Revenue Conversion Date fails to meet the Coverage Test, amounts due and owing hereunder shall nevertheless remain secured by a pledge of the Net Revenues. The determination by the City that the Coverage Test has been met shall be binding and conclusive.

(e) Other Uses Permitted. The City shall manage, conserve and apply the Pledged Revenues in such a manner that all deposits required to be made under the preceding paragraphs will be made at the times and in the amounts so required. Subject to the foregoing sentence, so long as no Default has occurred and is continuing hereunder or would result therefrom, the City may at any time and from time to time use and apply moneys in the Revenue Fund for (i) the acquisition and construction of improvements to the System; (ii) the prepayment of this Installment Purchase Agreement or Parity Obligations; or (iii) any other lawful purpose of the City.

SECTION 3.11. Project Fund. The Assignee has represented that it will establish a separate fund or account pursuant to the terms and provisions set forth in the Project Fund Agreement, into which the proceeds of this Installment Purchase Agreement shall be deposited as provided in Section 3.9(a). The City covenants that the funds deposited thereunder shall be requisitioned and spent by the City solely on Project Costs. The City shall maintain accurate records showing all requests for disbursements from the Project Fund, including records which show the name and address of each firm or corporation to whom payment is made and the amount and purpose of each payment. Any funds on deposit in the Project Fund and not needed for Project Costs (if any) shall be transferred by the City to pay Installment Payments hereunder.

ARTICLE 4 COVENANTS OF THE CITY

SECTION 4.1. Reports and Notices.

- (a) Annual Financial Statements. No later than 270 days after the end of each Fiscal Year, commencing with Fiscal Year 2024-25, the City shall deliver to the Authority audited financial statements of the City prepared in accordance with the accounting standards set forth by the Government Accounting Standard Board. Such financial statements will: (1) be audited by an Independent Certified Public Accountants; and (2) be accompanied by a report of such accountants containing an opinion. Notwithstanding the foregoing, if audited financial statements are not available within such 270-day period, the City shall provide to the Authority a statement to that effect together with unaudited financial statements reasonably acceptable to the Authority and the Assignee, and shall thereafter provide to the Authority its audited financial statements within 30 days of approval of such audited financial statements by the City Council of the City. Included with such financial statements shall be a calculation of Debt Service coverage on all Installment Payments hereunder and Parity Obligations outstanding during the prior Fiscal Year and a compliance certificate which shall be substantially similar to the form set forth in Exhibit D hereto.
- (b) <u>Budgets</u>. As soon as available, but in no event more than thirty (30) days after City Council approval thereof, the City shall provide a copy of its annual budget to the Assignee.
- (c) <u>Notice of Default</u>. Promptly after becoming aware thereof, the City shall provide to the Authority and the Assignee notice of the occurrence of an Event of Default, including, without limitation, any error in the City's financial information previously provided to the Authority and the occurrence of any breach, default, event of default or event that, with the giving of notice and/or the passage of time and/or the occurrence of any other condition, would become a breach, default or event of default under this Installment Purchase Agreement.
- (d) <u>Notice of Certain Events</u>. The City shall provide to the Authority (1) notice at least 30 days prior thereto, of any change in the principal place of business of the City or of the System or the office where its records concerning its accounts are kept; and (2) all other notices required to be provided hereunder.
- (e) <u>Additional Information</u>. The City shall provide the Assignee with any information it may reasonably request, including, but not limited to, information relating to End Users (in compliance with all applicable privacy and security laws), information relating to the System, and any other information so requested by the Assignee.
- **SECTION 4.2. Existence**. The City shall continue to exist as a local agency in compliance with State law.
- **SECTION 4.3.** Change in Business. The City shall not, without prior notice to the Authority and the Assignee, engage in any business activities or operations substantially different from or unrelated to the City's present business activities or operations.
- **SECTION 4.4.** Liens Against the System. With respect to the System, the City shall not, without the prior consent of the Authority and the Assignee, create, incur, assume, or allow to

exist any mortgage, deed of trust, pledge, lien (including the lien of an attachment, judgment, or execution), security interest, or other encumbrance of any kind upon any of the System's property, real or personal (collectively, "Liens"). The foregoing restrictions will not apply to:

- (a) Liens in favor of the Authority;
- (b) Liens for taxes, assessments, or governmental charges that are not past due;
- (c) pledges and deposits under workers' compensation, unemployment insurance, and social security laws;
- (d) pledges and deposits to secure the performance of bids, tenders, contracts (other than contracts for payment of money), and like obligations arising in the ordinary course of business as conducted on the date hereof;
- (e) easements, rights-of-way, restrictions, and other similar encumbrances that, in the aggregate, do not materially interfere with the occupation, use, and enjoyment of the property or assets encumbered thereby in the normal course of business or materially impair the value of the property subject thereto;
 - (f) purchase money Liens to secure indebtedness permitted hereunder; and/or
- (g) Liens relating to Parity Obligations issued in compliance with the provisions of Section 4.14 hereof; and/or
- (h) existing Liens as of the Closing Date and disclosed to the Authority in writing prior to the Closing Date.
- **SECTION 4.5. Insurance**. The City shall maintain insurance on the System with reputable and financially sound insurance companies or associations, including self-insurance to the extent customary, acceptable to the Assignee in such amounts and covering such risks as are usually carried by companies engaged in the same or similar business and similarly situated, and make such increases in the type or amount of coverage as the Assignee may reasonably request. All such policies insuring any collateral for the City's obligations to the Assignee will have additional insured, mortgagee and lender's loss payee clauses or endorsements, as applicable, in form and substance satisfactory to the Assignee. At the Assignee's request, the City agrees to deliver to the Assignee such proof of compliance with this Section as the Assignee may require.
- **SECTION 4.6.** System Maintenance. As provided in Section 3.10(a), prior to the Net Revenue Conversion Date, the Gross Revenues shall be applied to make payments of Installment Payments and any Parity Obligations in any Fiscal Year prior to the payment of Maintenance and Operation Costs coming due in such Fiscal Year. In the event and to the extent the amount of Gross Revenues following the payment of Installment Payments and any Parity Obligations in any Fiscal Year is insufficient to pay the Maintenance and Operation Costs coming due and payable in such Fiscal Year in full, the City shall pay the remaining Maintenance and Operation Costs from any source of legally available funds, including the General Fund of the City; provided, however, that such requirement to pay any Maintenance and Operation Costs from the General Fund of the City shall be subject to appropriation by the City.

SECTION 4.7. Against Sale or Other Disposition of the System. The City will not sell or otherwise dispose of the System or any part thereof essential to the proper operation of the System or that would have a Material Adverse Change on the Pledged Revenues received or receivable by the City, unless the Installment Payments and the Parity Obligations have been fully paid or provision has been made therefor. The City will not enter into any lease or agreement which impairs the operation of the System or any part thereof necessary to secure adequate Pledged Revenues for the payment of the interest on and principal of and redemption premiums, if any, on the Installment Payments and the Parity Obligations, or which would otherwise impair the rights of the Authority or the owners of the Parity Obligations with respect to the Pledged Revenues or the operation of the System or the tax-exempt status of the interest component of Installment Payments.

SECTION 4.8. Eminent Domain Proceeds. If all or any part of the System shall be taken by eminent domain proceedings, the net proceeds shall be used as follows:

- (a) If (1) the City files with the Assignee a certificate showing (i) the estimated loss of annual Pledged Revenues, if any, suffered or to be suffered by the City by reason of such eminent domain proceedings, (ii) a general description of the additions, betterments, extensions or improvements to the System proposed to be acquired and constructed by the City from such Net Proceeds, and (iii) an estimate of the additional annual Pledged Revenues to be derived from such additions, betterments, extensions or improvements, and (2) the City, on the basis of such certificate filed with the Assignee, determines that the estimated additional annual Pledged Revenues will sufficiently offset the estimated loss of annual Pledged Revenues resulting from such eminent domain proceedings so that the ability of the City to meet its obligations hereunder will not be substantially impaired (which determination shall be final and conclusive absent manifest error), then the City shall promptly proceed with the acquisition and construction of such additions, betterments, extensions or improvements substantially in accordance with such certificate and such Net Proceeds shall be applied for the payment of the costs of such acquisition and construction, and any balance of such Net Proceeds not required by the City for such purpose shall be deposited in the Revenue Fund.
- (b) If the foregoing conditions are not met, then such Net Proceeds shall be applied in part to the prepayment of the outstanding Installment Payments and the Parity Obligations on a pro rata basis.

SECTION 4.9. Amounts of Rates, Fees and Charges; Financial Covenants.

- (a) The City shall, at all times while any of the Installment Payments remain outstanding, fix, prescribe and collect rates, fees and charges and manage the operation of the System for each Fiscal Year so as to yield Revenues at least sufficient, after making reasonable allowances for contingencies and errors in the estimates, to pay the following amounts during such Fiscal Year:
 - (i) All current Maintenance and Operation Costs;
 - (ii) The interest on and principal of the Installment Payments and the payments for the Parity Obligations without preference or priority;

- (iii) All payments required for compliance with the terms of this Installment Purchase Agreement or any other Parity Obligation, including without limitation, any obligation to maintain a reserve fund at a certain level;
- (iv) All payments to meet any other obligations of the City which are charges, liens or encumbrances upon, or payable from, the Pledged Revenues; and
- (v) Payments with respect to the Subordinate Obligations as they become due and payable.

The provisions of this Section 4.9(a) are not intended to indicate the order in which the Gross Revenues are to be applied. As provided in Section 4.6, prior to the Net Revenue Conversion Date, the Gross Revenues shall first be applied to make payments of the principal and interest components of all Installment Payments and Parity Obligations under subsection (ii) above; and after the Net Revenue Conversion Date the Gross Revenues shall first be applied to pay Maintenance and Operation Costs.

(b) The City shall have at the end of each Fiscal Year of the City, commencing with the Fiscal Year ending June 30, 2027, a Debt Service Coverage Ratio (as defined below) for such year of not less than 1.25 to 1.00; provided, however that at no time prior to five years after the completion date of the Project, as to be reflected in a Certificate of the City to the Assignee and Authority, the City shall not be required to increase any charges, fees or rates to End Users to meet the Debt Service Coverage Ratio if such increase violates any Government Grant (which such Government Grant currently restricts the City from increasing charges, fees and rates to End Users for five years after the completion of the Project).

For purposes hereof, the term "Debt Service Coverage Ratio" means (i) prior to the Net Revenue Conversion Date, the ratio of: (1) gross income (after taxes and after eliminating any gain or loss on sale of assets or other extraordinary gain or loss), plus depreciation expense, amortization expense, and interest expense, minus non-cash patronage, and non-cash income from subsidiaries and/or joint ventures; to (2) all principal payments due within the period on all Long-Term Debt (as defined below) plus interest expense (all as calculated on a consolidated basis for the applicable period in accordance with the Generally Accepted Accounting Principles), and (ii) after the Net Revenue Conversion Date, the ratio of: (1) net income (after taxes and after eliminating any gain or loss on sale of assets or other extraordinary gain or loss), plus depreciation expense, amortization expense, and interest expense, minus non-cash patronage, and non-cash income from subsidiaries and/or joint ventures, and grant income; to (2) all principal payments due within the period on all Long-Term Debt (as defined below) plus interest expense (all as calculated on a consolidated basis for the applicable period in accordance with the Generally Accepted Accounting Principles).

For purposes hereof, "Long-Term Debt" means, for the City, on a consolidated basis, the sum of (1) all indebtedness for borrowed money, (2) obligations that are evidenced by notes, bonds, debentures or similar instruments, and (3) that portion of obligations with respect to capital leases or other capitalized agreements that are properly classified as a liability on the balance sheet in conformity with Generally Accepted Accounting Principles or that are treated as operating leases under regulations applicable to them but that otherwise would be required to be capitalized

under Generally Accepted Accounting Principles, in each case having a maturity of more than one year from the date of its creation or having a maturity within one year from such date but that is renewable or extendible, at the City's option, to a date more than one year from such date or that arises under a revolving credit or similar agreement that obligates the lender(s) to extend credit during a period of more than one year from such date, including all current maturities in respect of such indebtedness whether or not required to be paid within one year from the date of its creation.

- (c) (i) From and after the Net Revenue Conversion Date, if the Revenues of the System as of at the end of any Fiscal Year of the City is less than the Debt Service Coverage Ratio, the City shall, within 30 days after delivery of the Certificate disclosing such deficiency, cause and appoint (and, if the City fails to do so, the Assignee shall cause and appoint) with the approval of the Assignee, as applicable, a Financial Consultant to make recommendations with respect to the rates, fees and charges and the City's methods of operation and other factors affecting the financial condition in order to increase the fees, rates and changes of the System for future periods. A copy of the Financial Consultant's report and recommendations, if any, shall be filed with the Authority and the Assignee within 90 days after the date such Financial Consultant is retained.
 - (ii) The person appointing the Financial Consultant shall notify the Authority and the Assignee of such appointment, and the Financial Consultant shall deliver its report and findings to the City, the Authority and the Assignee. The City shall review such report and any written recommendations made by the Financial Consultant. The City shall meet with the Financial Consultant to discuss the Financial Consultant's reports, findings and written recommendations. The City shall promptly implement all of the Financial Consultant's written recommendations except those recommendations that require an expenditure of funds greater than the amount available or projected to be available for such purpose from Revenues under this Installment Purchase Agreement or those written recommendations that could, based upon the written advice of Bond Counsel, cause interest on the Installment Payments to be includible in gross income for federal income tax purposes. The fees and expenses of the Financial Consultant shall be paid as a Maintenance and Operation Cost. Each party shall deliver to the other party at no additional charge copies of any information, correspondence or documents delivered to the Financial Consultant contemporaneously with delivering such information, correspondence or documents to the Financial Consultant.
 - (iii) Failure to achieve a Debt Service Coverage Ratio of not less than 1.25 to 1.00 shall not constitute an Event of Default under this Installment Purchase Agreement if the City takes all action necessary to comply with the procedures set forth above for retaining a Financial Consultant and follows each recommendation contained in the Financial Consultant's report to the extent permitted by law and so long as the Debt Service Coverage Ratio remains not less than 1.00 to 1.00. Notwithstanding the foregoing, if a Debt Service Coverage Ratio of 1.25 to 1.00 is not achieved by the end of the subsequent Fiscal Year of the City after retention of a Financial Consultant, such failure shall constitute an Event of Default.

SECTION 4.10. Enforcement of and Performance Under Parity Obligations. The City shall enforce all material provisions of any contracts to which it is a party, an assignee, successor in interest to a party, or third-party beneficiary, in any case where such contracts provide

for Broadband services to be produced, transmitted and distributed by the System or provide for payments or services to be rendered to the City. Further, the City will comply with, keep, observe and perform all material agreements, conditions, covenants and terms, express or implied, required to be performed by it, contained in all contracts affecting or involving the System, to the extent that the City is a party thereto.

- **SECTION 4.11.** Collection of Charges, Fees and Rates. The City will have in effect at all times rules and regulations requiring each End User to pay the applicable charges, fees and rates and providing for the billing thereof, including, but not limited to, rules and regulations that comply with the Government Grant. In each case where such bill remains unpaid in whole or in part after it becomes delinquent, the City will take necessary actions to enforce the collection procedures contained in the rules and regulations.
- **SECTION 4.12. Against Encumbrances**. The City will not mortgage or otherwise encumber, pledge or place any charge or lien upon the System or any of the Pledged Revenues except as provided in this Installment Purchase Agreement and will not issue any obligations secured by Pledged Revenues on a parity with, or senior to, the Installment Payments and Parity Obligations; provided, that the City may at any time issue any Subordinate Obligations with the prior written consent of the Assignee, which consent will not be unreasonably withheld.
- **SECTION 4.13. Execution of Parity Obligations**. The City may at any time execute any Parity Obligations, the Contract Payments under which are payable on a parity with the Installment Payments; provided, that such Parity Obligations meet the conditions and requirements for the issuance of Parity Obligations under Section 4.14 below.
- **SECTION 4.14.** Conditions for Entering into Parity Obligations. The City may at any time after the Net Revenue Conversion Date enter into a Parity Obligation payable from Pledged Revenues and secured by a lien and charge upon the Pledged Revenues equal to and on a parity with the lien and charge securing this Installment Purchase Agreement, but only subject to specific conditions precedent, which are summarized below:
- (a) The City shall be in compliance with all agreements, conditions, covenants and terms contained in this Installment Purchase Agreement (including, without limitation, the provisions of Sections 4.9 and 4.11) and in any other Parity Obligations required to be observed or performed by it, and a certificate signed by the Finance Director to that effect shall have been filed with the Authority (this condition shall not apply where the purpose of a Parity Obligation proposed to be issued is to cure such non-compliance, provided that the certification shall identify such noncompliance and state that the issuance of such Parity Obligations and application of the proceeds thereof will cure such noncompliance).
- (b) The execution of the Parity Obligation shall have been duly authorized pursuant to all applicable laws.
- (c) The Pledged Revenues for the most recent Fiscal Year for which audited financial statements are available shall have produced Pledged Revenues equal to at least one hundred twenty-five percent (125%) of the Maximum Annual Debt Service as calculated after the date of such Parity Obligation and a certificate signed by the Finance Director to that effect shall have

been filed with the Authority; provided, that in the event that all or a portion of such Parity Obligation being entered into is for the purpose of refunding and retiring any outstanding Parity Obligation, interest and principal payments on the Parity Obligation to be so refunded and retired from the proceeds of such Parity Obligation being issued shall be excluded from the foregoing computation of Maximum Annual Debt Service.

SECTION 4.15. Tax Covenants. The City hereby covenants that, notwithstanding any other provision of this Installment Purchase Agreement, it will make no use of the proceeds of this Installment Purchase Agreement or of any other amounts, regardless of the source, or of any property or take any action, or refrain from taking any action, that would cause this Installment Purchase Agreement to be "arbitrage bonds" within the meaning of Section 148 of the Tax Code.

The City will not use or permit the use of either System or any portion thereof by any person other than a governmental unit as such term is used in Section 141 of the Tax Code, in such manner or to such extent as would result in the loss of exclusion from gross income for federal income tax purposes of the interest payable pursuant to this Installment Purchase Agreement under Section 103 of the Tax Code.

The City will not make any use of the proceeds from this Installment Purchase Agreement or any other funds of the City, or take or omit to take any other action, that would cause the obligation provided herein to be "federally guaranteed" within the meaning of Section 149(b) of the Tax Code or "private activity bonds" within the meaning of Section 141 of the Tax Code. To that end, so long as the Installment Payments are unpaid, the City, with respect to such proceeds and such other funds, will comply with all requirements of such Sections and all regulations of the United States Department of the Treasury issued thereunder and under the Tax Code to the extent such requirements are, at the time, applicable and in effect.

The City shall promptly file or cause to be filed an information report for the Installment Payments in compliance with Section 149(e) of the Tax Code.

The City has complied with the Tax Code, with respect to this Installment Purchase Agreement, and the City shall not knowingly take or omit to take any action that, under existing law which may adversely affect the exclusion from gross income for federal income tax purposes, or the exemption from any applicable State tax of the interest on Installment Purchase Agreement.

SECTION 4.16. Reconstruction of System; Application of Insurance Proceeds. If any useful portion of the System shall be damaged or destroyed, the City shall, as expeditiously as possible, continuously and diligently pursue or cause to be pursued the reconstruction or replacement thereof, unless the City shall file with the Authority a written certificate of an engineer qualified to render such certificate to the effect that such reconstruction or replacement is not in the best interests of the City and the Authority. The proceeds of any insurance paid on account of such damage or destruction, other than business interruption loss insurance or public liability insurance, shall be deposited by the City in a special account, held in trust by the City, and made available for, and to the extent necessary applied to, the cost of such reconstruction or replacement, if any. Pending such application, such proceeds may be invested by the City in investments permitted by Section 53601 of the State Government Code which mature not later than such times as shall be necessary to provide moneys when needed to pay such cost of reconstruction or

replacement. Any balance of such proceeds of insurance not required by the City for the purposes aforesaid shall be deemed Revenues.

SECTION 4.17. Records and Accounts. The City covenants and agrees that it shall keep proper books of record and accounts of the System, separate from all other records and accounts, in which complete and correct entries shall be made of all transactions relating to the System, the Revenues and the Pledged Revenues. Said books shall at all reasonable times be subject to the inspection of the Authority and the Assignee.

SECTION 4.18. Collection of Charges. The City covenants and agrees that, except to the extent that the City is required under agreements and/or contracts existing on the effective date of this Installment Purchase Agreement, no Broadband service from the System may be furnished or rendered to the United States of America, the State, or any private corporation or person free of charge, or for consideration lower than that charged other persons for similar service in accordance with the City's regulations. The City covenants that it shall maintain and enforce valid regulations for the payment of bills by End Users for Broadband service.

SECTION 4.19. Against Competing Broadband System. The City will not acquire, construct, operate or maintain, and will not, within the scope of its lawful powers, permit any other private or public corporation, political subdivision, district or agency, or any person whomsoever to acquire, construct, operate or maintain any Broadband system, communication system or similar utility in an area presently served by the System.

SECTION 4.20. Compliance with this Installment Purchase Agreement. The City will faithfully observe and perform or cause to be faithfully observed and performed all the covenants, conditions and requirements of this Installment Purchase Agreement, and will not suffer or permit any default to occur hereunder. The City will not do or permit anything to be done, or omit or refrain from doing anything, in any case where any such act done or permitted to be done, or any such omission of or refraining from action, would constitute an Event of Default hereunder. Upon request by the Authority, the City shall provide a written certificate of the City to the effect that it is in compliance with all covenants, conditions and requirements of this Installment Purchase Agreement, other than those expressly waived by Authority.

SECTION 4.21. Observance of Laws and Regulations. The City will well and truly keep, observe and perform or cause to be kept, observed and performed all valid and lawful obligations or regulations now or hereafter imposed on it by contract, or prescribed by any law of the United States, or of the State, including, but not limited to, all Environmental Laws, all laws required pursuant to the Government Grant, and the provisions of Article 12 (commencing with Section 53167) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code and Section 10001.5 of the Public Utilities Code, or by any officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of any and every right, privilege or franchise now owned or hereafter acquired and enjoyed by the City, including the City's right to exist and carry on business as a Broadband Internet access service provider, to the end that such rights, privileges and franchises shall be maintained and preserved, and shall not become abandoned, forfeited or in any manner impaired.

SECTION 4.22. Budgets. The City hereby covenants to take such action as may be necessary to include all Installment Payments and all other amounts due hereunder in its annual budget and to make the necessary annual appropriations for all such Installment Payments and all other amounts due hereunder. The covenants on the part of the City herein contained shall be deemed to be and shall be construed to be ministerial duties imposed by law and it shall be the ministerial duty of each and every public official of the City to take such action and do such things as are required by law in the performance of such official duty of such officials to enable the City to carry out and perform the covenants and agreements on the part of the City contained in this Installment Purchase Agreement.

SECTION 4.23. Inspection. The City shall permit the Authority or its agents, upon reasonable notice and during normal business hours or at such other times as the parties may agree, to inspect and visit any of its properties, examine and make excerpts from its books and records, and to discuss its business affairs, finances and accounts with its officers, directors, employees, and independent certified public accountants and to conduct reviews of any collateral.

SECTION 4.24. Further Assurances and Other Information. From time to time and at its expense, execute and deliver such documents and do such other acts and things as the Authority in its sole discretion may deem necessary or advisable from time to time in order to more fully carry out the provisions and purpose of this Installment Purchase Agreement, including delivery of such other information regarding the condition or operations, financial or otherwise, of the City as the Authority may from time to time reasonably request, including, but not limited to, copies of all pleadings, notices and communications referred to in Section 4.1 herein.

SECTION 4.25. Delivery of Original Documents. The City shall deliver to the Authority the original executed versions of this Installment Purchase Agreement, the Financing Documents and the certificates, instruments and documents required to be executed hereunder.

SECTION 4.26. No Public Registration. During any period that the Authority is a party to this Installment Purchase Agreement, this Installment Purchase Agreement shall not be (i) assigned a rating by any credit rating agency, (ii) registered with The Depository Trust Company or any other securities depository, (iii) offered pursuant to any type of offering document or official statement or (iv) assigned a CUSIP number by Standard & Poor's CUSIP Service.

SECTION 4.27. Indemnity for Taxes. At all times the City shall indemnify and hold and save the Authority harmless from and against any and all actions or causes of action, claims, demands, liabilities, loss, damage or expense of whatsoever kind and nature incurred by the Authority as a result of the non-payment of any documentary stamp tax, intangible tax, interest or penalties associated therewith or any other local, state or federal assessment required to be paid, but not paid in conjunction with the indebtedness evidenced by this Installment Purchase Agreement. The City agrees to pay to the Authority, its successors and assigns, all sums of money requested by the Authority hereunder within ten days of such request, which the Authority will or may advance, pay or cause to be paid, or become liable to pay, on account of or in connection with failure to pay as required by the regulations of the Governmental Authority so imposing said payment. The Authority will be entitled to charge for any and all disbursements made by it in good faith, under the reasonable belief that it or the City is or was liable for the amount so assessed. Any default by the City in making any payments required under this covenant will constitute a

payment Event of Default under this Installment Purchase Agreement and the Authority may, at its option, declare the entire amount of principal plus accrued interest thereon due and payable without notice or demand.

SECTION 4.28. ERISA. The City and its subsidiaries, for so long as this Installment Purchase Agreement remains outstanding, will remain in compliance in all material respects with the applicable provisions of ERISA, if any, the failure to comply with which has or may have a material adverse effect on the City.

ARTICLE 5

EVENTS OF DEFAULT AND REMEDIES

SECTION 5.1. Events of Default and Acceleration of Installment Purchase Agreement. Any of the following events shall constitute an event of default:

(a) Events of Default.

- (i) If default shall be made in the due and punctual payment of the interest component of Installment Payments payable pursuant to this Installment Purchase Agreement or with respect to any Parity Obligation when and as the same shall become due and payable; or
- (ii) If default shall be made in the due and punctual payment of the principal component of Installment Payments of or redemption premium, if any, on or of any sinking fund installment pursuant to this Installment Purchase Agreement or with respect to any Parity Obligation when and as the same shall become due and payable, whether at maturity as therein expressed, by declaration or otherwise;
- (iii) If default shall be made by the City in the observance or performance of any of the other agreements, conditions, covenants or terms on its part contained in this Installment Purchase Agreement (other than as qualified under Section 4.9(c(iii))), and such default shall have continued for a period of thirty (30) days after the City shall have been given notice in writing of such default by the Authority, which may give notice in its discretion; provided, that such default shall not constitute an Event of Default if the City shall commence to cure such default within such thirty (30)-day period and thereafter diligently and in good faith shall proceed to cure such default within a reasonable period of time but not later than an additional thirty (30) days; or
- (iv) If the City shall file a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America, or if a court of competent jurisdiction shall approve a petition, filed with or without the consent of the City, seeking reorganization under the federal bankruptcy laws or any other applicable law of the United States of America, or if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the City or of the whole or any substantial part of its property; or

- (v) Any representation or warranty made or deemed to be made by or on behalf of the City in this Installment Purchase Agreement or in any certificate, financial or other statement furnished by or on behalf of the City to the Authority pursuant hereto or thereto shall prove to have been inaccurate, misleading or incomplete in any material respect when made; or
- (vi) Any material provision of this Installment Purchase Agreement shall at any time for any reason cease to be the legal, valid and binding obligation of the City or shall cease to be in full force and effect, or shall be declared to be unenforceable, invalid or void, or the validity or enforceability thereof shall be contested by the City, or the City shall renounce the same or deny that it has any further liability hereunder or thereunder; or
- (vii) Dissolution, termination of existence, insolvency or business failure of the City or the System; or
- (viii) Any court of competent jurisdiction with jurisdiction to rule on the validity of any provision of this Installment Purchase Agreement shall find or rule that this Installment Purchase Agreement is not valid or not binding on the City; or
- (ix) The City should, after any applicable grace period, breach or be in default under the terms of this Installment Purchase Agreement or any other agreement between the City and the Authority or any affiliate of the Authority (including as applicable Farm Credit Leasing Services Authority); or
- (x) A judgment, decree, or order for the payment of money will have been rendered against the System which has a material adverse effect on the City and either: (1) enforcement proceedings will have been commenced; (2) a lien prohibited by this Installment Purchase Agreement will have been obtained; or (3) such judgment, decree, or order will continue unsatisfied and in effect for a period of 30 consecutive days without being vacated, discharged, satisfied, bonded, or stayed pending appeal; or
- (xi) This Installment Purchase Agreement ceases to be legal, valid, binding and enforceable against the City or is in any way terminated (except in accordance with its terms) or becomes or is declared ineffective or inoperative; or
 - (xii) The City experiences a Material Adverse Change.
- (b) Remedies on Default. Whenever any Event of Default shall have happened and be continuing, the Authority shall have the right, at its option upon notice to the City, to (i) apply to and obtain from any court of competent jurisdiction such decree or order as may be necessary to require officials of the City to charge and collect rates for services provided by the City and the System sufficient to meet all requirements of this Installment Purchase Agreement, and (ii) take whatever action at law or in equity as may appear necessary or desirable to collect the Installment Payments then due or thereafter to become due during the Term of this Installment Purchase Agreement, or enforce performance and observance of any obligation, agreement or covenant of the City under this Installment Purchase Agreement, subject to the following paragraph.

Notwithstanding any provision of this Installment Purchase Agreement, the City's liability to pay the Installment Payments and other amounts hereunder shall be limited solely to Pledged Revenues as provided in Article 3 hereof. In the event that Pledged Revenues shall be insufficient at any time to pay the principal and interest components of the Installment Payments in full, the City shall not be liable to pay or prepay such delinquent Installment Payments other than from Pledged Revenues.

In addition to the rights and remedies set forth above, upon the occurrence and during the continuance of an Event of Default, at the Assignee's option in each instance, the entire indebtedness outstanding hereunder will bear interest from the date of such Event of Default until such Event of Default will have been waived or cured in a manner satisfactory to the Authority at the Default Rate. All interest provided for herein will be payable on demand and will be calculated on the basis of a year consisting of 360 days consisting of twelve 30-day months.

SECTION 5.2. Other Remedies of the Authority. The Authority shall have the right:

- (a) by mandamus or other action or proceeding or suit at law or in equity to enforce its rights against the City or any director, officer or employee thereof, and to compel the City or any such director, officer or employee to perform and carry out its or his duties under the agreements and covenants required to be performed by it or him contained herein;
- (b) by suit in equity to enjoin any acts or things that are unlawful or violate the rights of the Authority; or
- (c) by suit in equity upon the happening of an Event of Default to require the City and its Board of Directors, officers and employees to account as the trustee of an express trust.
- SECTION 5.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Installment Purchase Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article 5 it shall not be necessary to give any notice, other than such notice as may be required, in this Article 5 or by law.
- **SECTION 5.4.** Agreement to Pay Attorneys' Fees and Expenses. In the event either party to this Installment Purchase Agreement should default under any of the provisions hereof and the non-defaulting party should employ attorneys (including in-house counsel) or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the non-defaulting party the reasonable fees of such attorneys (including the allocable cost of in-house counsel) and such other expenses so incurred by the non-defaulting party.
- **SECTION 5.5.** No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Installment Purchase Agreement should be breached by either party

and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

A waiver of any default or breach of duty or contract by the Authority shall not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission by the Authority to exercise any right or remedy accruing upon any default or breach of duty or contract shall impair any such right or remedy or shall be construed to be a waiver of any such default or breach of duty or contract or an acquiescence therein, and every right or remedy conferred upon the Authority by law or by this article may be enforced and exercised from time to time and as often as shall be deemed expedient by the Authority. If any action, proceeding or suit to enforce any right or exercise any remedy is abandoned or determined adversely to the Authority, the City and the Authority shall be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

ARTICLE 6

PREPAYMENT OF AGREEMENT

SECTION 6.1. Defeasance. Notwithstanding any other provision of this Installment Purchase Agreement, the City may on any date secure the payment of Installment Payments, in whole, by irrevocably depositing with Authority an amount of cash which is either (a) sufficient to pay all such Installment Payments and any applicable prepayment premium and all other sums due hereunder, including the principal and interest components thereof, when due, or (b) invested in whole or in part in Federal Securities in such amount as will, in the opinion of an independent certified public accountant, together with interest to accrue thereon and together with any cash which is so deposited, be fully sufficient and irrevocably pledged to the Authority to pay all such Installment Payments and any applicable Prepayment Premium and all other sums due hereunder when due or when due on any optional prepayment date pursuant to Section 6.2 as the City shall instruct at the time of said deposit. In the event of a deposit pursuant to this Section for the payment of all remaining Installment Payments, all obligations of the City under this Installment Purchase Agreement, and the pledge of Pledged Revenues and all other security provided by this Installment Purchase Agreement for said obligations, shall cease and terminate, excepting only the obligation of the City to make, or cause to be made, all of Installment Payments from such deposit. Said deposit shall be deemed to be and shall constitute a special fund irrevocably pledged for the payment of such Installment Payments in accordance with the provisions of this Installment Purchase Agreement.

SECTION 6.2. Optional Prepayment. The Installment Payments may be prepaid, in whole but not in part, on any date by paying to the Authority the principal component of the Installment Payments to be prepaid, together with the Prepayment Premium identified in Section 6.3 hereof.

SECTION 6.3. Prepayment Premium. The City may exercise its option to prepay the principal components of the Installment Payments in whole but not in part on any Installment Payment Date, upon 30 days' notice to the Authority and the Assignee, by paying a prepayment price equal to the aggregate principal components of the Installment Payments to be prepaid,

together with the interest component of the Installment Payment required to be paid on or accrued to such date, plus the following premium:

Prepayment Date	Premium
November 1, 2025 to November 1, 2027	3%
After November 1, 2027 to November 1, 2029	2%
After November 1, 2029 to November 1, 2031	1%
After November 1, 2031	0%

Notwithstanding the above, the City shall have a one-time option to prepay or satisfy up to no more than 10% in the aggregate of the amount of Installment Payments due hereunder from the proceeds of Pledged Revenues or from any other funds of the City that are legally available therefor, upon thirty (30) days' written notice to the Authority and the Assignee, at a prepayment price equal to 100% of such Installment Payments, plus interest accrued to the date of prepayment at the Interest Rate. If the City exercises such option to prepay, the Assignee shall provide an updated Schedule of Installment Payments to replace Exhibit B hereto.

SECTION 6.4. Mandatory Prepayment from Net Proceeds of Insurance or Eminent Domain. The City shall prepay the unpaid principal components of the Installment Payments in whole on any date or in part, on any Installment Payment Date, from and to the extent the City determines to apply any Net Proceeds of insurance award or condemnation award with respect to the Enterprise for such purpose pursuant to Sections 4.8 at a price equal to the principal components of the Installment Payments to be prepaid. The City and the Authority hereby agree that such proceeds, to the extent remaining after payment of any delinquent Installment Payments, shall be credited towards the City's obligations under this Section 6.3

SECTION 6.5. Effect of Prepayment. In the event that the City prepays the Installment Payments and all other sums due to the Authority hereunder in full pursuant to Article 6, the City's obligations under this Installment Purchase Agreement shall thereupon cease and terminate, including but not limited to the City's obligation to pay Installment Payments under this Installment Purchase Agreement; subject however, to the provisions of Section 6.1 in the case of prepayment by application of a defeasance deposit.

ARTICLE 7 MISCELLANEOUS

SECTION 7.1. Notices. All written notices to be given under this Installment Purchase Agreement shall be given by first-class mail or personal delivery to the party entitled thereto at its address set forth below, or by telecopier or other form of telecommunication or electronic mail, at its number set forth below. Notice shall be effective either (a) upon transmission by email or other form of telecommunication, (b) 48 hours after deposit in the United States of America first-class

mail, postage prepaid, or (c) in the case of personal delivery, to any person or electronic mail, upon actual receipt. The Authority and the City may, by written notice to the other party, from time to time modify the address or number to which communications are to be given hereunder.

If to the Authority, as follows:

Fort Bragg Joint Powers Financing Authority c/o City of Fort Bragg 416 N. Franklin Street Fort Bragg, CA 95437 Attn: Executive Director Email:

If to the City, as follows:

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

If to the Assignee, as follows:

EverBank, N.A. 301 West Bay Street, 8th Floor Jacksonville, FL 32202 Attention: Director of Public Finance Email:

SECTION 7.2. Assignment by the Authority. The Authority's rights under this Installment Purchase Agreement, including the right to receive and enforce payment of the Installment Payments to be made by the City under this Installment Purchase Agreement may be assigned by the Authority to a Qualified Institutional Buyer upon delivery to the City of a Letter in substantially similar form as that set forth in Exhibit C. Upon any assignment the Authority shall provide the City a written notice of such assignment naming the assignee. The City acknowledges and agrees that the Authority has entered into the Assignment Agreement with Assignee concurrently with this Installment Purchase Agreement pursuant to which the Authority has assigned its rights and obligations under this Installment Purchase Agreement to the Assignee.

The Authority or any assignee has the right to make additional assignments of its rights and obligations under this Installment Purchase Agreement, but the City shall not be required to pay more than a single payee, regardless of the number of assignees, and no such assignment will be effective as against the City unless and until the City consents to such assignment. The City shall pay all Installment Payments hereunder under the written direction of the Authority or the assignee named in the most recent assignment or notice of assignment filed with the City. During the Term of this Installment Purchase Agreement, the City shall keep a complete and accurate record of all such notices of assignment.

SECTION 7.3. Assignment by the City. This Installment Purchase Agreement may not be assigned by the City, other than to a public agency which shall succeed to the interests of the City in and to the System and which (by operation of law, by contract or otherwise) becomes legally bound to all of the terms and provisions hereof. The prior written consent of the Authority shall be required in the case of any such assignment. In connection with any such assignment by the City, the City shall provide the Authority with an opinion of bond counsel that the assignee is legally obligated to pay all Installment Payments and other sums hereunder and to satisfy all of the obligations of the City under this Installment Purchase Agreement and the other Financing

Documents, and that such assignment shall not adversely affect the exclusion of interest payable pursuant to this Installment Purchase Agreement from gross income for federal income tax purposes and the exemption of such interest for State of California income tax purposes.

- **SECTION 7.4.** Amendment of this Installment Purchase Agreement. This Installment Purchase Agreement may be amended only in writing by the City and the Authority, with the prior written consent of the Assignee.
- **SECTION 7.5. Binding Effect**. This Installment Purchase Agreement shall inure to the benefit of and shall be binding upon the Authority and the City and their respective successors and assigns.
- **SECTION 7.6. Severability**. In the event any provision of this Installment Purchase Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- **SECTION 7.7. Net-Net-Net Parity Obligation**. This Installment Purchase Agreement shall be deemed and construed to be a "net-net-net" contract, and the City hereby agrees that the Installment Payments shall be an absolute net return to the Authority, free and clear of any expenses, charges or set-offs whatsoever.
- **SECTION 7.8. Further Assurances and Corrective Instruments**. The Authority and the City agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Installment Purchase Agreement.
- **SECTION 7.9. Execution in Counterparts**. This Installment Purchase Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- **SECTION 7.10. Applicable Law and Venue**. This Installment Purchase Agreement shall be governed by and construed in accordance with the laws of the State of California and venue shall be in the County of Mendicino.
- **SECTION 7.11.** Captions. The captions or headings in this Installment Purchase Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Section of this Installment Purchase Agreement.
- SECTION 7.12. USA Patriot Act Notice. The Authority hereby notifies the City that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify, and record information that identifies the City in accordance with the USA Patriot Act. The City covenants and agrees it will not, and agrees to cause each of its subsidiaries not to, at any time, directly or indirectly be (a) a person with whom the Authority is restricted from doing business under any Anti-Terrorism Law, (b) engaged in any business involved in making or receiving any contribution of funds, goods or services to or for the benefit of such a person or in any transaction that evades or avoids, or has the purpose of evading or avoiding, the prohibitions set forth in any Anti-Terrorism Law, or (c) otherwise in violation of any Anti-Terrorism Law (the City will and will

cause each of its subsidiaries to provide to the Authority any certifications or information that the Authority requests to confirm compliance by the City and its subsidiaries with any Anti-Terrorism Law). "Anti-Terrorism Law" means any law relating to terrorism or money laundering, including Executive Order No. 13224, the USA Patriot Act, the laws comprising or implementing the Authority Secrecy Act, and the Laws administered by the United States Treasury Department's Office of Foreign Asset Control, as any of the foregoing laws may from time to time be amended, renewed, extended, or replaced.

SECTION 7.13. Costs and Expenses. To the extent allowed by law, the City agrees to pay all reasonable out-of-pocket costs and expenses (including the fees and expenses of counsel retained or employed by the Authority) incurred by the Authority and any participants of the Authority in connection with the origination, administration, collection and enforcement of this Installment Purchase Agreement, including, without limitation, all costs and expenses incurred in obtaining, perfecting, maintaining, determining the priority of, and releasing any security for the City's obligations to the Authority, and any stamp, intangible, transfer or like tax incurred in connection with this Installment Purchase Agreement or the recording hereof or thereof.

SECTION 7.14. Indemnification. To the extent allowed by law, the City indemnifies the Authority, its affiliates and its and their respective officers, directors, employees, agents and advisors (each an "Indemnitee") against, and holds each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including fees and expenses of employed or retained counsel) incurred by any Indemnitee or asserted against any Indemnitee by any third party arising out of or as a result of (a) the execution or delivery of any Financing Document, (b) the acquisition, construction, ownership, operation and all other matters relating to, the acquisition, construction, ownership, operation and all other matters relating to the Project and the System or the grant of agency made by the Authority under Section 3.1 hereunder, the performance or nonperformance by the City of its obligations under any Financing Document or the consummation of the transactions contemplated thereby, including the use of the proceeds therefrom, (c) breach of representations, warranties or covenants of the City under this Installment Purchase Agreement, or (d) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, including any such items or losses relating to or arising under Environmental Laws or pertaining to environmental matters, regardless whether any Indemnitee is a party thereto; provided that such indemnity will not, as to an Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the active negligence or willful misconduct of such Indemnitee.

SECTION 7.15. Waiver of Jury Trial. (a) To the extent allowed by law, the City and the Authority each hereby irrevocably waives any right it may have to a trial by jury in connection with any action directly or indirectly arising out of or relating to this Installment Purchase Agreement. Each party hereto (1) certifies that no representative, administrative agent or attorney of any other person has represented, expressly or otherwise, that such other person would not, in the event of litigation, seek to enforce the foregoing waiver and (2) acknowledges that it and the other parties hereto have been induced to enter into this Installment Purchase Agreement by, among other things, the mutual waivers and certifications in this section.

- THE AUTHORITY AND THE ASSIGNEE (BY ITS ACCEPTANCE HEREOF) HEREBY. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) BETWEEN THE AUTHORITY AND THE ASSIGNEE ARISING OUT OF OR IN ANY WAY RELATED TO THIS INSTALLMENT PURCHASE AGREEMENT, THE NOTE AND THE OTHER RELATED DOCUMENTS. THIS PROVISION IS A MATERIAL INDUCEMENT TO THE ASSIGNEE TO PROVIDE THE FINANCING EVIDENCED BY THIS INSTALLMENT PURCHASE AGREEMENT. IF AND TO THE EXTENT THAT THE FOREGOING WAIVER OF THE RIGHT TO A JURY TRIAL IS UNENFORCEABLE FOR ANY REASON IN SUCH FORUM, THE AUTHORITY AND THE ASSIGNEE HEREBY CONSENT TO THE ADJUDICATION OF ANY AND ALL CLAIMS PURSUANT TO JUDICIAL REFERENCE AS PROVIDED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638, AND THE JUDICIAL REFEREE, WHO SHALL BE A BENCH OFFICER OR RETIRED BENCH OFFICER, SHALL BE EMPOWERED TO HEAR AND DETERMINE ANY AND ALL ISSUES IN SUCH REFERENCE WHETHER FACT OR LAW. THE AUTHORITY AND THE ASSIGNEE REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND CONSENT AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS AND CONSENTS TO JUDICIAL REFERENCE FOLLOWING THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL OF ITS CHOICE ON SUCH IN THE EVENT OF LITIGATION, A COPY OF THIS INSTALLMENT PURCHASE AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT OR TO JUDICIAL REFERENCE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638 AS PROVIDED HEREIN.
- (c) THE AUTHORITY WAIVES, TO THE EXTENT NOT PROHIBITED BY LAW, ANY RIGHT THE UNDERSIGNED MAY HAVE TO CLAIM OR RECOVER FROM THE ASSIGNEE IN ANY LEGAL ACTION OR PROCEEDING ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.
- (d) THE ASSIGNEE HEREBY RECOGNIZES THAT THE PROCEDURAL REQUIREMENTS AND REMEDIES APPLICABLE TO COMMENCING AN ACTION AGAINST THE AUTHORITY DIFFER FROM REQUIREMENTS APPLICABLE TO NONGOVERNMENTAL ENTITIES.

(Signature page follows)

IN WITNESS WHEREOF, the Authority has caused this Installment Purchase Agreement to be executed in its corporate name by its duly authorized officer, and the City has caused this Installment Purchase Agreement to be executed in its name by its duly authorized officer, as of the date first above written.

CITY OF FORT BRAGG JOINT POWERS PUBLIC FINANCING AUTHORITY

	By:
	By: Isaac Whippy, Executive Director
ATTEST:	
By:	
By: Diana Paoli, Secretary	
	CITY OF FORT BRAGG
	CITT OF TOKE BRAGO
	By:
	Isaac Whippy, City Manager
ATTEST:	
By:	
Diana Paoli, City Clerk	

-Signature Page-Installment Purchase Agreement

EXHIBIT A

DESCRIPTION OF THE PROJECT

Acquisition, if applicable, design and construction of improvements to the City's Broadband system including but not limited to expansion of the existing Mendocino Community Network, known as MCN that the City is acquiring with non-Acquisition Costs proceeds from the Mendocino Unified School City.

EXHIBIT B

SCHEDULE OF INSTALLMENT PAYMENTS

Payment	Principal Component	Interest Rate*	Interest	Total Installment
Date			Component	Payment
11/01/2025	-	4.850%	\$177,284.79**	\$177,284.79
05/01/2026	-	4.850%	191,085.40**	191,085.40
11/01/2026	-	4.850%	191,085.40**	191,085.40
05/01/2027	-	4.850%	191,085.40**	191,085.40
11/01/2027	-	4.850%	191,085.40	191,085.40
	\$145,513.72	4.850%	191,085.40	336,599.12
05/01/2028			,	,
11/01/2028	149,042.42	4.850%	187,556.69	336,599.11
05/01/2029	152,656.70	4.850%	183,942.42	336,599.12
11/01/2029	156,358.63	4.850%	180,240.49	336,599.12
05/01/2030	160,150.32	4.850%	176,448.79	336,599.11
	164,033.97	4.850%	172,565.15	336,599.12
11/01/2030	10.,000.57	110007	1,2,000110	220,233112
05/01/2031	168,011.79	4.850%	168,587.33	336,599.12
11/01/2031	172,086.08	4.850%	164,513.04	336,599.12
05/01/2032	176,259.17	4.850%	160,339.95	336,599.12
11/01/2032	180,533.45	4.850%	156,065.67	336,599.12
11/01/2032	184,911.39	4.850%	151,687.73	336,599.12
05/01/2033	101,511.35	1.02070	131,007.73	330,377.12
11/01/2033	189,395.49	4.850%	147,203.63	336,599.12
05/01/2034	193,988.33	4.850%	142,610.79	336,599.12
11/01/2034	198,692.55	4.850%	137,906.57	336,599.12
05/01/2035	203,510.84	4.850%	133,088.28	336,599.12
05/01/2035	208,445.98	4.850%	128,153.14	336,599.12
11/01/2035	200,113.90	1.02070	120,133.11	330,377.12
05/01/2036	213,500.79	4.850%	123,098.32	336,599.11
11/01/2036	218,678.19	4.850%	117,920.93	336,599.12
05/01/2037	223,981.13	4.850%	112,617.98	336,599.11
05/01/2037	229,412.68	4.850%	107,186.44	336,599.12
11/01/2037	22),112.00	1.05070	107,100.11	330,377.12
05/01/2038	234,975.93	4.850%	101,623.18	336,599.11
11/01/2038	240,674.10	4.850%	95,925.02	336,599.12
05/01/2039	246,510.45	4.850%	90,088.67	336,599.12
11/01/2039	252,488.33	4.850%	84,110.79	336,599.12
05/01/2040	258,611.17	4.850%	77,987.95	336,599.12
03/01/2070	264,882.49	4.850%	71,716.63	336,599.12
11/01/2040	204,002.49	4.03070	/1,/10.03	330,377.12
05/01/2041	271,305.89	4.850%	65,293.23	336,599.12
03/01/2041	2/1,505.89	4.030%	05,295.25	330,399.12

11/01/2041	277,885.06	4.850%	58,714.06	336,599.12
05/01/2042	284,623.77	4.850%	51,975.35	336,599.12
11/01/2042	291,525.90	4.850%	45,073.22	336,599.12
	298,595.40	4.850%	38,003.72	336,599.12
05/01/2043				
11/01/2043	305,836.34	4.850%	30,762.78	336,599.12
05/01/2044	313,252.87	4.850%	23,346.25	336,599.12
11/01/2044	320,849.25	4.850%	15,749.87	336,599.12
05/01/2045	328,629.84	4.850%	7,969.27	336,599.11
Total	\$7,879,810.41		\$4,842,785.12	\$12,722,595.53

^{*}Assumes no Event of Default or Event of Taxability has occurred and is continuing.

^{**} To be paid from the Capitalized Interest Fund held by the Assignee pursuant to the Capitalized Interest Fund Administration Agreement dated as of May 14, 2025, among the City, EverBank, N.A. and the Assignee.

EXHIBIT C

FORM OF ASSIGNEE LETTER

CITY OF FORT BRAGG INSTALLMENT PURCHASE AGREEMENT (the "Obligation")

In connection with that certain Installment Purchase Agreement dated as of May 1, 2025 (the "Obligation") entered into by the City of Fort Bragg (the "City") and the City of Fort Bragg Joint Powers Financing Authority (the "Authority"), _______, as assignee of the Authority (the "Assignee"), the Assignee hereby states:

- 1. The Assignee has knowledge and experience in financial and business matters relating to the Obligation and is capable of evaluating the merits and risks of the Obligation and is able to bear the economic risks thereof.
- 2. The Assignee has made such investigation of the financial information provided by the City as the Assignee, in the exercise of its business judgment, considers appropriate under the circumstances. In making its decision to acquire the Obligation, the Assignee has relied on the accuracy and completeness of information provided by the City. The Assignee has not required the City to deliver any offering document in connection with the issuance of the Obligation.
- 3. The Assignee is aware that the Obligation involves various risks, that the Obligation is not a general obligation of the City, and that payment of the Obligation is secured only from the sources described in the resolution or ordinance of the City authorizing the Obligation (the "Authorizing Measure") and the Installment Purchase Agreement and related Financing documents identified therein.
- 4. Neither the Assignee nor any of its affiliates is acting as a fiduciary for the City or in the capacity of broker, dealer, underwriter, or municipal advisor with respect to the Obligation. Neither the Assignee nor any of its affiliates has provided or will provide any financial, legal, tax, accounting or other advice to the City with respect to the Obligation; it being understood that the City has sought and obtained and will obtain such advice (including as it relates to structure, timing, terms, and similar matters) with respect to the Obligation from its own advisors (and not the Assignee or any of its affiliates) to the extent that the City desired or desires to obtain such advice.
- 5. The Assignee acknowledges that the Obligation is not being qualified under the Trust Indenture Act of 1939, as amended, and the Obligation is not being registered in reliance upon the exemption from registration under Section 3(a)(2) of the Securities Act of 1933, as amended, and that neither the City nor bond counsel shall have any obligation to effect any such registration or qualification.
- 6. The Assignee is not acting as a broker or other intermediary and is making the Financing and acquiring the Obligation for its own account and not with a present view to a resale or other distribution to the public. The Assignee understands that the Obligation may not be transferred except in compliance with applicable federal and state laws.

	on D thereunder, or (b) a qualified institutional buyer.
DATED as of	
	[]
	By:
	Name:
	Title

EXHIBIT D

FORM OF COMPLIANCE CERTIFICATE

CERTIFICATE OF COMPLIANCE

	real real real results of the undersigned, the of the City of Fort Bragger') on, 202 that:
1.	To the best of my knowledge, the City is not in default under any documents related to the Installment Purchase Agreement dated as of May 1, 2025 (as amended and supplemented, the "Agreement"; capitalized terms used but not defined herein shall have the meaning set forth in the Agreement), by and between the City and the City of Fort Bragg Joint Powers Financing Authority.
2.	The City confirms that during the prior Fiscal Year that it has fixed and prescribed rates and charges for the System in compliance with Section 4.9 of the Agreement.
3.	The following is a calculation of Debt Service Coverage Ratio on all Installment Payments and Parity Obligations outstanding during the prior Fiscal Year:
	PLEDGED REVENUES/TOTAL DEBT SERVICE =coverage]
	CITY OF FORT BRAGG
	By:
	Name:
	Title:

ASSIGNMENT AGREEMENT

This ASSIGNMENT AGREEMENT (this "Agreement"), dated as of May 1, 2025, is between the City of Fort Bragg Joint Powers Financing Authority, a joint powers authority duly organized and existing under the laws of the State of California (the "Authority"), and EverBank, N.A., a national banking association and existing under the laws of the United States of America, as assignee (including its successors and assigns, the "Assignee").

BACKGROUND:

- 1. The City of Fort Bragg (the "City") desires to finance a portion of the costs of the acquisition, design, construction and improvements to the City's broadband internet access system (the "System") as identified in Exhibit A to the Installment Purchase Agreement (as defined below) (the "Project").
- 2. The Authority has been formed for the purpose of assisting the City in the financing of public capital improvements, and in order to provide funds to finance the Project, the Authority has entered into an Installment Purchase Agreement dated as of May 1, 2025 (as amended and supplemented, the "Installment Purchase Agreement") with the City under which the Authority agrees to provide financing for the Project and to sell the completed Project to the City in consideration of the agreement by the City to pay the purchase price of the Project in semiannual installments (the "Installment Payments").
- 3. For the purpose of obtaining the moneys required to finance the Project in accordance with the terms of the Installment Purchase Agreement, the Authority has agreed to assign and transfer certain of its rights under the Installment Purchase Agreement to the Assignee, including but not limited to its right to receive and enforce the payment of the Installment Payments, under this Agreement.

AGREEMENT:

In consideration of the material covenants contained in this Agreement, the parties hereto hereby formally covenant, agree and bind themselves as follows:

SECTION 1. *Defined Terms*. All capitalized terms not otherwise defined herein have the respective meanings given those terms in the Installment Purchase Agreement.

SECTION 2. *Assignment*. The Authority hereby assigns to the Assignee all of the Authority's rights, title and interest under the Installment Purchase Agreement, including but not limited to:

(a) the right to receive and collect all of the Installment Payments and all of Pledged Revenues from the City under the Installment Purchase Agreement;

- (b) the right to receive and collect any proceeds of any insurance maintained thereunder with respect to the Project, or any eminent domain award (or proceeds of sale under threat of eminent domain) paid with respect to the Project; and
- (c) the right to exercise such rights and remedies conferred on the Authority under the Installment Purchase Agreement as may be necessary or convenient (i) to enforce payment of the Installment Payments, the Pledged Revenues and any amounts required to be credited to the payment or prepayment thereof, or (ii) otherwise to protect the interests of the Authority in the event of a default by the City under the Installment Purchase Agreement.

The assignment made under this Section is absolute and irrevocable, and without recourse to the Authority.

SECTION 3. Acceptance. The Assignee hereby accepts the assignments made herein.

SECTION 4. Representations and Warranties of the Authority. The Authority hereby represents, warrants and covenants to and with the Assignee as follows:

- (a) The Installment Purchase Agreement is free and clear of all claims, liens, security interests, encumbrances of any kind or character created by, through or under the Authority, except the rights of the City thereunder, and except as contemplated in the Installment Purchase Agreement. The Installment Purchase Agreement is and shall remain free of all claims, liens, security interests and encumbrances arising through any act or omission of the Authority.
- (b) The Authority has complied with and performed all of its obligations under the Installment Purchase Agreement and all related documents and instruments.
- (c) The Installment Purchase Agreement delivered to the Assignee herewith is an original and constitutes the entire writing, obligation and agreement between the Authority and City respecting the Installment Payments and the Pledged Revenues due thereunder.

SECTION 5. Representations and Warranties of the Assignee. The Assignee hereby certifies, represents, warrants, acknowledges, and covenants to and with the City and the Authority as follows:

(a) The Assignee acknowledges that the City will rely on the certifications, representations, warranties, acknowledgements, and covenants contained in this Agreement.

- (b) The Assignee is a national banking association and is authorized to acquire the Installment Purchase Agreement as set forth herein.
- (c) The Assignee is a "qualified institutional buyer" (a "Qualified Institutional Buyer") within the meaning of Rule 144A promulgated under the Securities Act of 1933, as amended (the "Securities Act"), or an "accredited investor" as described in Section 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act (an "Institutional Accredited Investor").
- (d) The Assignee is not acquiring the Installment Purchase Agreement for more than one account, has no present intention to re-assign the Installment Purchase Agreement, other than to a subsidiary or affiliate of the Assignee, and is not acquiring the Installment Purchase Agreement with a view to distributing the Installment Purchase Agreement.
- (e) The Assignee has sufficient knowledge and experience in financial and business matters, including the purchase and ownership of municipal obligations and other obligations similar to the Installment Purchase Agreement, to be capable of evaluating the merits and risks of the Installment Purchase Agreement, and the Assignee is able to bear the economic risks of acquiring the Installment Purchase Agreement.
- (f) The Assignee recognizes that the Installment Purchase Agreement involves significant risks, that there is no established market for the Installment Purchase Agreement and that none is likely to develop and, accordingly, that the Assignee must bear the economic risk of acquiring the Installment Purchase Agreement for an indefinite period of time.
- (g) The Assignee is not relying upon the City or any of its employees or agents for advice as to the merits and risks of acquiring the Installment Purchase Agreement. The Assignee has sought such accounting, legal and tax advice as it has considered necessary to make an informed lending decision.
- (h) The Assignee has conducted its own independent examination of, and has had an opportunity to ask questions and receive answers concerning the City, the Project, the System, the Gross Revenues and the Net Revenues, the Installment Purchase Agreement, and the security therefor, and the transactions and documents related to or contemplated by the foregoing.

- (i) The Assignee has been furnished with all documents and information regarding the City, the Project, the System, the Gross Revenues and the Net Revenues, the Installment Purchase Agreement, and the security therefor, and the transactions and documents related to or contemplated by the foregoing, and all matters related thereto required to make its lending decision.
- (j) The Assignee understands that the offering and sale of the Installment Purchase Agreement by the City were exempt from Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, pursuant to Section (d)(1)(i) of said Rule.
- (k) The Assignee understands that the Installment Purchase Agreement carries no rating from any rating service.
- (l) The Assignee understands that the Installment Purchase Agreement is not registered under the Securities Act and is not registered or otherwise qualified for sale under the "blue sky" laws and regulations of any state.
- (m) The officer of the Assignee executing this Agreement on behalf of the Assignee is duly authorized to do so on the Assignee's behalf.

SECTION 5. Limitations on Further Assignments. The Assignee may assign or otherwise transfer all (but not less than all) of its interest in the Installment Purchase Agreement, but only to (i) a subsidiary or affiliate of the Assignee, (ii) an institution that (A) the Assignee reasonably believes is either (x) a Qualified Institutional Buyer, or (y) an Institutional Accredited Investor and is purchasing the Installment Purchase Agreement for its own account, or (ii) the Federal Reserve Bank. Any such transferee must deliver to the City and the Authority an executed Investor Letter containing substantially the representations and warranties set forth in Section 5, and such transfer must otherwise comply in all respects with the provisions of the Installment Purchase Agreement regarding such transfer.

SECTION 6. *Execution in Counterparts*. This Agreement may be executed in any number of counterparts, each of which is an original and all together constitute one and the same agreement. Separate counterparts of this Agreement may be separately executed by the Assignee and the Authority, both with the same force and effect as though the same counterpart had been executed by the Assignee and the Authority.

SECTION 7. *Binding Effect*. This Agreement inures to the benefit of and binds the Authority and the Assignee, and their respective successors and assigns, subject, however, to the limitations contained herein.

SECTION 8. *Governing Law*. This Agreement is governed by the Constitution and laws of the State of California.

Section 9. Waiver of Jury Trial; Agreement for Judicial Reference; No Sovereign Immunity. To the fullest extent permitted by law, the Authority hereby waives its right to trial by jury in any action, proceeding and/or hearing on any matter whatsoever arising out of, or in any way connected with, this Agreement or any related documents, or the enforcement of any remedy under any law, statute, or regulation. To the extent such waiver is not enforceable, the Authority hereby consents to the adjudication of any and all such matters pursuant to Judicial Reference as provided in Section 638 of the California Code of Civil Procedure, and the judicial referee shall be empowered to hear and determine any and all issues in such Judicial Reference whether fact or law.

To the extent the foregoing waiver of a jury trial is unenforceable under applicable California law, the Authority agrees to refer, for a complete and final adjudication, any and all issues of fact or law involved in any litigation or proceeding (including all discovery and law and motion matters, pretrial motions, trial matter and post-trial motions up to and including final judgment), brought to resolve any dispute (whether based on contract, tort or otherwise) between the parties hereto arising out of, in connection with or otherwise related or incidental to this Agreement to a judicial referee who shall be appointed under a general reference pursuant to California Code of Civil Procedure Section 638, which referee's decision will stand as the decision of the court. Such judgment will be entered on the referee's statement of judgment in the same manner as if the action had been tried by the court. The Authority and the Assignee shall select a single neutral referee, who shall be a retired state or federal judge with at least five years of judicial experience in civil matters; provided that the event the Authority and the Assignee cannot agree upon a referee, the referee will be appointed by the court.

The Authority hereby represents that it does not possess and will not invoke a claim of sovereign immunity for disputes arising out of contractual claims relating to this Agreement. To the extent the Authority has or hereafter may acquire under any applicable law any rights to immunity from legal proceedings on the grounds of sovereignty, the Authority hereby waives and agrees not to claim, to the extent permitted by law, such rights to immunity for itself in respect of its obligations arising under or related to this Agreement.

Section 10. Arm's Length Transaction. The transaction described in this Agreement is an arm's length, commercial transaction between the Authority and the Assignee in which: (i) the Assignee is acting solely as a principal (i.e., as an assignee) and for its own interest; (ii) the Assignee is not acting as a municipal advisor or financial advisor to the Authority; (iii) the Assignee has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to the City or the Authority with respect to this transaction and the discussions, undertakings and procedures leading thereto (irrespective of whether the Assignee or any of its subsidiaries or affiliates has provided other services or is currently providing other services to the Authority on other matters); (iv) the only obligations the Assignee has to the Authority with respect to this transaction are set forth in this Agreement or the Installment Purchase Agreement; and (v) the Assignee is not

recommending that the City or the Authority take an action with respect to the transaction described in this Agreement and the other Financing Documents, and before taking any action with respect to the this transaction, the City or the Authority should discuss the information contained herein with the City's or the Authority's own legal, accounting, tax, financial and other advisors, as the City or the Authority deems appropriate.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers as of the day and year first written above.

CITY OF FORT BRAGG JOINT POWERS FINANCING AUTHORITY, as Assignor
ByExecutive Director
EVERBANK N.A., as Assignee
By Director of Public Finance

INSTALLMENT PURCHASE AGREEMENT

Dated as of May 1, 2025

by and between

CITY OF FORT BRAGG JOINT POWERS PUBLIC FINANCING AUTHORITY

and

CITY OF FORT BRAGG

Relating To

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INSTALLMENT PURCHASE AGREEMENT

This INSTALLMENT PURCHASE AGREEMENT (this "Installment Purchase Agreement"), dated for convenience as of May 1, 2025, is by and between the CITY OF FORT BRAGG JOINT POWERS AUTHORITY, a joint exercise of powers authority duly organized and existing under the laws of the State of California (the "Authority"), and the CITY OF FORT BRAGG, a local agencygeneral law city duly organized and existing under the laws of the State of California (the "City").

WITNESSETH:

WHEREAS, pursuant to the provisions Article 12 (commencing with Section 53167) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, the City constitutes a local agency, as defined therein, and is authorized to provide broadband internet access service to the public (the "System"); and

WHEREAS, the City has or will applied for or is entitled to receive a grant(s) (as described further herein) (the "Government Grant") to fund a portion of the costs to acquire, design, construct and improve the System, as identified more specifically described in Exhibit A attached hereto and incorporated herein by reference (the "Project"); and

WHEREAS, each of the Authority and the City <u>have has</u> duly authorized the execution of this Installment Purchase Agreement; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this Installment Purchase Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Installment Purchase Agreement;

NOW, THEREFORE, in consideration of the above premises and of the mutual agreements and covenants hereinafter contained and for other good and valuable consideration, the parties hereto agree as follows:

ARTICLE 1

DEFINITIONS AND EXHIBITS

SECTION 1.1. Definitions. All capitalized terms used in this Section 1.1 Installment Purchase Agreement shall for all purposes of this Installment Purchase Agreement hereof have the meanings herein specified set forth in this Section 1.1 or as hereinafter defined.

"Acquisition Amount" means \$\frac{7,879,810.41}{.}

"Annual Debt Service" means, for any Fiscal Year, the sum of (1) the interest accruing encomponent of the Installment Payments and any other Parity Obligations during such Fiscal Year, assuming that all principal payments required to be made hereunder and under such other Parity Obligations are made as scheduled, plus (2) the principal component of the Installment Payments and principal amount due under any other Parity Obligations in such Fiscal Year, calculated as if such principal amounts were deemed to accrue daily during such Fiscal Year in equal amounts from, in each case, each date principal is to be paid under this Installment Purchase Agreement and under such other Parity Obligations to the next succeeding date that a principal payment is due hereunder and under such other Parity Obligations; provided, that the amount on deposit in a debt service reserve fund for any Parity Obligations on any date of calculation of Annual Debt Service shall be deducted from the amount of principal due at the final maturity of such Parity Obligations and in each preceding year until such amount is exhausted.

"Assignee" means EverBank, N.A., a national banking association, and its successors and assigns.

"Assignment Agreement" means the Assignment Agreement dated as of May 1, 2025, by and between the Authority and the Assignee.

"<u>Authorized Investments</u>" means any of the following, but only to the extent that the same are acquired at fair market value, which at the time of investment are legal investments under the laws of the State of California for the moneys proposed to be invested therein:

- (a) direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America;
- (b) obligations of any of the following federal agencies which obligations represent full faith and credit of the United States of America, including: (i) Export-Import Authority; (ii) Farm Credit System Financial Assistance Authority, (iii) Farmers Home Administration; (iv) General Services Administration; (v) U.S. Maritime Administration; (vi) Small Business Administration; (vii) Government National Mortgage Association (GNMA); (viii) U.S. Department of Housing & Urban Development (PHA's); (ix) Federal Housing Administration and (x) Federal Financing Authority;
- (c) senior debt obligations rated "Aaa" by Moody's and "AAA" by S&P issued by the Federal National Mortgage Association or the Federal Home Financing

Mortgage Authority, senior debt obligations of other government-sponsored agencies, obligations of the Resolution Funding Authority (REFCORP) and senior debt obligations of other government sponsored agencies;

- (d) U.S. dollar denominated deposit accounts, federal funds and banker's acceptances with domestic commercial banks (including the Assignee and its affiliates) which have a rating on their short term certificates of deposit on the date of purchase of "P-1" by Moody's and "A-1" or "A-1+" by S&P and maturing no more than 360 days after the date of purchase, provided that ratings on holding companies are not considered as the rating of the bank; provided however, that, for the avoidance of doubt, deposit accounts, federal funds and banker's acceptances of the Assignee or its affiliates shall also satisfy this provision;
- (e) commercial paper which is rated at the time of purchase in the single highest classification, "P-1" by Moody's and "A-1+" by S&P, and which matures not more than 270 days after the date of purchase;
- pre-refunded municipal obligations defined as follows: Any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and (i) which are rated, based upon an irrevocable escrow account or fund (the "escrow"), in the highest rating category of Moody's and S&P or any successors thereto; or (ii)(A) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or obligations described in paragraph (a) above, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (B) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to above, as appropriate;
 - (g) the Local Agency Investment Fund maintained by the State of California;
 - (h) the California Asset Management Program; and
- (i) any other investments permitted by the <u>California</u> Government Code <u>of</u> the State.

"Broadband" means communications network facilities that enable high-speed Internet access.

"Business Day" means any day other than a Saturday or Sunday or a day on which (i) banks located in Jacksonville, Florida, or San Francisco, California, are not required or

authorized to remain closed, and (ii) the New York Stock Exchange is not closed; and (iii) neither the Authority and nor the Federal Reserve Banks are not Bank is closed.

"Capitalized Interest Fund" means the fund or account established and held by the Assignee for the benefit of the City into which certain proceeds of this Installment Purchase Agreement shall be deposited and administered pursuant to the Capitalized Interest Fund Agreement as described further in Section 3.10(b) hereof.

"<u>Capitalized Interest Fund Agreement</u>" means the Capitalized Interest Fund Administration Agreement dated as of May —<u>14</u>, 2025, among the City, EverBank, N.A. and the Assignee, relating to the administration of the Capitalized Interest Fund.

"<u>City</u>" means the City of Fort Bragg, a local agency duly organized and existing under the laws of the State of California.

"Closing Date" means May —14, 2025.

"Contract(s)" means any instrument pursuant to which a Parity Obligation is issued.

"Contract Payment Date" means any date on which Contract Payments are scheduled to be paid by the City under and pursuant to the Parity Obligations.

"Contract Payments" means the payments scheduled to be paid by the City under a Contract and pursuant to the Parity Obligations, which payments are secured by a pledge of Pledged Revenues.

"Costs of Issuance" means all items of expense directly or indirectly payable by or reimbursable to the City and related to the authorization, execution, sale and delivery of this Installment Purchase Agreement any Parity Obligations, including but not limited to any costs, fees and charges for preparation and execution of this Installment Purchase Agreement or any Parity Obligations and any other cost, charge or fee incurred in connection with the delivery of this Installment Purchase Agreement or such Parity Obligations.

"<u>Date of Taxability</u>" means the date from and for the interest component of the Installment Payments is subject to federal or State income taxation as a result of a Determination of Taxability.

"<u>Debt Service Reserve Fund</u>" means the fund or account established and held by the Assignee for the benefit of the City into which [the proceeds of this Installment Purchase Agreement][funds transferred by the City]—shall be deposited and administered pursuant to the DSRF Agreement as described further in Section 3.10 hereof. [TO BE DETERMINED]

"<u>Debt Service Reserve Requirement</u>" means, initially, an amount equal to the least of (a) Maximum Annual Debt Service; (b) 10% of the Acquisition Amount; and (c) 125% of the average annual principal and interest requirements of the Installment Payments hereunder.

"<u>Default</u>" means any event or circumstance which, following the applicable cure period or notice or both, results in an Event of Default.

"<u>Default Rate</u>" means a rate of interest equal to the Interest Rate set forth herein, plus 3.0%.

"<u>Determination of Taxability</u>" means and shall be deemed to have occurred on the first to occur of the following:

- (i) on the date when the City files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability shall have occurred;
- on the date when the Assignee notifies the City that it has received a written opinion from Special Counsel to the effect that an Event of Taxability has occurred, which notice shall be accompanied by a copy of such opinion of Special Counsel, unless, within 180 days after receipt by the City of such notification and copy of such opinion from the Assignee, the City shall deliver to the Assignee a ruling or determination letter issued to or on behalf of the City by the Commissioner or any CityAssistant Director of the Internal Revenue Service (or any other governmental official exercising the same or a substantially similar function from time to time) to the effect that, after taking into consideration such facts as form the basis for the opinion that an Event of Taxability has occurred, an Event of Taxability shall not have occurred;
- (iii) on the date when the City shall be advised in writing by the Commissioner or any City Director of the Internal Revenue Service (or any other government official or agent exercising the same or a substantially similar function from time to time) that, based upon any review or audit or upon any other ground whatsoever, an Event of Taxability has occurred; or
- (iv) on that date when the City shall receive notice from the Assignee that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed the interest component of the Installment Payments as includable in the gross income of the Assignee due to the occurrence of an Event of Taxability;

provided, however, that no Determination of Taxability shall occur under subparagraphparagraph (iii) or subparagraphparagraph (iv) above unless the City has been afforded the opportunity, at its expense, to contest any such assessment, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined; provided further, however, that upon demand from the Assignee, the City shall reimburse the Assignee for any payments, including any taxes, interest, penalties or other charges, such Assignee shall be obligated to make as a result of the Determination of Taxability.

["DSRF Agreement" means the Debt Service Reserve Fund Administration Agreement dated as of May —14, 2025, by and among the City, EverBank, N.A. and the Assignee, relating to the administration of the Debt Service Reserve Fund. ||TBD|

"<u>End User</u>" means any individual or entity in <u>California the State</u> that uses a broadband <u>Internet internet</u> access service that is provided by the City.

"Event of Default" means any of the events of default as defined in Section 5.1.

"Event of Taxability" means a change in law or fact or the interpretation thereof, or the occurrence or existence of any fact, event or circumstance (including, without limitation, the taking of any action by the City, or the failure to take any action by the City, or the making by the City of any misrepresentation in this Installment Purchase Agreement or the certificate regarding federal arbitrage which has been executed and delivered by the City in connection with this Installment Purchase Agreement) which has the effect of causing the interest component of the Installment Payments to be includable, in whole or in part, in the gross income of the Assignee for federal income tax purposes.

"Environmental Laws" means any federal, state, or local law, rule or regulation now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, relating to health, safety, or the environment.

"<u>Federal Securities</u>" means any direct general non-callable obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), or obligations the timely payment of principal of and interest on which are directly guaranteed by the United States of America.

"Finance Director" means the City's finance director.

"<u>Financial Consultant</u>" means a person having the experience and qualifications necessary to review and make recommendations regarding the operation, management, marketing, improvement, condition or use of the System.

"Financing Documents" means this Installment Purchase Agreement and any and all other documents from time to time evidencing, securing, or delivered to the Authority in connection with, this Installment Purchase Agreement, including, but not limited to, the Project Fund Administration Agreement, the Capitalized Interest Fund Agreement and the DSRF Agreement.

"Fiscal Year" means each twelve-month period during the Term of this Installment Purchase Agreement, commencing on July 1 inof any calendar year and ending on June 30 inof the next succeeding calendar year, or any other twelve-month period selected by the City as its fiscal year period.

"Generally Accepted Accounting Principles" means United States—generally accepted accounting principles in the United States, or those required of the regulatory agency having jurisdiction over the City.

"Governmental Authority" means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other person with authority to bind a party at law.

"Government Grant" means the Last Mile Federal Funding Account funding as more particularly described in that certain letter from the California Public Utilities Commission dated October 11, 2024.

"Gross Revenues" means all revenues, fees, income, rents, sale proceeds, and receipts received or earned by the City from or attributable to the ownership or operation of the System, including moneys received from the imposition of fees and charges to providers and end users, together with all interest earned by and profits derived from the sale of investments in the related funds thereof, minus non-cash patronage, non-cash income from subsidiaries and/or joint ventures, and grant income.

"Independent Certified Public Accountant" means an independent certified public accountant or any firm of certified public accountants appointed by the City.

"Installment Payment Date" means each date upon which an Installment Payments are Payment is due and payable as set forth on Exhibit B hereto.

"Installment Payments" means all payments required to be paid by the City on any date under this Installment Purchase Agreement and pursuant to Section 3.2 and 3.5, including any prepayment thereof pursuant to Section 6.1 or 6.2.

"Installment Purchase Agreement" means this Installment Purchase Agreement, dated as of May 1, 2025, between the Authority and the City, as amended and supplemented.

"Interest Rate" means 4.85%, so long as no Event of Default or Event of Taxability has occurred and is continuing.

"Maintenance and Operation Costs" means the reasonable and necessary costs paid or incurred by the City for maintaining and operating the System, determined in accordance with Generally Accepted Accounting Principles, including all reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the System in good repair and working order, and including all administrative costs of the City that are charged directly or apportioned to the operation of the System, such as salaries and wages of employees, overhead, taxes (if any) and insurance premiums (including payments required to be paid into any self-insurance funds), and including all other reasonable and necessary costs of the City or charges required to be paid by it to comply with the terms of this Installment Purchase Agreement or of any resolution authorizing the execution of any Parity Obligation or of such Parity Obligation, and fees and expenses of Independent Certified Public Accountants; but excluding in all cases (1) the principal of and interest oncomponents of Installment Payments and Contract Payments, and payment of Subordinate Obligations, (ii) costs of capital additions, replacements, betterments, extensions or improvements which under Generally Accepted

Accounting Principles are chargeable to a capital account, and (iii) depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles related to the System.

"Material Adverse Change" means an event or occurrence which adversely affects in a material manner (a) the assets, liabilities, condition (financial or otherwise), business, facilities or operations of the City or the System, (b) the ability of the City to carry out its business in the manner conducted as of the date of this Installment Purchase Agreement or Parity Obligations or to meet or perform its obligations under this Installment Purchase Agreement or Parity Obligations on a timely basis, (c) the validity or enforceability of this Installment Purchase Agreement or Parity Obligations, or (d) the exclusion of the interest component of the Installment Payments or Parity Obligations, as applicable, from gross income for federal income tax purposes or the exemption of such interest for state income tax purposes.

"<u>Maximum Annual Debt Service</u>" means, as of any date of calculation, the largest Annual Debt Service during the period from the date of such calculation through the final Installment Payment Date of this Installment Purchase Agreement and <u>allthe final</u> Parity Obligations.

"Maximum Rate" means the maximum non-usurious interest rate that may, under applicable federal law and applicable state law, be contracted for, charged or received under such laws.

"Net Revenue Conversion Date" means the date on which the City files with the Assignee a Certificate of the City pursuant to Section 3.10(d) stating that the Coverage Test has been met.

"<u>Net Revenues</u>" means, for any period, an amount equal to all of the Gross Revenues received during such period, minus the amount required to pay all Maintenance and Operation Costs becoming payable during such period.

"<u>Parity Obligations</u>" means all other bonds, notes, <u>Financings financings</u>, installment sale agreements, leases, or other obligations of the City payable from and secured by a pledge of and lien upon any of the Pledged Revenues incurred on a parity with the Installment Payments, issued in accordance with Section 4.14 hereof.

"<u>Pledged Revenues</u>" means (a) prior to the Net Revenue Conversion Date, the Gross Revenues of the System, and (b) from and after the Net Revenue Conversion Date, the Net Revenues of the System.

"<u>Project</u>" means the acquisition, design and construction of certain improvements to the System, as more particularly described on Exhibit A attached hereto.

"Project Costs" means, with respect to the Project, all costs of the acquisition and construction thereof which are paid from moneys on deposit in the Project Fund, including but not limited to:

- (a) all costs required to be paid to any person under the terms of any agreement for or relating to the acquisition and construction of the Project;
- (b) obligations incurred for labor and materials in connection with the acquisition and construction of the Project;
- (c) the cost of performance or other bonds and any and all types of insurance that may be necessary or appropriate to have in effect in connection with the acquisition and construction of the Project;
- (d) all costs of engineering, architectural services and other preliminary investigation expenses, including the actual out-of-pocket costs for site investigations, surveys, hazardous materials investigations, test borings, surveys, estimates, plans and specifications and preliminary investigations therefor, development fees, sales commissions, and for supervising construction, as well as for the performance of all other duties required by or consequent to the proper acquisition and construction of the Project;
- (e) any sums required to reimburse the Authority or the City for advances made for any of the above items or for any other costs incurred and for work done, including but not limited to administrative costs of the Authority or the City, which are properly chargeable to the acquisition and construction of the Project; and
- (f) all financing costs incurred in connection with the acquisition and construction of the Project, including but not limited to delivery costs and other costs incurred in connection with this Installment Purchase Agreement and the financing of the Project.

"<u>Project Fund</u>" means the fund or account established and held by the Assignee for the benefit of the City into which the <u>net</u> proceeds of this Installment Purchase Agreement shall be deposited and administered pursuant to the Project Fund Agreement.

"Project Fund Agreement" means the Project Fund Administration Agreement dated as of May —14, 2025, among and between the City, EverBank, N.A. and the Assignee, relating to the administration of the Project Fund.

"Resolution of Issuance" means Resolution No. adopted on April [28], 2025.

"Revenue Fund" means the fund established under Section 3.9 and held by the City for the receipt and deposit of Revenues.

"Revenues" means all income, rents, rates, fees, charges and other moneys derived from the ownership or operation of the System, including, without limiting the generality of the foregoing, (1) all income, rents, rates, fees, charges, business interruption insurance proceeds or other moneys derived by City from the sale, furnishing and supplying of Broadband or other services, facilities, and commodities sold, furnished or supplied through the facilities of or in the conduct or operation of the business of the System, plus (2) the earnings on and income derived from the investment of such income, rents, rates, fees, charges, or other moneys, plus (3) the proceeds of any charges collected by City, but excluding in all cases customer deposits,

connection fees, development impact fees or any other deposits or advances subject to refund until such deposits or advances have become the property of City.

"Special Counsel" means (a) Nixon Peabody LLP, or (b) any other attorney or firm of attorneys of nationally recognized expertise with respect to legal matters relating to obligations the interest on which is excludable from gross income for purposes of federal income taxation under Section 103 of the Tax Code.

"State" means the State of California.

"Subordinate Obligations" means all obligations of the City that are subordinate in priority and payment to the Installment Payments and payments required under Parity Obligations.

"System" means the facilities and property owned or to be owned or operated by the City in connection with the Broadband services of the City, together with all extensions thereof and improvements thereto hereafter acquired, constructed or installed by the City.

"<u>Taxable Date</u>" means the date as of which the interest components of the Installment Payments are first includable in gross income of the recipient thereof as a result of the occurrence of an Event of Taxability, as such date is established pursuant to either (a) a Determination of Taxability, or (b) an opinion of Special Counsel.

"<u>Taxable Period</u>" means the period for which the interest components of the Installment Payments become includable in the gross income of the recipient thereof, commencing on the Taxable Date.

"Taxable Rate" means 6.65%.

"<u>Tax Code</u>" means the Internal Revenue Code of 1986, as amended. Any reference herein to a provision of the Tax Code shall include all applicable temporary and permanent regulations promulgated under the Tax Code.

"<u>Term of this Installment Purchase Agreement</u>" or "<u>Term</u>" means the time during which this Installment Purchase Agreement is in effect, as provided in Section 3.4.

"Written Certificate" of the Authority or the City means, respectively, a written certificate, request or requisition signed in the name of the Authority or the City by its Authorized Representative. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

SECTION 1.2. Benefits of Installment Purchase Agreement Limited to Parties. Nothing contained herein, expressed or implied, is intended to give to any person other than the City and the Authority any right, remedy or claim under or pursuant hereto. Any agreement or

covenant required herein to be performed by or on behalf of the City shall be for the sole and exclusive benefit of the Authority.

SECTION 1.3. Successor Is Deemed Included in all References to Predecessor. Whenever the City is named or referred to herein, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in the City, and all agreements and covenants required hereby to be performed by or on behalf of the City shall be assumed fully by and will bind and inure to the benefit of the successors thereof whether so expressed or not.

SECTION 1.4. Waiver of Personal Liability. No member of the City Council of the City and no officer, agent, or employee of the City, or of any department or agency thereof, shall be individually or personally liable for the payment of the principal of or interest on this Installment Purchase Agreement, but nothing contained herein shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law or hereby.

SECTION 1.5. Article and Section Headings, Gender and References. The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof. Words of any gender shall be deemed and construed to include all genders. All references herein to "articles," "sections" and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof; and the words "hereby," "herein," "hereof," "hereto," "herewith" and other words of similar import refer to this Installment Purchase Agreement as a whole and not to any particular article, section, subdivision or clause hereof.

SECTION 1.6. Partial Invalidity. If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of the City shall be contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof; but the Authority shall retain all the rights and benefits accorded to it under any applicable provisions of law.

SECTION 1.7. Exhibits. The following Exhibits are attached to, and by reference made a part of, this Installment Purchase Agreement:

Exhibit A: Description of the Project.

Exhibit B: Schedule of Installment Payments.

Exhibit C: Form of Assignee Letter.

Exhibit D: Form of Compliance Certificate of the City.

ARTICLE 2

REPRESENTATIONS, COVENANTS AND WARRANTIES

SECTION 2.1. Representations, Covenants and Warranties of the City. The City represents, covenants and warrants to the Authority as follows:

- (a) <u>Installment Purchase Agreement</u>. Each representation and warranty and all information set forth in this Installment Purchase Agreement and/or any other document submitted in connection with, or to induce the Authority to enter into this Installment Purchase Agreement, and the other Financing Documents is correct in all material respects as of the Closing Date.
- (b) <u>Due Organization and Existence</u>. The City is a <u>general law city and</u> local agencyand political subdivision of the State of California, duly organized and existing under the laws of the State of California, with full power and authority to enter into this Installment Purchase Agreement and the other Financing Documents and to conduct its business.
- (c) <u>Authorization</u>. The laws of the State <u>of California</u> authorize the City to enter into this Installment Purchase Agreement and the other Financing Documents and to enter into the transactions contemplated hereby, and to carry out its obligations under this Installment Purchase Agreement and the other Financing Documents, and the City Council of the City has duly authorized the execution and delivery of this Installment Purchase Agreement and the other Financing Documents. This Installment Purchase Agreement and the other Financing Documents-have been, when duly authorized, executed and delivered by the City and shall constitute legal, valid and binding agreements of the City enforceable against the City in accordance with their respective terms.
- (d) <u>Conflicting Agreements</u>. Neither the execution and delivery of this Installment Purchase Agreement or the other Financing Documents nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the City is now a party or by which the City is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrances whatsoever upon any of the property or assets of the City, other than as set forth herein.
- (e) <u>Consents and Approvals</u>. All consents, approvals, authorizations, orders, licenses or permits of any Governmental Authority, legislative body, board, agency or commission having jurisdiction of the matter, that are required for the due authorization by, or that would constitute a condition precedent to or the absence of which would materially adversely affect the making or accepting of this Installment Purchase Agreement and the execution, delivery of and performance of any Financing Document by the City have been duly obtained (except for such approvals, consents and orders as may be required under the Blue Sky or securities laws of any state in connection with the offering and sale of this Installment Purchase Agreement, as to which no representation is made).

- (f) <u>Budgets; Full Disclosure</u>. All budgets, projections, feasibility studies, and other documentation submitted by the City to the Authority in connection with, or to induce the Authority to enter into, this Installment Purchase Agreement are based upon assumptions that are true and correct, and as of the Closing Date, no fact has come to light, and no event has occurred, that would cause any assumption made therein to be misleading or untrue. Neither this Installment Purchase Agreement nor other certificate, statement, agreement, or document furnished to the Authority in connection with this Installment Purchase Agreement (a) contains any untrue statement of a material fact, or (b) fails to state a material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which they were made, not misleading. The City is not aware of any Material Adverse Change that has not been disclosed in writing to the Authority.
- (g) <u>Accurate Financial Information</u>. Each submission of financial information or documents relating to the City will constitute a representation and warranty by the City that such information and documents (a) are true and accurate in all material respects, and (b) do not fail to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.
- (h) <u>System Condition</u>. The System is anticipated to (i) reasonably meet present demand in all material respects, (ii) be constructed in a good and professional manner, (iii) be in good working order and condition, and (iv) comply in all material respects with all applicable law, including, but not limited to, all Environmental Laws and the Government Grant.
- (i) <u>Rate Matters</u>. The City's rates for the provision of Broadband have been approved, if applicable, by any and all necessary governmental regulatory authorities, including, without limitation, each public service commission or public utilities commission that may have jurisdiction over the operations and rates of the City. Further, to the City's actual knowledge there is no pending or threatened proceeding before any Governmental Authority, the objective or result of which is or could be to materially reduce or otherwise materially adversely change any of the City's rates for the provision of Broadband services, or otherwise have a material adverse effect on the condition, financial or otherwise, operations, properties, or business of the System.
- (j) <u>Litigation</u>. There is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court, government agency, public board or body, is pending for which the City has been served or, to the City's actual current knowledge, threatened against the City: (i) in any way affecting the existence of the City or in any way challenging the respective powers of the several offices or the titles of the officials of the City to such offices; (ii) affecting or seeking to prohibit, restrain or enjoin the making, execution or delivery of this Installment Purchase Agreement of the other Financing Documents or the application of the proceeds of this Installment Purchase Agreement or the other Financing Documents; (iii) in any way contesting or affecting, as to the City, the validity or enforceability of this Installment Purchase Agreement or the other Financing Documents; (iv) in any way contesting the powers of the City or its authority with respect to the adoption of Resolution of Issuance, or the execution and delivery of this Installment Purchase Agreement or the other Financing Documents; or (v) in any way contesting or challenging the consummation of the transactions contemplated hereby or thereby or that might materially adversely affect the ability of the City to perform and satisfy its

obligations under this Installment Purchase Agreement; nor to the best of the City's knowledge is there any basis for any such action, suit, proceeding, inquiry or investigation, wherein an unfavorable decision, ruling or finding would materially adversely affect the proceedings authorizing this Installment Purchase Agreement or the performance by the City of its obligations thereunder, or the authorization, execution, delivery or performance by the City of this Installment Purchase Agreement or the other Financing Documents.

- (k) <u>Valid and Binding Obligation</u>. This Installment Purchase Agreement and each of the Financing Documents is a valid and binding obligation of the City enforceable in accordance with its terms.
- (l) <u>Pledge and Other Liens</u>. The pledge in Section 3.10 of this Installment Purchase Agreement constitutes a lien on and a pledge of all Pledged Revenues and there are no other liens on the Pledged Revenues as of the Closing Date.
- (m) <u>Due Execution</u>. The City has duly authorized and executed this Installment Purchase Agreement and the other Financing Documents in accordance with the laws of the State.
- (n) No Default or Event of Non-Appropriation. The City is not in default and has not failed to appropriate funds required under the terms, conditions or provisions of any agreement or instrument to which the City has issued debt in the past ten years.
- (o) <u>Outstanding Parity Obligations</u>. As of the date of this Installment Purchase Agreement, there are no Parity Obligations.
- (p) <u>Environmental Laws</u>. The Project and the System are anticipated to be in full compliance with all applicable Environmental Laws.
- (q) <u>Sufficient Funds</u>. The City reasonably believes that sufficient funds can be <u>obtained generated by the System</u> to make all Installment Payments and all other amounts required to be paid pursuant to this Installment Purchase Agreement.
- (r) <u>Financial Statements</u>. The City's audited financial statements for the period ended June 30, 20[23/24]2024, fairly present the financial condition of the City as of the <u>datesdate</u> thereof and the results of operation for the period covered thereby. Except as has been otherwise disclosed to the Assignee as of the Closing Date, there has been no material change in the financial condition of the City since the <u>datesdate</u> of said statements—and reports, that will in the reasonable opinion of the City materially impair its ability to perform its obligations under this Installment Purchase Agreement.
- (s) <u>Information</u>. All information, reports and other papers and data furnished by the City to the Assignee were, at the time the same were so furnished, complete and accurate in all material respects, to the best of the City's knowledge, and were provided with the expectation that Assignee would rely thereon in entering into the <u>within</u> transaction. No fact is known to the City which has had or, so far as the City can now reasonably foresee, may in the future impair the City's ability to perform its obligations under this Installment Purchase Agreement, which has not been set forth in the financial statements previously furnished to the Assignee or in other

such other information, reports, papers and data or otherwise disclosed in writing to the Assignee prior to the Closing Date. Any financial, budget and other projections furnished to the Assignee by the City or its or their agents were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair and reasonable in light of the conditions existing at the time of delivery of such financial, budget or other projections, and represented, and as of the date of this representation, represent the City's best estimate of the City's future financial performance. To the best of the City's knowledge, no document furnished nor any representation, warranty or other written statement made to the Assignee in connection with the negotiation, preparation or execution of this Installment Purchase Agreement contains any untrue or misleading statement of a material fact.

- (t) Role of Assignee. The City acknowledges that (i) the Assignee, as the assignee of the Authority under the Assignment Agreement, is acting solely for its own loan account and not as a fiduciary for the City or in the capacity of broker, dealer, placement agent, municipal securities underwriter or municipal advisor, (ii) the Assignee has not provided, and will not provide, financial, legal (including securities law), tax, accounting or other advice to or on behalf of the City or with respect to this Installment Purchase Agreement and the financing related thereto, and (iii) the Assignee has expressed no view regarding the legal sufficiency of its representations for purposes of compliance with any legal requirements applicable to any other party, or the correctness of any legal interpretation made by counsel to any other party with respect to any such matters.
- (u) OFAC Status. The City is not listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the U.S. Department of the Treasury's Office of Foreign Assets Control, and any successor thereto, the Secretary of the Treasury, or included in any Executive Orders, that prohibits or limits the Assignee from making any advance or extension of credit to the City or from otherwise conducting business with the City.

SECTION 2.2. Representations, Covenants and Warranties of the Authority. The Authority represents, covenants and warrants to the City as follows:

- (a) <u>Due Organization and Existence</u>. The Authority is a joint powers authority duly organized and existing under California law.
- (b) <u>Authorization</u>. The Authority is authorized to enter into this Installment Purchase Agreement and the transactions contemplated hereby, and the Authority has duly authorized the execution and delivery of this Installment Purchase Agreement.
- (c) <u>No Violations</u>. Neither the execution and delivery of this Installment Purchase Agreement nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Authority is now a party or by which the Authority is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Authority.

- (d) <u>Litigation</u>. To the best knowledge of the Authority, there is no pending or threatened action or proceeding against the Authority or for which the Authority has received actual notice before any court or administrative agency which will materially adversely affect the ability of the Authority to perform its obligations under this Installment Purchase Agreement.
- (e) <u>Assignee Letter</u>. The Authority will cause the Assignee to deliver to the City a certificate or letter substantially in the form set forth in Exhibit C attached hereto, and will abide by all transfer restrictions herein and therein.

ARTICLE 3

TERMS OF AGREEMENT

SECTION 3.1. Purchase of Project and City. The Authority agrees to provide funds on the Closing Date solely through proceeds received from the Assignee pursuant to the Assignment Agreement (the initial deposits of which are more particularly described in Section 3.9 hereof) in the Acquisition Amount for the City to acquire property and easements which are necessary for the acquisition, construction and/or installation of the Project and for the acquisition, construction and/or installation of the Project. The Authority hereby appoints the City as its agent to carry out all phases of the acquisition, design construction, installation and/or equipping of the Project and the City, as agent of the Authority, assumes all rights, duties, responsibilities and liabilities of the Authority regarding the acquisition, design, construction, installation and/or equipping of the Project. Title to the Project, and each and every portion thereof shall vest in the City upon the acquisition, design and construction thereof; provided, however, the City shall be subject to the payment of Installment Payments as described under this Installment Purchase Agreement and any other amounts due hereunder, to the remedies of the Authority in the Event of Default as provided in Article 5 hereof. The City, as agent of the Authority, may enter into any purchase order, construction management agreement, architecture or engineering contract or construction contract required for the design, acquisition, construction, installation and completion of the Project. The Authority hereby assigns to the City all rights and powers to enforce such purchase orders or contracts as are required for design, acquisition, construction, installation, purchase and completion of the Project, which enforcement may be by auction at law or in equity; provided that the assignment made by the Authority herein shall not prevent the Authority, or its assignee, from asserting any rights or remedies legally available to it. Any appointment of the City as agent of the Authority is limited solely to the extent required under applicable law to render enforceable this Installment Purchase Agreement and to enable the City to acquire, construct, own and operate the Project, but shall not operate to bind or obligate the Authority for any purpose whatsoever. The City shall not represent to any person that it is acting as agent for the Authority.

SECTION 3.2. Repayment Purchase of the Project by the City.

(a) <u>Obligation to Pay</u>. The City hereby agrees to purchase from the Authority the Project at a purchase price equal to the Acquisition Amount together with interest on the unpaid principal balance of the Acquisition Amount, payable in Installment Payments, payable on each Installment Payment Date as set forth in Exhibit B.

- (b) <u>Rate on Overdue Payments</u>. If the City fails to make any of the payments required in this Section on or before the due date therefor, the Installment Payment in default shall continue as an obligation of the City until the amount in default shall have been fully paid and the City agrees to pay the same with interest thereon, to the extent permitted by law, from the due date thereof at the Default Rate, or, if lower, the maximum rate then permitted by law Maximum Rate.
- (c) <u>Gross Up of Interest Rate Upon Determination of Taxability</u>. Notwithstanding the foregoing provisions of this Section, in the event a Determination of Taxability occurs, the City shall pay the Taxable Rate, as interest components of the Installment Payments, to the Assignee on and after the date of demand by the Assignee therefor.
- (d) <u>Maximum Rate</u>. Anything herein to the contrary notwithstanding, the amount of interest payable hereunder for any Interest period shall not exceed the Maximum Rate.
- **SECTION 3.3. Substitution of the Project**. The City may substitute other property or components of the Project, but only if the City first obtains the consent of the Authority and the Assignee, and files with the Authority and the Assignee a statement of the City which:
 - (a) identifies the property, facilities or combination thereof, to be substituted and the components of the Project that they will replace; and
 - (b) states that the estimated costs of the substituted property, facilities or combination thereof is not less than the cost of the components of the Project being replaced;
 - (c) states that such substitution will not adversely affect Pledged Revenues or otherwise result in a Material Adverse Change; and
 - (d) an opinion of Special Counsel shall be provided that confirms that such substitution shall not, in and of itself, cause the interest component of any Installment Payment to be federally taxable.
- **SECTION 3.4.** Term. The Term of this Installment Purchase Agreement shall commence on the Closing Date, and shall end on the earlier of [May 1, 2045], or the date upon which all Installment Payments and all other sums due to the Authority hereunder shall be paid in full or provision for such payment shall be made as provided in Section 6.1.
- **SECTION 3.5.** Payments Generally. The Authority has assigned its right to receive payments hereunder to the Assignee pursuant to the Assignment Agreement. Payments shall be made on or prior to each Installment Payment Date by wire to the Assignee in accordance with written instructions provided by the Assignee to the City. Any such written instructions shall be provided by the Assignee to the City at least five days prior to the first Interest Payment Date.
- **SECTION 3.6.** Taxes. Any payment by the City to the Authority will be made net of any taxes (other than income and similar taxes imposed on or measured by the Authority's overall net income). The City shall be responsible for the payment of all such taxes.

- **SECTION 3.7.** Conditions Precedent. The Authority's obligation to extend financing under this Installment Purchase Agreement is subject to the condition precedent that the Authority receive, in form and substance satisfactory to the Authority, each of the following:
 - (a) <u>Installment Purchase Agreement and Related Documents</u>. A duly executed copy of this Installment Purchase Agreement and all instruments and documents contemplated hereby and thereby, including the Project Fund Agreement, the Capitalized Interest Fund Agreement and the DSRF Agreement.
 - (b) <u>Evidence of Authority Authorization</u>. Such certified board resolutions, certificates of incumbency, and other evidence that the Authority may require that this Installment Purchase Agreement, all instruments and documents executed in connection herewith have been duly authorized and executed.
 - (c) <u>Insurance</u>. Such evidence as the Authority may require that the City is in <u>or will be</u> compliance with Section 4.5 below.
 - (d) <u>Consents and Approvals</u>. Evidence as the Authority may require that all regulatory and other consents and approvals referred to in Section 2.1 have been obtained and are in full force and effect.
 - (e) <u>Opinions of Counsel</u>. The City shall provide an opinion of special counsel regarding the tax-exempt status of interest on the interest component of Installment Payments under federal tax laws (and, to the extent applicable, State laws).
 - Opinion of City Attorney. An opinion of the City Attorney to the City to the effect that (A) the City is duly organized, validly existing, and in good standing under the laws of the State, (B) the City has duly received all requisite approvals and has the legal power to enter into and perform under the Financing Documents, (C) all proceedings of the City necessary to be taken in connection with the authorization, execution, delivery and performance of the Financing Documents have been duly taken and all such authorizations are presently in effect, (D) the Financing Documents have been duly executed and delivered by the City and constitutes constitute the valid and binding obligation of the City enforceable against the City in accordance with itstheir terms, except as enforceability may be limited: by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or affecting the rights of creditors generally and by general equitable principles which may limit the right to obtain the remedy of specific performance of obligation other than the obligation to pay money, and (E) the execution, delivery, and performance by the City of the Financing Documents does not and will not: (i) violate any provision of any law, rule or regulation, any judgment, order or ruling of any court or governmental agency, articles of organization, articles of incorporation, other charter documents, bylaws or operating agreement, as applicable, of the City, or any agreement, indenture, mortgage, or other instrument to which the City is a party or by which the City or any of its properties is bound; or (ii) be in conflict with, result in a breach of, or constitute with the giving of notice or passage of time, or both, a default under any such agreement, indenture, mortgage, or other instrument; and (#F) no consent, permission, authorization, order or

(g) Opinion of City Attorney as Authority Counsel. An opinion of the City Attorney acting in the capacity of counsel to the Authority in form and substance satisfactory to the Assignee.

(h) A tax certificate of the City.

- (i) (g) The City has provided a certificate certifying that on the Closing Date each representation and warranty on the part of the City contained in this Installment Purchase Agreement is true and correct and no Event of Default, or event which would, with the passage of time or the giving of notice, constitute an Event of Default, has occurred and is continuing and no default exists under any other Parity Obligations, or under any other agreements by and between the City and the Assignee and certifying as to such other matters as the Assignee might reasonably request.
- (j) (h)—All proceedings taken in connection with the transactions contemplated by this Installment Purchase Agreement, and all instruments, authorizations and other documents applicable thereto, are satisfactory to the Assignee and its counsel.
- (k) (i) No law, regulation, ruling or other action of the United States, the State of California or any political subdivision or authority therein or thereof shall be in effect or shall have occurred, the effect of which would be to prevent the City from fulfilling its obligations under this Installment Purchase Agreement or the other Contracts.
- (1) The Assignee shall have been provided with the opportunity to review all pertinent financial information regarding the City, agreements, documents, and any other material information relating to the City or the Gross Revenues or any other component of the collateral securing the obligations of the City hereunder.
- (m) (k) All information provided by the City to the Assignee is accurate in all material respects based on the best knowledge of the City, after due inquiry.
- (n) (1) The Assignee shall have received such other certificates, approvals, filings, opinions and documents as shall be reasonably requested by the Assignee.
- (m) All other legal matters pertaining to the execution and delivery of this Installment Purchase Agreement shall be reasonably satisfactory to the Assignee.

SECTION 3.8. Nature of City's Obligations.

- (a) <u>Special Obligation</u>. The City's obligation to pay the Installment Payments is a special obligation of the City limited solely to the Pledged Revenues. Under no circumstances is the City required to advance moneys derived from any source of income other than the Pledged Revenues and other sources specifically identified herein for the payment of the Installment Payments, and no other funds or property of the City are liable for the payment of the Installment Payments.
- (b) Obligations Absolute. The obligations of the City to pay the Installment Payments from the Pledged Revenues and to perform and observe the other agreements contained herein are absolute and unconditional and are not subject to any defense or any right of setoff, counterclaim or recoupment arising out of any breach of the City or the Authority of any obligation to the City or otherwise with respect to the System, whether hereunder or otherwise, or out of indebtedness or liability at any time owing to the City by the Authority. Until such time as all of the Installment Payments have been fully paid or prepaid, the City:
 - (i) will not suspend or discontinue payment of any Installment Payments;
 - (ii) will perform and observe all other agreements contained in this Installment Purchase Agreement; and
 - (iii) will not terminate this Installment Purchase Agreement for any cause, including, without limiting the generality of the foregoing, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the System, sale of the System, the taking by eminent domain of title to or temporary use of any component of the System, commercial frustration of purpose, any change in the tax or other laws of the United States of America or the State of California or any political subdivision of either thereof or any failure of the Authority to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Installment Purchase Agreement.
- (c) Protection of Rights. If the Authority fails to perform any such agreements on its part, the City may institute such action against the Authority as the City deems necessary to compel performance so long as such action does not abrogate the obligations of the City contained in the preceding subsection (b). The City may, however, at the City's own cost and expense and in the City's own name or in the name of the Authority prosecute or defend any action or proceeding or take any other action involving third persons which the City deems reasonably necessary in order to secure or protect the City's rights hereunder, and in such event the Authority will (upon reasonable notice, and at the sole expense of the City) cooperate fully with the City to the extent reasonably necessary and take such action reasonably necessary to effect the substitution of the City for the Authority in such action or proceeding if the City shall so request.
- **SECTION 3.9. Deposit of and Application of Funds**. On the Closing Date, the Authority shall cause the Acquisition Amount to be deposited by the Assignee as follows:

- (a) \$_____6,930,000.00 shall be held by the Assignee for deposit ininto the Project Fund established by the Assignee to be applied by the City for Project Costs, pursuant to the Project Fund Agreement-1 and shall be invested in Authorized Investments or as otherwise set forth in the Project Fund Agreement.1.
- (b) \$_____199,269.42 shall be applied by the Assignee for the payment of Costs of Issuance on the Closing Date, pursuant to a cost of issuance requisition [and shall be held uninvested until discharged pursuant to by payment of invoices received by the Assignee].
- (c) \$\frac{750,540.99}{200}\$ shall be held by the Assignee for deposit ininto the Capitalized Interest Fund established by the Assignee to be applied by the Bank Assignee pursuant to Section 3.10(b) and the Capitalized Interest Fund Agreement and shall be invested in Authorized Investments or as otherwise set forth in the Capitalized Interest Fund Agreement.
- (d) [\$_____ shall be held by the Assignee for deposit in the Debt Service Reserve Fundestablished by the Assignee and to be administered pursuant to the DSRF Agreement [and shall be invested in Authorized Investments or as otherwise set forth in the DSRF Agreement.]][TOBE DELETED IF THE FUNDS ARE BEING SENT FROM THE CITY RATHER THAN-FUNDED WITH PROCEEDS].

In addition, on the Closing Date, the Authority shall cause the Assignee to deposit into the Debt Service Reserve Fund established by the Assignee with funds transferred from the City to the Assignee in the amount of \$673,198.24 which and shall be invested in Authorized Investments or as otherwise set forth in the DSRF Agreement, and such Debt Service Reserve Fund shall be administered pursuant to this Installment Purchase Agreement and the DSRF Agreement.

SECTION 3.10. Revenue Fund; Pledge of Pledged Revenues; Debt Service Reserve Fund.

- (a) Revenue Fund; Receipt and Deposit of Pledged Revenues. There is hereby established a special fund known as the "City of Fort Bragg Broadband System Revenue Fund," which fund shall be held and maintained by the City so long as this Installment Purchase Agreement and any Parity Obligations are outstanding. The City shall deposit all Gross Revenues in the Revenue Fund promptly upon the receipt thereof, and shall apply amounts in the Revenue Fund solely for the uses and purposes set forth herein and in the Parity Obligation Documents. The City shall withdraw amounts on deposit in the Revenue Fund and apply such amounts at the times and for the purposes, and in the priority, as follows:
 - (i) following the Net Revenue Conversion Date (but only following the Net Revenue Conversion Date), all Maintenance and Operation Costs;
 - (ii) all Installment Payments and any Parity Obligations;
 - (iii) prior to the Net Revenue Conversion Date, all Maintenance and Operation Costs;

- (iv) to the Assignee the amount of any deficiency in the Debt Service Reserve Fund or in any reserve fund established for any Parity Obligations held by the Assignee, the notice of which deficiency has been given to the City in accordance with this Agreement, [the DSRF Agreement]— and the related Parity Obligation Documents, as applicable;
- (iv) any other payments required to comply with the provisions of any Parity Debt Documents, including Maintenance and Operation Costs prior to the Net Revenue Conversion Date; and
 - (vi) any other purposes authorized under subsection (c) of this Section.
- (b) Payment of Installment Payments. At least three (3) Business Days prior to each Installment Payment Date, the City shall withdraw from the Revenue Fund and transfer to the Authority an amount of Pledged Revenues equal to the aggregate amount of the Installment Payment when and as the same becomes due and payable; provided, however, that with respect to the following Payment Dates, the Bank shall transfer moneys from the Capitalized Interest Fund in the amounts set forth below for payment of interest component of Installment Payments due on the dates set forth below:

Payment Date	Amount		
<u>11/01/2025</u>	<u>\$177,284.79</u>		
<u>05/01/2026</u>	<u>191,085.40</u>		
<u>11/01/2026</u>	<u>191,085.40</u>		
05/01/2027	<u>191,085.40</u>		
<u>11/01/2025</u>	<u>177,284.79</u>		
Payment Date	Amount		

provided, further, however, that with respect to any Payment Date after the exhaustion of the Capitalized Interest Fund, to the extent that the amount of Pledged Revenues are deficient to pay any Installment Payment, then the City shall notify the Authority and the Assignee immediately (and in any event, at least (2) two Business Days prior to any Installment Payment Date), and the Assignee shall withdraw, pursuant to the terms and provisions in the DSRF Agreement, on the

applicable Installment Payment Date, from the Debt Service Reserve Fund the amount necessary to pay the Installment Payment then due. [TBD IF CITY OR BANK HOLDS THE DSRF]

- (c) Pledge of Pledged Revenues. Prior to the Net Revenue Conversion Date, the Installment Payments shall be secured by a first pledge of and lien on all of the Gross Revenues. From and after the Net Revenue Conversion Date, the Installment Payments shall be secured by a first pledge of and lien on all of the Net Revenues. In addition, the Installment Payments are secured by a pledge of all of the moneys from the investment of such moneys. The Installment Payments and all other Parity Obligations (if any) shall be equally secured by a pledge, charge and lien upon the Pledged Revenues and such other moneys without priority for series, issue, number or date and the payment of the interest on and principal of the Installment Payments shall be and are secured by an exclusive pledge, charge and lien upon the Pledged Revenues and such other moneys. So long as any amounts are due and owing hereunder, the Pledged Revenues and such other moneys may not be used for any other purpose; except as expressly permitted by this Section 3.10.
- (d) <u>Determination of Net Revenue Conversion Date</u>. The pledge of and lien on the Gross Revenues for the security hereunder may be converted to a pledge of and lien on the Net Revenues, upon the occurrence of the following events (the "Coverage Test") as follows: the amount of Net Revenues received by the City during any three (3) consecutive Fiscal Years following the completion of the Project based on financial statements of the City for such Fiscal Years which have been audited in accordance with Section 4.1(a) are at least equal to 125% of the amount of Maximum Annual Debt Service.

In the event the City determines that the Coverage Test has been met at any time following the completion of the Project, the City may file with the Assignee a Certificate of the City which states such determination and identifies the calculations which demonstrate that the Coverage Test has been met. Upon the filing of such Certificate of the City with the Assignee, the pledge of Gross Revenues for the security of the Installment Payments shall be converted to a pledge of Net Revenues. In the event the amount of Gross Revenues in any Fiscal Year following the Net Revenue Conversion Date fails to meet the Coverage Test, amounts due and owing hereunder shall nevertheless remain secured by a pledge of the Net Revenues. The determination by the City that the Coverage Test has been met shall be binding and conclusive.

(e) Other Uses Permitted. The City shall manage, conserve and apply the Pledged Revenues in such a manner that all deposits required to be made under the preceding paragraphs will be made at the times and in the amounts so required. Subject to the foregoing sentence, so long as no Default has occurred and is continuing hereunder or would result therefrom, the City may at any time and from time to time use and apply moneys in the Revenue Fund for (i) the acquisition and construction of improvements to the System; (ii) the prepayment of this Installment Purchase Agreement or Parity Obligations; or (iii) any other lawful purpose of the City.

SECTION 3.11. Project Fund. The Assignee has represented that it will establish a separate fund or account pursuant to the terms and provisions set forth in the Project Fund Agreement, into which the proceeds of this Installment Purchase Agreement shall be deposited as provided in Section 3.9(a). The City covenants that the funds deposited thereunder shall be

requisitioned and spent by the City solely on Project Costs. The City shall maintain accurate records showing all requests for disbursements from the Project Fund, including records which show the name and address of each firm or corporation to whom payment is made and the amount and purpose of each payment. Any funds on deposit in the Project Fund and not needed for Project Costs (if any) shall be transferred by the City to pay Installment Payments hereunder.

ARTICLE 4 COVENANTS OF THE CITY

SECTION 4.1. Reports and Notices.

- (a) Annual Financial Statements. No later than 270 days after the end of each Fiscal Year commencing with Fiscal Year 20[24/25]2024-25, the City shall deliver to the Authority audited financial statements of the City prepared in accordance with the accounting standards set forth by the Government Accounting Standard Board. Such financial statements will: (1) be audited by independent certified public accountants selected by the Cityan Independent Certified Public Accountants; and (2) be accompanied by a report of such accountants containing an opinion. Notwithstanding the foregoing, if audited financial statements are not available within such 270-day period, the City shall provide to the Authority a statement to that effect together with unaudited financial statements reasonably acceptable to the Authority and the Assignee, and shall thereafter provide to the Authority its audited financial statements within 30 days of approval of such audited financial statements by the City Council of the City. Included with such financial statements shall be a calculation of Debt Service coverage on all Installment Payments hereunder and Parity Obligations outstanding during the prior Fiscal Year and a compliance certificate which shall be substantially similar to the form set forth in Exhibit D hereto.
- (b) <u>Budgets</u>. As soon as available, but in no event more than thirty (30) days after City <u>Council</u> approval thereof, the City shall provide a copy of its annual budget to the Assignee.
- (c) <u>Notice of Default</u>. Promptly after becoming aware thereof, the City shall provide to the Authority and the Assignee notice of the occurrence of an Event of Default, including, without limitation, any error in the City's financial information previously provided to the Authority and the occurrence of any breach, default, event of default or event that, with the giving of notice and/or the passage of time and/or the occurrence of any other condition, would become a breach, default or event of default under this Installment Purchase Agreement.
- (d) <u>Notice of Certain Events</u>. The City shall provide to the Authority (1) notice at least 30 days prior thereto, of any change in the principal place of business of the City or of the System or the office where its records concerning its accounts are kept; and (2) all other notices required to be provided hereunder.
- (e) <u>Additional Information</u>. The City shall provide the Assignee with any information it may reasonably request, including, but not limited to, information relating to End Users (in compliance with all applicable privacy and security laws), information relating to the System, and any other information so requested by the Assignee.

- **SECTION 4.2. Existence**. The City shall continue to exist as a local agency in compliance with **California**State law.
- **SECTION 4.3.** Change in Business. The City shall not, without the prior notice ofto the Authority and the Assignee, engage in any business activities or operations substantially different from or unrelated to the City's present business activities or operations.
- **SECTION 4.4.** Liens against Against the System. With respect to the System, the City shall not, without the prior consent of the Authority and the Assignee, create, incur, assume, or allow to exist any mortgage, deed of trust, pledge, lien (including the lien of an attachment, judgment, or execution), security interest, or other encumbrance of any kind upon any of the System's property, real or personal (collectively, "Liens"). The foregoing restrictions will not apply to:
 - (a) Liens in favor of the Authority;
 - (b) Liens for taxes, assessments, or governmental charges that are not past due;
 - (c) pledges and deposits under workers' compensation, unemployment insurance, and social security laws;
 - (d) pledges and deposits to secure the performance of bids, tenders, contracts (other than contracts for payment of money), and like obligations arising in the ordinary course of business as conducted on the date hereof;
 - (e) easements, rights-of-way, restrictions, and other similar encumbrances that, in the aggregate, do not materially interfere with the occupation, use, and enjoyment of the property or assets encumbered thereby in the normal course of business or materially impair the value of the property subject thereto;
 - (f) purchase money Liens to secure indebtedness permitted hereunder; and/or
 - (g) Liens relating to Parity Obligations issued in compliance with the provisions of Section 4.14 hereof; and/or
 - (h) existing Liens as of the Closing Date and disclosed to the Authority in writing prior to the Closing Date.]

[CONFIRM NO LIENS OR RELATED MATTERS REQUIRED BY THE GOVERNMENT GRANT]

SECTION 4.5. Insurance. The City shall maintain insurance on the System with reputable and financially sound insurance companies or associations, including self-insurance to the extent customary, acceptable to the Authority Assignee in such amounts and covering such risks as are usually carried by companies engaged in the same or similar business and similarly situated, and make such increases in the type or amount of coverage as the Authority Assignee may reasonably request. All such policies insuring any collateral for the City's obligations to the

<u>AuthorityAssignee</u> will have additional insured, mortgagee and lender's loss payee clauses or endorsements, as applicable, in form and substance satisfactory to the <u>AuthorityAssignee</u>. At the <u>Authority'sAssignee's</u> request, the City agrees to deliver to the <u>AuthorityAssignee</u> such proof of compliance with this <u>sectionSection</u> as the <u>AuthorityAssignee</u> may require.

SECTION 4.6. System Maintenance. As provided in Section 3.10(a), prior to the Net Revenue Conversion Date, the Gross Revenues shall be applied to make payments of Installment Payments and any Parity Obligations in any Fiscal Year prior to the payment of Maintenance and Operation Costs coming due in such Fiscal Year. In the event and to the extent the amount of Gross Revenues following the payment of Installment Payments and any Parity Obligations in any Fiscal Year is insufficient to pay the Maintenance and Operation Costs coming due and payable in such Fiscal Year in full, the City shall pay the remaining Maintenance and Operation Costs from any source of legally available funds, including the General Fund of the City; provided, however, that such requirement to pay any Maintenance and Operation Costs from the General Fund of the City shall be subject to appropriation by the City.

SECTION 4.7. Against Sale or Other Disposition of the System. The City will not sell or otherwise dispose of the System or any part thereof essential to the proper operation of the System or that would have a Material Adverse Change on the Pledged Revenues received or receivable by the City, unless the Installment Payments and the Parity Obligations have been fully paid or provision has been made therefor. The City will not enter into any lease or agreement which impairs the operation of the System or any part thereof necessary to secure adequate Pledged Revenues for the payment of the interest on and principal of and redemption premiums, if any, on the Installment Payments and the Parity Obligations, or which would otherwise impair the rights of the Authority or the owners of the Parity Obligations with respect to the Pledged Revenues or the operation of the System or the tax-exempt status of the interest component of Installment Payments.

SECTION 4.8. Eminent Domain Proceeds. If all or any part of the System shall be taken by eminent domain proceedings, the net proceeds shall be used as follows:

(a) If (1) the City files with the AuthorityAssignee a certificate showing (i) the estimated loss of annual Pledged Revenues, if any, suffered or to be suffered by the City by reason of such eminent domain proceedings, (ii) a general description of the additions, betterments, extensions or improvements to the System proposed to be acquired and constructed by the City from such Net Proceeds, and (iii) an estimate of the additional annual Pledged Revenues to be derived from such additions, betterments, extensions or improvements, and (2) the City, on the basis of such certificate filed with the AuthorityAssignee, determines that the estimated additional annual Pledged Revenues will sufficiently offset the estimated loss of annual Pledged Revenues resulting from such eminent domain proceedings so that the ability of the City to meet its obligations hereunder will not be substantially impaired (which determination shall be final and conclusive absent manifest error), then the City shall promptly proceed with the acquisition and construction of such additions, betterments, extensions or improvements substantially in accordance with such certificate and such Net Proceeds shall be applied for the payment of the costs of such acquisition and construction, and any balance of

such Net Proceeds not required by the City for such purpose shall be deposited in the Revenue Fund.

(b) If the foregoing conditions are not met, then such Net Proceeds shall be applied in part to the prepayment of the outstanding Installment Payments and the Parity Obligations on a pro rata basis.

SECTION 4.9. Amounts of Rates, Fees and Charges; Financial Covenants.

- (a) The City shall, at all times while any of the Installment Payments remain outstanding, fix, prescribe and collect rates, fees and charges and manage the operation of the System for each Fiscal Year so as to yield Revenues at least sufficient, after making reasonable allowances for contingencies and errors in the estimates, to pay the following amounts during such Fiscal Year:
 - (i) All current Maintenance and Operation Costs;
 - (ii) The interest on and principal of the Installment Payments and the payments for the Parity Obligations without preference or priority;
 - (iii) All payments required for compliance with the terms of this Installment Purchase Agreement or any other Parity Obligation, including without limitation, any obligation to maintain a reserve fund at a certain level;
 - (iv) All payments to meet any other obligations of the City which are charges, liens or encumbrances upon, or payable from, the Pledged Revenues; and
 - (v) Payments with respect to the Subordinate Obligations as they become due and payable.

The provisions of this Section 4.9(a) are not intended to indicate the order in which the Gross Revenues are to be applied. As provided in Section 4.6, prior to the Net Revenue Conversion Date, the Gross Revenues shall first be applied to make payments of the principal of and interest oncomponents of all Installment Payments and Parity Obligations under subsection (ii) above; and after the Net Revenue Conversion Date the Gross Revenues shall first be applied to pay Maintenance and Operation Costs.

(b) From and after the Net Revenue Conversion Date, the The City shall have at the end of each Fiscal Year of the City, commencing with the Fiscal Year ending June 30, 2027, a Debt Service Coverage Ratio (as defined below) for such year of not less than 1.25 to 1.00-; provided, however that at no time prior to five years after the completion date of the Project, as to be reflected in a Certificate of the City to the Assignee and Authority, the City shall not be required to increase any charges, fees or rates to End Users to meet the Debt Service Coverage Ratio if such increase violates any Government Grant (which such Government Grant currently restricts the City from increasing charges, fees and rates to End Users for five years after the completion of the Project).

For purposes hereof, the term "Debt Service Coverage Ratio" means (i) prior to the Net Revenue Conversion Date, the ratio of: (1) gross income (after taxes and after eliminating any gain or loss on sale of assets or other extraordinary gain or loss), plus depreciation expense, amortization expense, and interest expense, minus non-cash patronage, and non-cash income from subsidiaries and/or joint ventures; to (2) all principal payments due within the period on all Long-Term Debt (as defined below) plus interest expense (all as calculated on a consolidated basis for the applicable period in accordance with the Generally Accepted Accounting Principles), and (ii) after the Net Revenue Conversion Date, the ratio of: (1) net income (after taxes and after eliminating any gain or loss on sale of assets or other extraordinary gain or loss), plus depreciation expense, amortization expense, and interest expense, minus non-cash patronage, and non-cash income from subsidiaries and/or joint ventures, and grant income; to (2) all principal payments due within the period on all Long-Term Debt (as defined below) plus interest expense (all as calculated on a consolidated basis for the applicable period in accordance with the Generally Accepted Accounting Principles).

For purposes hereof, "Long-Term Debt" means, for the City, on a consolidated basis, the sum of (1) all indebtedness for borrowed money, (2) obligations that are evidenced by notes, bonds, debentures or similar instruments, and (3) that portion of obligations with respect to capital leases or other capitalized agreements that are properly classified as a liability on the balance sheet in conformity with Generally Accepted Accounting Principles or that are treated as operating leases under regulations applicable to them but that otherwise would be required to be capitalized under Generally Accepted Accounting Principles, in each case having a maturity of more than one year from the date of its creation or having a maturity within one year from such date but that is renewable or extendible, at the City's option, to a date more than one year from such date or that arises under a revolving credit or similar agreement that obligates the lender(s) to extend credit during a period of more than one year from such date, including all current maturities in respect of such indebtedness whether or not required to be paid within one year from the date of its creation.

- (c) (i) From and after the Net Revenue Conversion Date, if the Revenues of the System as of at the end of any Fiscal Year of the City is less than the Debt Service Coverage Ratio, the City shall, within 30 days after delivery of the Certificate disclosing such deficiency, cause and appoint (and, if the City fails to do so, the Assignee shall cause and appoint) with the approval of the Assignee, as applicable, a Financial Consultant to make recommendations with respect to the rates, fees and charges and the City's methods of operation and other factors affecting the financial condition in order to increase the fees, rates and changes of the System for future periods. A copy of the Financial Consultant's report and recommendations, if any, shall be filed with the Authority and the Assignee within 90 days after the date such Financial Consultant is retained.
 - (ii) The person appointing the Financial Consultant shall notify the Authority and the Assignee of such appointment, and the Financial Consultant shall deliver its report and findings to the City, the Authority and the Assignee. The City shall review such report and any written recommendations made by the Financial Consultant. The City shall meet with the Financial Consultant to discuss the Financial Consultant's reports, findings and written recommendations. The City shall promptly implement all of the Financial Consultant's written recommendations except those recommendations that require an

expenditure of funds greater than the amount available or projected to be available for such purpose from Revenues under this Installment Purchase Agreement or those written recommendations that could, based upon the written advice of Bond Counsel, cause interest on the Installment Payments to be includible in gross income for federal income tax purposes. The fees and expenses of the Financial Consultant shall be paid as a Maintenance and Operation Cost. Each party shall deliver to the other party at no additional charge copies of any information, correspondence or documents delivered to the Financial Consultant contemporaneously with delivering such information, correspondence or documents to the Financial Consultant.

(iii) Failure to achieve thea Debt Service Coverage Ratio of not less than 1.25 to 1.00 shall not constitute an Event of Default under this Installment Purchase Agreement if the City takes all action necessary to comply with the procedures set forth above for retaining a Financial Consultant and follows each recommendation contained in the Financial Consultant's report to the extent permitted by law- and so long as the Debt Service Coverage Ratio remains not less than 1.00 to 1.00. Notwithstanding the foregoing, if a Debt Service Coverage Ratio of 1.25 to 1.00 is not achieved by the end of the subsequent Fiscal Year of the City after retention of a Financial Consultant, such failure shall constitute an Event of Default.

SECTION 4.10. Enforcement of and Performance Under Parity Obligations. The City shall enforce all material provisions of any contracts to which it is a party, an assignee, successor in interest to a party, or third-party beneficiary, in any case where such contracts provide for Broadband services to be produced, transmitted and distributed by the System or provide for payments or services to be rendered to the City. Further, the City will comply with, keep, observe and perform all material agreements, conditions, covenants and terms, express or implied, required to be performed by it, contained in all contracts affecting or involving the System, to the extent that the City is a party thereto.

SECTION 4.11. Collection of Charges, Fees and Rates. The City will have in effect at all times rules and regulations requiring each End User to pay the applicable charges, fees and rates and providing for the billing thereof, including, but not limited to, rules and regulations that comply with the Government Grant. In each case where such bill remains unpaid in whole or in part after it becomes delinquent, the City will take necessary actions to enforce the collection procedures contained in the rules and regulations.

SECTION 4.12. Against Encumbrances. The City will not mortgage or otherwise encumber, pledge or place any charge or lien upon the System or any of the Pledged Revenues except as provided in this Installment Purchase Agreement and will not issue any obligations secured by Pledged Revenues on a parity with, or senior to, the Installment Payments and Parity Obligations; provided, that the City may at any time issue any Subordinate Obligations with the prior written consent of the Assignee, which consent will not to be unreasonably withheld.

SECTION 4.13. Execution of Parity Obligations. The City may at any time execute any Parity Obligations, the Contract Payments under which are payable on a parity with the

Installment Payments; provided, that such Parity Obligations meet the conditions and requirements for the issuance of Parity Obligations under Section 4.14 below.

SECTION 4.14. Conditions for Entering into Parity Obligations. The City may at any time after the Net Revenue Conversion Date enter into a Parity Obligation payable from Pledged Revenues and secured by a lien and charge upon the Pledged Revenues equal to and on a parity with the lien and charge securing this Installment Purchase Agreement, but only subject to specific conditions precedent, which are summarized below:

- (a) The City shall be in compliance with all agreements, conditions, covenants and terms contained in this Installment Purchase Agreement (including, without limitation, the provisions of Sections 4.9 and 4.11) and in any other Parity Obligations required to be observed or performed by it, and a certificate signed by the Finance Director to that effect shall have been filed with the Authority (this condition shall not apply where the purpose of a Parity Obligation proposed to be issued is to cure such non-compliance, provided that the certification shall identify such noncompliance and state that the issuance of such Parity Obligations and application of the proceeds thereof will cure such noncompliance).
- (b) The execution of the Parity Obligation shall have been duly authorized pursuant to all applicable laws.
- (c) The Pledged Revenues for the most recent Fiscal Year for which audited financial statements are available shall have produced Pledged Revenues equal to at least one hundred twenty-five percent (125%) of the Maximum Annual Debt Service as calculated after the date of such Parity Obligation and a certificate signed by the Finance Director to that effect shall have been filed with the Authority; provided, that in the event that all or a portion of such Parity Obligation being entered into is for the purpose of refunding and retiring any outstanding Parity Obligation, interest and principal payments on the Parity Obligation to be so refunded and retired from the proceeds of such Parity Obligation being issued shall be excluded from the foregoing computation of Maximum Annual Debt Service.

SECTION 4.15. Tax Covenants. The City hereby covenants that, notwithstanding any other provision of this Installment Purchase Agreement, it will make no use of the proceeds of this Installment Purchase Agreement or of any other amounts, regardless of the source, or of any property or take any action, or refrain from taking any action, that would cause this Installment Purchase Agreement to be "arbitrage bonds" within the meaning of Section 148 of the Tax Code.

The City will not use or permit the use of either System or any portion thereof by any person other than a governmental unit as such term is used in Section 141 of the Tax Code, in such manner or to such extent as would result in the loss of exclusion from gross income for federal income tax purposes of the interest payable pursuant to this Installment Purchase Agreement under Section 103 of the Tax Code.

The City will not make any use of the proceeds from this Installment Purchase Agreement or any other funds of the City, or take or omit to take any other action, that would cause the obligation provided herein to be "federally guaranteed" within the meaning of Section 149(b) of the Tax Code or "private activity bonds" within the meaning of Section 141 of

the Tax Code. To that end, so long as the Installment Payments are unpaid, the City, with respect to such proceeds and such other funds, will comply with all requirements of such Sections and all regulations of the United States Department of the Treasury issued thereunder and under the Tax Code to the extent such requirements are, at the time, applicable and in effect.

The City shall promptly file or cause to be filed an information report for the Installment Payments in compliance with Section 149(e) of the Tax Code.

The City has complied with the Tax Code, with respect to this Installment Purchase Agreement, and the City shall not knowingly take or omit to take any action that, under existing law which may adversely affect the exclusion from gross income for federal income tax purposes, or the exemption from any applicable State tax of the interest on Installment Purchase Agreement.

SECTION 4.16. Reconstruction of System; Application of Insurance Proceeds. If any useful portion of the System shall be damaged or destroyed, the City shall, as expeditiously as possible, continuously and diligently pursue or cause to be pursued the reconstruction or replacement thereof, unless the City shall file with the Authority a written certificate of an engineer qualified to render such certificate to the effect that such reconstruction or replacement is not in the best interests of the City and the Authority. The proceeds of any insurance paid on account of such damage or destruction, other than business interruption loss insurance or public liability insurance, shall be deposited by the City in a special account, held in trust by the City, and made available for, and to the extent necessary applied to, the cost of such reconstruction or replacement, if any. Pending such application, such proceeds may be invested by the City in investments permitted by Section 53601 of the CaliforniaState Government Code which mature not later than such times as shall be necessary to provide moneys when needed to pay such cost of reconstruction or replacement. Any balance of such proceeds of insurance not required by the City for the purposes aforesaid shall be deemed Revenues.

SECTION 4.17. Records and Accounts. The City covenants and agrees that it shall keep proper books of record and accounts of the System, separate from all other records and accounts, in which complete and correct entries shall be made of all transactions relating to the System, the Revenues and the Pledged Revenues. Said books shall at all reasonable times be subject to the inspection of the Authority and the Assignee.

SECTION 4.18. Collection of Charges. The City covenants and agrees that, except to the extent that the City is required under agreements and/or contracts existing on the effective date of this Installment Purchase Agreement, no Broadband service from the System may be furnished or rendered to the United States of America, the State, or any private corporation or person free of charge, or for consideration lower than that charged other persons for similar service in accordance with the City's regulations. The City covenants that it shall maintain and enforce valid regulations for the payment of bills by End Users for Broadband service.

SECTION 4.19. Against Competing <u>Broadband</u> System. The City will not acquire, construct, operate or maintain, and will not, within the scope of its lawful powers, permit any other private or public corporation, political subdivision, district or agency, or any person

whomsoever to acquire, construct, operate or maintain any Broadband system, communication system or similar utility in an area presently served by the System.

SECTION 4.20. Compliance with this Installment Purchase Agreement. The City will faithfully observe and perform or cause to be faithfully observed and performed all the covenants, conditions and requirements of this Installment Purchase Agreement, and will not suffer or permit any default to occur hereunder. The City will not do or permit anything to be done, or omit or refrain from doing anything, in any case where any such act done or permitted to be done, or any such omission of or refraining from action, would constitute an Event of Default hereunder. Upon request by the Authority, the City shall provide a written certificate of the City to the effect that it is in compliance with all covenants, conditions and requirements of this Installment Purchase Agreement, other than those expressly waived by Authority.

SECTION 4.21. Observance of Laws and Regulations. The City will well and truly keep, observe and perform or cause to be kept, observed and performed all valid and lawful obligations or regulations now or hereafter imposed on it by contract, or prescribed by any law of the United States, or of the State, including, but not limited to, all Environmental Laws, all laws required pursuant to the Government Grant, and the provisions of Article 12 (commencing with Section 53167) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code and Section 10001.5 of the Public Utilities Code, or by any officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of any and every right, privilege or franchise now owned or hereafter acquired and enjoyed by the City, including the City's right to exist and carry on business as a Broadband Internet access service provider, to the end that such rights, privileges and franchises shall be maintained and preserved, and shall not become abandoned, forfeited or in any manner impaired.

SECTION 4.22. Budgets. The City hereby covenants to take such action as may be necessary to include all Installment Payments and all other amounts due hereunder in its annual budget and to make the necessary annual appropriations for all such Installment Payments and all other amounts due hereunder. The covenants on the part of the City herein contained shall be deemed to be and shall be construed to be ministerial duties imposed by law and it shall be the ministerial duty of each and every public official of the City to take such action and do such things as are required by law in the performance of such official duty of such officials to enable the City to carry out and perform the covenants and agreements on the part of the City contained in this Installment Purchase Agreement.

SECTION 4.23. Inspection. The City shall permit the Authority or its agents, upon reasonable notice and during normal business hours or at such other times as the parties may agree, to inspect and visit any of its properties, examine and make excerpts from its books and records, and to discuss its business affairs, finances and accounts with its officers, directors, employees, and independent certified public accountants and to conduct reviews of any collateral.

SECTION 4.24. Further Assurances and Other Information. From time to time and at its expense, execute and deliver such documents and do such other acts and things as the Authority in its sole discretion may deem necessary or advisable from time to time in order to more fully carry out the provisions and purpose of this Installment Purchase Agreement,

including delivery of such other information regarding the condition or operations, financial or otherwise, of the City as the Authority may from time to time reasonably request, including, but not limited to, copies of all pleadings, notices and communications referred to in Section 4.1 herein.

SECTION 4.25. Delivery of Original Documents. The City shall deliver to the Authority the original executed versions of this Installment Purchase Agreement, the Financing Documents and the certificates, instruments and documents required to be executed hereunder.

SECTION 4.26. No Public Registration. During any period that the Authority is a party to this Installment Purchase Agreement, this Installment Purchase Agreement shall not be (i) assigned a rating by any credit rating agency, (ii) registered with The Depository Trust Company or any other securities depository, (iii) offered pursuant to any type of offering document or official statement or (iv) assigned a CUSIP number by Standard & Poor's CUSIP Service.

SECTION 4.27. Indemnity for Taxes. At all times the City shall indemnify and hold and save the Authority harmless from and against any and all actions or causes of action, claims, demands, liabilities, loss, damage or expense of whatsoever kind and nature incurred by the Authority as a result of the non-payment of any documentary stamp tax, intangible tax, interest or penalties associated therewith or any other local, state or federal assessment required to be paid, but not paid in conjunction with the indebtedness evidenced by this Installment Purchase Agreement. The City agrees to pay to the Authority, its successors and assigns, all sums of money requested by the Authority hereunder within ten days of such request, which the Authority will or may advance, pay or cause to be paid, or become liable to pay, on account of or in connection with failure to pay as required by the regulations of the Governmental Authority so imposing said payment. The Authority will be entitled to charge for any and all disbursements made by it in good faith, under the reasonable belief that it or the City is or was liable for the amount so assessed. Any default by the City in making any payments required under this covenant will constitute a payment Event of Default under this Installment Purchase Agreement and the Authority may, at its option, declare the entire amount of principal plus accrued interest thereon due and payable without notice or demand.

SECTION 4.28. ERISA. The City and its subsidiaries, for so long as this Installment Purchase Agreement remains outstanding, will remain in compliance in all material respects with the applicable provisions of ERISA, if any, the failure to comply with which has or may have a material adverse effect on the City.

ARTICLE 5

EVENTS OF DEFAULT AND REMEDIES

SECTION 5.1. Events of Default and Acceleration of Installment Purchase Agreement. Any of the following events shall constitute an event of default:

(a) Events of Default.

- (i) If default shall be made in the due and punctual payment of the interest component of Installment Payments payable pursuant to this Installment Purchase Agreement or with respect to any Parity Obligation when and as the same shall become due and payable; or
- (ii) If default shall be made in the due and punctual payment of the principal component of Installment Payments of or redemption premium, if any, on or of any sinking fund installment pursuant to this Installment Purchase Agreement or with respect to any Parity Obligation when and as the same shall become due and payable, whether at maturity as therein expressed, by declaration or otherwise;
- (iii) If default shall be made by the City in the observance or performance of any of the other agreements, conditions, covenants or terms on its part contained in this Installment Purchase Agreement (other than as qualified under Section 4.9(c(iii))), and such default shall have continued for a period of thirty (30) days after the City shall have been given notice in writing of such default by the Authority, which may give notice in its discretion; provided, that such default shall not constitute an Event of Default if the City shall commence to cure such default within such thirty (30)-day period and thereafter diligently and in good faith shall proceed to cure such default within a reasonable period of time but not later than an additional thirty (30) days; or
- (iv) If the City shall file a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America, or if a court of competent jurisdiction shall approve a petition, filed with or without the consent of the City, seeking reorganization under the federal bankruptcy laws or any other applicable law of the United States of America, or if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the City or of the whole or any substantial part of its property; or
- (v) Any representation or warranty made or deemed to be made by or on behalf of the City in this Installment Purchase Agreement or in any certificate, financial or other statement furnished by or on behalf of the City to the Authority pursuant hereto or thereto shall prove to have been inaccurate, misleading or incomplete in any material respect when made; or
- (vi) Any material provision of this Installment Purchase Agreement shall at any time for any reason cease to be the legal, valid and binding obligation of the City or shall cease to be in full force and effect, or shall be declared to be unenforceable, invalid or void, or the validity or enforceability thereof shall be contested by the City, or the City shall renounce the same or deny that it has any further liability hereunder or thereunder; or
- (vii) Dissolution, termination of existence, insolvency or business failure of the City or the System; or

- (viii) Any court of competent jurisdiction with jurisdiction to rule on the validity of any provision of this Installment Purchase Agreement shall find or rule that this Installment Purchase Agreement is not valid or not binding on the City; or
- (ix) The City should, after any applicable grace period, breach or be in default under the terms of this Installment Purchase Agreement or any other agreement between the City and the Authority or any affiliate of the Authority (including as applicable Farm Credit Leasing Services Authority); or
- (x) A judgment, decree, or order for the payment of money will have been rendered against the System which has a material adverse effect on the City and either: (1) enforcement proceedings will have been commenced; (2) a lien prohibited by this Installment Purchase Agreement will have been obtained; or (3) such judgment, decree, or order will continue unsatisfied and in effect for a period of 30 consecutive days without being vacated, discharged, satisfied, bonded, or stayed pending appeal; or
- (xi) This Installment Purchase Agreement ceases to be legal, valid, binding and enforceable against the City or is in any way terminated (except in accordance with its terms) or becomes or is declared ineffective or inoperative; or
 - (xii) The City has experiences a Material Adverse Change.
- (b) Remedies on Default. Whenever any Event of Default shall have happened and be continuing, the Authority shall have the right, at its option upon notice to the City, to (i) apply to and obtain from any court of competent jurisdiction such decree or order as may be necessary to require officials of the City to charge and collect rates for services provided by the City and the System sufficient to meet all requirements of this Installment Purchase Agreement, and (ii) take whatever action at law or in equity as may appear necessary or desirable to collect the Installment Payments then due or thereafter to become due during the Term of this Installment Purchase Agreement, or enforce performance and observance of any obligation, agreement or covenant of the City under this Installment Purchase Agreement, subject to the following paragraph.

Notwithstanding any provision of this Installment Purchase Agreement, the City's liability to pay the Installment Payments and other amounts hereunder shall be limited solely to Pledged Revenues as provided in Article 3 hereof. In the event that Pledged Revenues shall be insufficient at any time to pay the principal and interest <u>oncomponents of</u> the Installment Payments in full, the City shall not be liable to pay or prepay such delinquent Installment Payments other than from Pledged Revenues.

In addition to the rights and remedies set forth above, upon the occurrence and during the continuance of an Event of Default, at the Assignee's option in each instance, the entire indebtedness outstanding hereunder will bear interest from the date of such Event of Default until such Event of Default will have been waived or cured in a manner satisfactory to the Authority at the Default Rate. All interest provided for herein will be payable on demand and will be calculated on the basis of a year consisting of 360 days consisting of twelve 30-day months.

SECTION 5.2. Other Remedies of the Authority. The Authority shall have the right:

- (a) by mandamus or other action or proceeding or suit at law or in equity to enforce its rights against the City or any director, officer or employee thereof, and to compel the City or any such director, officer or employee to perform and carry out its or his duties under the agreements and covenants required to be performed by it or him contained herein;
- (b) by suit in equity to enjoin any acts or things that are unlawful or violate the rights of the Authority; or
- (c) by suit in equity upon the happening of an Event of Default to require the City and its Board of Directors, officers and employees to account as the trustee of an express trust.
- **SECTION 5.3.** No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Installment Purchase Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article 5 it shall not be necessary to give any notice, other than such notice as may be required, in this Article 5 or by law.
- SECTION 5.4. Agreement to Pay Attorneys' Fees and Expenses. In the event either party to this Installment Purchase Agreement should default under any of the provisions hereof and the non-defaulting party should employ attorneys (including in-house counsel) or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the non-defaulting party the reasonable fees of such attorneys (including the allocable cost of in-house counsel) and such other expenses so incurred by the non-defaulting party.
- **SECTION 5.5.** No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Installment Purchase Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

A waiver of any default or breach of duty or contract by the Authority shall not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission by the Authority to exercise any right or remedy accruing upon any default or breach of duty or contract shall impair any such right or remedy or shall be construed to be a waiver of any such default or breach of duty or contract or an acquiescence therein, and every right or remedy conferred upon the Authority by law or by this article may be enforced and exercised from time to time and as often as shall be deemed expedient by the Authority. If any action, proceeding or suit to enforce any right or exercise any remedy is abandoned or determined adversely to the Authority, the City and

the Authority shall be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

ARTICLE 6

PREPAYMENT OF AGREEMENT

SECTION 6.1. **Defeasance**. Notwithstanding any other provision of this Installment Purchase Agreement, the City may on any date secure the payment of Installment Payments, in whole, by irrevocably depositing with Authority an amount of cash which is either (a) sufficient to pay all such Installment Payments and any applicable prepayment premium and all other sums due hereunder, including the principal and interest components thereof, when due, or (b) invested in whole or in part in Federal Securities in such amount as will, in the opinion of an independent certified public accountant, together with interest to accrue thereon and together with any cash which is so deposited, be fully sufficient and irrevocably pledged to the Authority to pay all such Installment Payments and any applicable Prepayment Premium and all other sums due hereunder when due or when due on any optional prepayment date pursuant to Section 6.2 as the City shall instruct at the time of said deposit. In the event of a deposit pursuant to this Section for the payment of all remaining Installment Payments, all obligations of the City under this Installment Purchase Agreement, and the pledge of Pledged Revenues and all other security provided by this Installment Purchase Agreement for said obligations, shall cease and terminate, excepting only the obligation of the City to make, or cause to be made, all of Installment Payments from such deposit. Said deposit shall be deemed to be and shall constitute a special fund irrevocably pledged for the payment of such Installment Payments in accordance with the provisions of this Installment Purchase Agreement.

SECTION 6.2. Optional Prepayment. The Installment Payments may be prepaid, in whole but not in part, on any date by paying to the Authority the principal portion component of the Installment Payments to be prepaid, together with the Prepayment Premium identified in Section 6.3 hereof.

SECTION 6.3. Prepayment Premium. The City may exercise its option to prepay the principal components of the Installment Payments in whole but not in part on any Installment Payment Date, upon 30 days' notice to the <u>Authority and the</u> Assignee, by paying a prepayment price equal to the aggregate principal components of the Installment Payments to be prepaid, together with the interest component of the Installment Payment required to be paid on or accrued to such date, plus the following premium:

Prepayment Date	Premium
November 1, 2025 to November 1, 2027	3%
After [November 1], 2027 to November 1, 2029	2%
After [November 1], 2029	1%

After November 1, 2031

0%

Notwithstanding the above, the City shall have a one-time option to prepay or satisfy up to no more than 10% in the aggregate of the amount of Installment Payments due hereunder from the proceeds of Pledged Revenues or from any other funds of the City that are legally available therefor, upon thirty (30) days' written notice to the Authority and the Assignee, at a prepayment price equal to 100% of such Installment Payments, plus interest accrued to the date of prepayment at the Interest Rate. If the City exercises such option to prepay, the Assignee shall provide an updated Schedule of Installment Payments to replace Exhibit B hereto.

SECTION 6.4. Mandatory Prepayment From Net Proceeds of Insurance or Eminent Domain. The City shall prepay the unpaid principal components of the Installment Payments in whole on any date or in part, on any Installment Payment Date, from and to the extent the City determines to apply any Net Proceeds of insurance award or condemnation award with respect to the Enterprise for such purpose pursuant to Sections 4.8 at a price equal to the principal components of the Installment Payments to be prepaid. The City and the Authority hereby agree that such proceeds, to the extent remaining after payment of any delinquent Installment Payments, shall be credited towards the City's obligations under this Section 6.3

SECTION 6.5. Effect of Prepayment. In the event that the City prepays the Installment Payments and all other sums due to the Authority hereunder in full pursuant to Article 6, the City's obligations under this Installment Purchase Agreement shall thereupon cease and terminate, including but not limited to the City's obligation to pay Installment Payments under this Installment Purchase Agreement; subject however, to the provisions of Section 6.1 in the case of prepayment by application of a defeasance deposit.

ARTICLE 7 MISCELLANEOUS

SECTION 7.1. Notices. All written notices to be given under this Installment Purchase Agreement shall be given by <u>first class first-class</u> mail or personal delivery to the party entitled thereto at its address set forth below, or by telecopier or other form of telecommunication or electronic mail, at its number set forth below. Notice shall be effective either (a) upon transmission by <u>telecopieremail</u> or other form of telecommunication, (b) 48 hours after deposit in the United States of America <u>first class first-class</u> mail, postage prepaid, or (c) in the case of personal delivery, to any person or electronic mail, upon actual receipt. The Authority and the City may, by written notice to the other party, from time to time modify the address or number to which communications are to be given hereunder.

If to the Authority, as follows:

Fort Bragg Joint Powers Public Financing Authority c/o City of Fort Bragg 416 N. Franklin Street

If to the City, as follows:

City of Fort Bragg 416 N. Franklin Street Fort Bragg, CA 95437 Attn: City Manager Fort Bragg, CA 95437 Attn: Executive Director Email: Email:

If to the Assignee, as follows:

EverBank, N.A. 301 West Bay Street, 8th Floor Jacksonville, FL 32202 Attention: Director of Public Finance Email:

SECTION 7.2. Assignment by the Authority. The Authority's rights under this Installment Purchase Agreement, including the right to receive and enforce payment of the Installment Payments to be made by the City under this Installment Purchase Agreement may be assigned by the Authority to a Qualified Institutional Buyer upon delivery to the City of a Letter in substantially familiar form as, that set forth in Exhibit C. Upon any assignment the Authority shall provide the City a written notice of such assignment naming the assignee. The City acknowledges and agrees that the Authority has entered into the Assignment Agreement with Assignee concurrently with this Installment Purchase Agreement pursuant to which the Authority has assigned its rights and obligations under this Installment Purchase Agreement to the Assignee.

The Authority or any assignee has the right to make additional assignments of its rights and obligations under this Installment Purchase Agreement, but the City shall not be required to pay more than a single payee, regardless of the number of assignees, and no such assignment will be effective as against the City unless and until the City consents to such assignment. The City shall pay all Installment Payments hereunder under the written direction of the Authority or the assignee named in the most recent assignment or notice of assignment filed with the City. During the Term of this Installment Purchase Agreement, the City shall keep a complete and accurate record of all such notices of assignment.

SECTION 7.3. Assignment by the City. This Installment Purchase Agreement may not be assigned by the City, other than to a public agency which shall succeed to the interests of the City in and to the System and which (by operation of law, by contract or otherwise) becomes legally bound to all of the terms and provisions hereof. The prior written consent of the Authority shall be required in the case of any such assignment. In connection with any such assignment by the City, the City shall provide the Authority with an opinion of bond counsel that the assignee is legally obligated to pay all Installment Payments and other sums hereunder and to satisfy all of the obligations of the City under this Installment Purchase Agreement and the other Financing Documents, and that such assignment shall not adversely affect the exclusion of interest payable pursuant to this Installment Purchase Agreement from gross income for federal income tax purposes and the exemption of such interest for State of California income tax purposes.

SECTION 7.4. Amendment of this Installment Purchase Agreement. This Installment Purchase Agreement may be amended only in writing by the City and the Authority. with the prior written consent of the Assignee.

- **SECTION 7.5. Binding Effect**. This Installment Purchase Agreement shall inure to the benefit of and shall be binding upon the Authority and the City and their respective successors and assigns.
- **SECTION 7.6. Severability**. In the event any provision of this Installment Purchase Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- **SECTION 7.7. Net-Net-Net Parity Obligation**. This Installment Purchase Agreement shall be deemed and construed to be a "net-net" contract, and the City hereby agrees that the Installment Payments shall be an absolute net return to the Authority, free and clear of any expenses, charges or set-offs whatsoever.
- **SECTION 7.8.** Further Assurances and Corrective Instruments. The Authority and the City agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Installment Purchase Agreement.
- **SECTION 7.9. Execution in Counterparts.** This Installment Purchase Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- **SECTION 7.10. Applicable Law and Venue**. This Installment Purchase Agreement shall be governed by and construed in accordance with the laws of the State of California and venue shall be in the County of Mendicino.
- **SECTION 7.11.** Captions. The captions or headings in this Installment Purchase Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Section of this Installment Purchase Agreement.
- SECTION 7.12. USA Patriot Act Notice. The Authority hereby notifies the City that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify, and record information that identifies the City in accordance with the USA Patriot Act. The City covenants and agrees it will not, and agrees to cause each of its subsidiaries not to, at any time, directly or indirectly be (a) a person with whom the Authority is restricted from doing business under any Anti-Terrorism Law, (b) engaged in any business involved in making or receiving any contribution of funds, goods or services to or for the benefit of such a person or in any transaction that evades or avoids, or has the purpose of evading or avoiding, the prohibitions set forth in any Anti-Terrorism Law, or (c) otherwise in violation of any Anti-Terrorism Law (the City will and will cause each of its subsidiaries to provide to the Authority any certifications or information that the Authority requests to confirm compliance by the City and its subsidiaries with any Anti-Terrorism Law). "Anti-Terrorism Law" means any law relating to terrorism or money laundering, including Executive Order No. 13224, the USA Patriot Act, the laws comprising or implementing the Authority Secrecy Act, and the Laws administered by the United States Treasury Department's Office of Foreign Asset Control, as any of the foregoing laws may from time to time be amended, renewed, extended, or replaced.

SECTION 7.13. Costs and Expenses. To the extent allowed by law, the City agrees to pay all reasonable out-of-pocket costs and expenses (including the fees and expenses of counsel retained or employed by the Authority) incurred by the Authority and any participants of the Authority in connection with the origination, administration, collection and enforcement of this Installment Purchase Agreement, including, without limitation, all costs and expenses incurred in obtaining, perfecting, maintaining, determining the priority of, and releasing any security for the City's obligations to the Authority, and any stamp, intangible, transfer or like tax incurred in connection with this Installment Purchase Agreement or the recording hereof or thereof.

SECTION 7.14. Indemnification. To the extent allowed by law, the City indemnifies the Authority, its affiliates and its and their respective officers, directors, employees, agents and advisors (each an "Indemnitee") against, and holds each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including fees and expenses of employed or retained counsel) incurred by any Indemnitee or asserted against any Indemnitee by any third party arising out of or as a result of (a) the execution or delivery of any Financing Document, (b) the acquisition, construction, ownership, operation and all other matters relating to, the acquisition, construction, ownership, operation and all other matters relating to the Project and the System or the grant of agency made by the Authority under Section 3.1 hereunder, the performance or nonperformance by the City of its obligations under any Financing Document or the consummation of the transactions contemplated thereby, including the use of the proceeds therefrom, (c) breach of representations, warranties or covenants of the City under this Installment Purchase Agreement, or (d) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, including any such items or losses relating to or arising under Environmental Laws or pertaining to environmental matters, regardless whether any Indemnitee is a party thereto; provided that such indemnity will not, as to an Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the active negligence or willful misconduct of such Indemnitee.

SECTION 7.15. Waiver of Jury Trial. (a) To the extent allowed by law, the City and the Authority each hereby irrevocably waives any right it may have to a trial by jury in connection with any action directly or indirectly arising out of or relating to this Installment Purchase Agreement. Each party hereto (1) certifies that no representative, administrative agent or attorney of any other person has represented, expressly or otherwise, that such other person would not, in the event of litigation, seek to enforce the foregoing waiver and (2) acknowledges that it and the other parties hereto have been induced to enter into this Installment Purchase Agreement by, among other things, the mutual waivers and certifications in this section.

(b) THE AUTHORITY AND THE ASSIGNEE (BY THEIRITS ACCEPTANCE HEREOF) HEREBY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) BETWEEN THE AUTHORITY AND THE ASSIGNEE ARISING OUT OF OR IN ANY WAY RELATED TO THIS INSTALLMENT PURCHASE AGREEMENT, THE NOTE AND THE OTHER RELATED DOCUMENTS. THIS PROVISION IS A MATERIAL INDUCEMENT TO THE ASSIGNEE TO PROVIDE THE FINANCING EVIDENCED BY THIS INSTALLMENT

PURCHASE AGREEMENT. IF AND TO THE EXTENT THAT THE FOREGOING WAIVER OF THE RIGHT TO A JURY TRIAL IS UNENFORCEABLE FOR ANY REASON IN SUCH FORUM, THE AUTHORITY AND THE ASSIGNEE HEREBY CONSENT TO THE ADJUDICATION OF ANY AND ALL CLAIMS PURSUANT TO JUDICIAL REFERENCE AS PROVIDED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638, AND THE JUDICIAL REFEREE, WHO SHALL BE A BENCH OFFICER OR RETIRED BENCH OFFICER, SHALL BE EMPOWERED TO HEAR AND DETERMINE ANY AND ALL ISSUES IN SUCH REFERENCE WHETHER FACT OR LAW. THE AUTHORITY AND THE ASSIGNEE REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND CONSENT AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS AND CONSENTS TO JUDICIAL REFERENCE FOLLOWING THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL OF ITS CHOICE ON SUCH MATTERS. IN THE EVENT OF LITIGATION, A COPY OF THIS INSTALLMENT PURCHASE AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT OR TO JUDICIAL REFERENCE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638 AS PROVIDED HEREIN.

- (c) THE AUTHORITY WAIVES, TO THE EXTENT NOT PROHIBITED BY LAW, ANY RIGHT THE UNDERSIGNED MAY HAVE TO CLAIM OR RECOVER FROM THE ASSIGNEE IN ANY LEGAL ACTION OR PROCEEDING ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.
- (d) THE ASSIGNEE HEREBY RECOGNIZES THAT THE PROCEDURAL REQUIREMENTS AND REMEDIES APPLICABLE TO COMMENCING AN ACTION AGAINST THE AUTHORITY DIFFER FROM REQUIREMENTS APPLICABLE TO NONGOVERNMENTAL ENTITIES.

(Signature page follows)

IN WITNESS WHEREOF, the Authority has caused this Installment Purchase Agreement to be executed in its corporate name by its duly authorized officer, and the City has caused this Installment Purchase Agreement to be executed in its name by its duly authorized officer, as of the date first above written.

CITY OF FORT BRAGG JOINT POWERS PUBLIC FINANCING AUTHORITY

	By:
	By:
ATTEST:	
By:	
[Diana Paoli], Secretary	
	CITY OF FORT BRAGG
	B_{V^*}
	By:
ATTEST:	
Ву:	
Diana Paoli, City Clerk	

-Signature Page-Installment Purchase Agreement

EXHIBIT A

DESCRIPTION OF THE PROJECT

[Acquisition, <u>if applicable</u>, design and construction of improvements to the City's Broadband system including but not limited <u>to</u> expansion of the existing [Mendocino Community Network, known as MCN]— that the City is acquiring with non-Acquisition Costs proceeds from the Mendocino Unified School City.][UNDER REVIEW]

EXHIBIT B
SCHEDULE OF INSTALLMENT PAYMENTS

Payment	Principal Component	Interest Rate*	Interest	Total Installment	
Date			Component	Payment	
			•		
<u>11/01/2025</u>		<u>4.850%</u>	<u>\$177,284.79**</u>	<u>\$177,284.79</u>	
<u>05/01/2026</u>		<u>4.850%</u>	<u>191,085.40**</u>	<u>191,085.40</u>	
11/01/2026		4.850%	191,085.40**	191,085.40	
05/01/2027		4.850%	191,085.40**	191,085.40	
11/01/2027	Ξ.	4.850%	191,085.40	191,085.40	
	\$145,513.72	4.850%	191,085.40	336,599.12	
05/01/2028					
11/01/2028	149,042.42	4.850%	187,556.69	336,599.11	
05/01/2029	152,656.70	4.850%	183,942.42	336,599.12	
11/01/2029	156,358.63	4.850%	180,240.49	336,599.12	
05/01/2030	160,150.32	4.850%	176,448.79	336,599.11	
	164,033.97	4.850%	172,565.15	336,599.12	
11/01/203					
0					
05/01/2031	168,011.79	4.850%	168,587.33	336,599.12	
11/01/2031	172,086.08	4.850%	164,513.04	336,599.12	
05/01/2032	176,259.17	4.850%	160,339.95	336,599.12	
11/01/2032	180,533.45	4.850%	156,065.67	336,599.12	
	184,911.39	4.850%	151,687.73	336,599.12	
05/01/2033					
11/01/2033	189,395.49	4.850%	147,203.63	336,599.12	
05/01/2034	193,988.33	4.850%	142,610.79	336,599.12	
11/01/2034	198,692.55	4.850%	137,906.57	336,599.12	
05/01/2035	203,510.84	4.850%	133,088.28	336,599.12	
	208,445.98	4.850%	128,153.14	336,599.12	
11/01/203					
5					
05/01/2036	213,500.79	4.850%	123,098.32	336,599.11	
11/01/2036	218,678.19	4.850%	117,920.93	336,599.12	
05/01/2037	223,981.13	4.850%	112,617.98	336,599.11	
	229,412.68	4.850%	107,186.44	336,599.12	
11/01/203					
7					
05/01/2038	234,975.93	4.850%	101,623.18	336,599.11	
11/01/2038	240,674.10	4.850%	95,925.02	336,599.12	
05/01/2039	246,510.45	4.850%	90,088.67	336,599.12	

11/01/2039	252,488.33	4.850%	84,110.79	336,599.12
05/01/2040	258,611.17	4.850%	77,987.95	336,599.12
	264,882.49	4.850%	71,716.63	336,599.12
11/01/204				
$\underline{\underline{0}}$				
05/01/2041	271,305.89	<u>4.850%</u>	65,293.23	336,599.12
11/01/2041	277,885.06	4.850%	58,714.06	336,599.12
05/01/2042	284,623.77	4.850%	51,975.35	336,599.12
11/01/2042	291,525.90	4.850%	45,073.22	336,599.12
	298,595.40	4.850%	38,003.72	336,599.12
05/01/2043				
11/01/2043	305,836.34	4.850%	30,762.78	336,599.12
05/01/2044	313,252.87	4.850%	23,346.25	336,599.12
11/01/2044	320,849.25	4.850%	15,749.87	336,599.12
05/01/2045	328,629.84	4.850%	7,969.27	336,599.11
Total	<u>\$7,879,810.41</u>		<u>\$4,842,785.12</u>	\$12,722,595.53

^{*}Assumes no Event of Default or Event of Taxability has occurred and is continuing.

[TO COME WITH NOTATION THAT ASSUMED INTEREST RATE DOESN'T INCLUDE EVENTS OF DEFAULT OF EVENTS OF TAXABILITY]** To be paid from the Capitalized Interest Fund held by the Assignee pursuant to the Capitalized Interest Fund Administration Agreement dated as of May 14, 2025, among the City, EverBank, N.A. and the Assignee.

EXHIBIT C

FORM OF ASSIGNEE LETTER

CITY OF FORT BRAGG INSTALLMENT PURCHASE AGREEMENT (the "Obligation")

In connection with that certain Installment Purchase Agreement dated as of May 1, 2025 (the "Obligation") entered into by the City of Fort Bragg (the "City") and the City of Fort Bragg Joint Powers Public Financing Authority (the "Authority"), ______, as assignee of the Authority (the "Assignee"), the Assignee hereby states:

- 1. The Assignee has knowledge and experience in financial and business matters relating to the Obligation and is capable of evaluating the merits and risks of the Obligation and is able to bear the economic risks thereof.
- 2. The Assignee has made such investigation of the financial information provided by the City as the Assignee, in the exercise of its business judgment, considers appropriate under the circumstances. In making its decision to acquire the Obligation, the Assignee has relied on the accuracy and completeness of information provided by the City. The Assignee has not required the City to deliver any offering document in connection with the issuance of the Obligation.
- 3. The Assignee is aware that the Obligation involves various risks, that the Obligation is not a general obligation of the City, and that payment of the Obligation is secured only from the sources described in the resolution or ordinance of the City authorizing the Obligation (the "Authorizing Measure") and the Installment Purchase Agreement and related Financing documents identified therein.
- 4. Neither the Assignee nor any of its affiliates is acting as a fiduciary for the City or in the capacity of broker, dealer, underwriter, or municipal advisor with respect to the Obligation. Neither the Assignee nor any of its affiliates has provided or will provide any financial, legal, tax, accounting or other advice to the City with respect to the Obligation; it being understood that the City has sought and obtained and will obtain such advice (including as it relates to structure, timing, terms, and similar matters) with respect to the Obligation from its own advisors (and not the Assignee or any of its affiliates) to the extent that the City desired or desires to obtain such advice.
- 5. The Assignee acknowledges that the Obligation is not being qualified under the Trust Indenture Act of 1939, as amended, and the Obligation is not being registered in reliance upon the exemption from registration under Section 3(a)(2) of the Securities Act of 1933, as amended, and that neither the City nor bond counsel shall have any obligation to effect any such registration or qualification.
- 6. The Assignee is not acting as a broker or other intermediary and is making the Financing and acquiring the Obligation for its own account and not with a present view to a resale or other distribution to the public. The Assignee understands that the Obligation may not be transferred except in compliance with applicable federal and state laws.
- 7. The Assignee is an (a) "accredited investor" within the meaning of the Securities Act of 1933, as amended, and Regulation D thereunder, or (b) a qualified institutional buyer.

DATED as of	_, 20
	By:
	Name:
	Title:

EXHIBIT D

FORM OF COMPLIANCE CERTIFICATE

CERTIFICATE OF COMPLIANCE

I		T IS HEREBY CERTIFIED by the undersigned, the of the City of Fort (the "City") on, 202 that:
		1. To the best of my knowledge, the City is not in default under any documents related to the Installment Purchase Agreement dated as of May 1, 2025 (as amended and supplemented, the "Agreement"; capitalized terms used but not defined herein shall have the meaning set forth in the Agreement), by and between the City and the City of Fort Bragg Joint Powers Public Financing Authority.
		2. The City confirms that during the prior Fiscal Year that it has fixed and prescribed rates and charges for the System in compliance with Section 4.9 of the Agreement.
	ł	3. From and after the Net Revenue Conversion Date, as required by Section 4.9(b) of the Agreement, the The following is a calculation of Debt Service Coverage Ratio on all Installment Payments and Parity Obligations outstanding during the prior Fiscal Year:
_		NET PLEDGED REVENUES/TOTAL DEBT SERVICE = overage]
		CITY OF FORT BRAGG
		By:
		Name:
		Title:

1

Summary report: Litera Compare for Word 11.10.0.38 Document comparison done on 5/9/2025 9:01:01 AM Style name: Default Style **Intelligent Table Comparison:** Active Original filename: Fort Bragg 2025 Installment Purchase Agreement v5 1.docx Modified filename: Fort Bragg 2025 Installment Purchase Agreement v8 2.docx **Changes:** Add 160 Delete 177 Move From 0 0 Move To Table Insert 2 0 Table Delete 0 Table moves to Table moves from 0 Embedded Graphics (Visio, ChemDraw, Images etc.) 0 Embedded Excel 0 Format changes 0 339 **Total Changes:**





AGENCY: City Council
MEETING DATE: April 28, 2025

DEPARTMENT: City Manager/Finance Director

PRESENTED BY: I. Whippy/Consultants
EMAIL ADDRESS: iwhippy@fortbragg.com

AGENDA ITEM SUMMARY

TITLE:

CONSIDER ADOPTION OF A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FORT BRAGG, APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE INSTALLMENT PURCHASE AGREEMENT WITH THE CITY OF FORT BRAGG JOINT POWERS PUBLIC FINANCING AUTHORITY AND ASSIGNMENT OF PAYMENTS THEREUNDER TO EVERBANK, N.A., AND RELATED DOCUMENTS AND ADDITIONAL ACTIONS

ISSUE:

Based on guidance from the City Council over the past six months, and per the recommendation of City staff and its financial consultants, the City intends to issue \$7.8 million of debt to fund a portion of the Middle Mile Broadband Initiative (MMBI, or "Project") project costs. Most of the Project costs will be funded through a \$10.3 million grant from the State of California, while the remaining \$6.93 million of Project costs are to be funded through this debt issuance. The debt structure being utilized is an Installment Purchase Agreement between the City and the City of Fort Bragg Joint Powers Public Financing Authority (the "Authority"), as further described below.

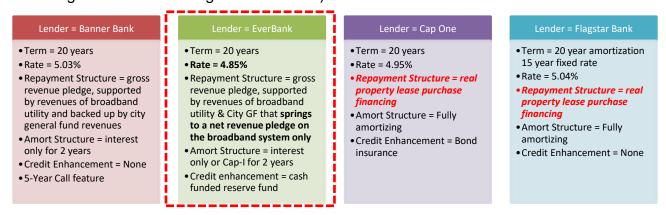
To fund the remaining portion of the costs necessary to complete the Project, the City will enter into an Installment Purchase Agreement (the "2025 IPA") with the Authority. Pursuant to the 2025 IPA, the Authority has agreed to purchase the Project from the City with funds provided by EverBank, N.A. (the "Lender") pursuant to an Assignment Agreement (the "Assignment Agreement") by and between the Authority, as assignor, and the Lender, as assignee. Pursuant to the 2025 IPA, the City will acquire the Project from the Authority and obligate itself to make installment payments on a semi-annual basis. Pursuant to the Assignment Agreement, the Authority will assign to the Lender substantially all of the Authority's rights, title and interest under the 2025 IPA. The financial impact of the 2025 IPA is further described in the Analysis section below and the attached Good Faith Estimates.

BACKGROUND:

On November 25, 2024, City Manager, its Municipal Advisor (NHA Advisors) and its Project consultant (Mitch Drake) delivered a comprehensive presentation to City Council related to the Project and various funding options available to the City. Direction was given to explore debt financing mechanisms that didn't require the City to pledge assets to the debt (as it has done previously for its 2021 Lease Revenue Bonds), and attempt to secure financing terms that would allow the debt to be self-supported (no General Fund "backstop") by the City's new Broadband Enterprise Fund once certain operating metrics were achieved. Given the unique start up nature of the enterprise, it was made clear that the City's General Fund

would, at a minimum, need to act as a "co-signor" for the debt for the initial start period of the enterprise to satisfy credit rating requirements from potential lenders and ensure that debt payments could be made if the new enterprise system wasn't able to, provided, however, that the City must still appropriate from its General Fund in order to comply with state law.

After refining the financing strategy and pro-forma in early 2025, the City's Broker-Dealer (Oppenheimer) solicited interest from over 10 lenders/banks. The City received interest from four banks who provided their interest rates and borrowing terms for the transaction. EverBank provided the lowest interest rate, and furthermore, it was also the only bank that provide an automatic mechanism to remove the General Fund as a backstop for the maintenance of the system once certain metrics are met. EverBank does require that the City maintain a debt service reserve fund equal to one year's worth of debt payments, and the City intends to re-allocate current reserves to meet that requirement (as opposed to financing that amount through the 2025 IPA).



On March 24, 2025, these results were presented to City Council and direction was given to staff and NHA to lock the interest rate with EverBank immediately and move expeditiously to document and close the transaction. Since that time, the team has been working diligently to put together the required legal documentation (drafted by Nixon Peabody, LLP, Special Counsel) and work through credit approval with EverBank. In retrospect, locking the interest rate in late March proved advantageous as significant market volatility emerged shortly after with a spike in interest rates.

It is expected that final credit approval will be obtained during the week of April 28th, with the Authority approval on May 12th, and closing scheduled for May 14th.

ANALYSIS:

The 2025 IPA is being structured to provide the City with \$6.93 million of funds to complete the MMBI Project. After accounting for costs of issuance (\$185,000) and 2-years of prefunded/capitalized interest (\$749,039), the total loan size is expected to be \$7,864,039. The annual debt requirements are shown below and are amortized over 20 years. As discussed before, the first two years of payments will be funded through capitalized interest to ensure that the City won't need to make any debt service payments while the enterprise is starting

up. As shown in the table below, the first payment that needs to be made will be \$524,653 in FY 2028 and then \$669,330 annually from FY 2029 to FY 2045.

Net Debt Service Schedule

							1000000000
Date	Principal	Coupon	Interest	Total P+I	DSR	CIF	Net New D/S
05/01/2026	-	-	367,632.89	367,632.89	-	(367,632.89)	-
05/01/2027	-	-	381,405.88	381,405.88	-	(381,405.88)	-
05/01/2028	145,222.47	4.850%	381,405.88	526,628.35	-	-	526,628.35
05/01/2029	301,095.27	4.850%	370,755.55	671,850.82	-	-	671,850.82
05/01/2030	315,875.45	4.850%	355,975.36	671,850.81	-	-	671,850.81
05/01/2031	331,381.16	4.850%	340,469.65	671,850.81	-	-	671,850.81
05/01/2032	347,648.03	4.850%	324,202.79	671,850.82	-	-	671,850.82
05/01/2033	364,713.39	4.850%	307,137.42	671,850.81	_	_	671,850.81
05/01/2034	382,616.47	4.850%	289,234.35	671,850.82	_	_	671,850.82
05/01/2035	401,398.37	4.850%	270,452.45	671,850.82	-	-	671,850.82
05/01/2036	421,102.24	4.850%	250,748.58	671,850.82	-	-	671,850.82
05/01/2037	441,773.33	4.850%	230,077.49	671,850.82	_	_	671,850.82
05/01/2038	463,459.12	4.850%	208,391.69	671,850.81	_	_	671,850.81
05/01/2039	486,209.44	4.850%	185,641.38	671,850.82	_	_	671,850.82
05/01/2040	510,076.52	4.850%	161,774.30	671,850.82	_	_	671,850.82
05/01/2041	535,115.18	4.850%	136,735.63	671,850.81	-	-	671,850.81
05/01/2042	561,382.95	4.850%	110,467.86	671,850.81	_	_	671,850.81
05/01/2043	588,940.15	4.850%	82,910.66	671,850.81	-	-	671,850.81
05/01/2044	617,850.09	4.850%	54,000.73	671,850.82	-	-	671,850.82
05/01/2045	648,179.14	4.850%	23,671.66	671,850.80	(669,330.64)	-	2,520.16
Total	\$7,864,038.77	-	\$4,833,092.20	\$12,697,130.97	(669,330.64)	(749,038.77)	\$11,278,761.56

SUMMARY OF FINANCING DOCUMENTS:

The subject resolution authorizes and approve the form of all the primary legal documents (the "Financing Documents") necessary to provide for the successful execution of the 2025 IPA. A brief summary of each of the Financing Documents follows.

- 1. <u>Installment Purchase Agreement</u>: Pursuant to the IPA, the City and the Authority are entering into an arrangement whereby the Authority has agreed to purchase the Project from the City with funds provided by EverBank, N.A. (the "Lender"), and the City agrees to use the funds to fund the remaining portion of the costs necessary to complete the Project by entering into an Installment Purchase Agreement. The IPA also sets forth the interest rate the Lender is charging, the requirement that the Lender be paid from gross revenues of the broadband system until net revenues are sufficient, and other terms and conditions of the financing.
- 2. <u>Assignment Agreement</u>: Pursuant to the Assignment Agreement, the Authority assigns certain of its rights under the IPA to the Lender, including its rights to payments under the IPA and enforcement rights under the IPA.

3. <u>Project Fund Agreement</u>: Pursuant to the Project Fund Agreement, the City, EverBank as Lender and EverBank as depository bank agree to establish certain deposit accounts where funds will be held and disbursed by the Bank for the Project and in which has certain security interests in.

RECOMMENDED ACTION:

Staff recommends that, the members of the City Council, adopt the attached resolution.

ALTERNATIVE ACTION(S):

- 1. Do not adopt the resolutions.
- Provide alternative direction to staff.

FISCAL IMPACT:

There is no financial impact to the FY 2025 budget. The first debt payment will occur in FY 2028 in an amount of 524,653 and is expected to be paid by revenue of the new Broadband Enterprise. All costs of issuance will be financed through the 2025 IPA.

GREENHOUSE GAS EMISSIONS IMPACT:

There is no impact to greenhouse gas emissions from approving the resolution.

STRATEGIC PLAN/CONSISTENCY:

N/A

<u>IMPLEMENTATION/TIMEFRAMES</u>:

1. INVIGORATE ECONOMIC OPPORTUNITY AND COMMUNITY VIBRANCY

- 1 (D) Develop and maintain affordable and reliable high-speed fiber-optics infrastructure to support and attract diverse businesses, online education, and remote employment that will connect Fort Bragg to the world.
 - Construct, manage, and maintain a municipal broadband utility that provides citywide access to underground networks with industry-leading speeds to provide secondary communications during emergencies and support businesses.

ATTACHMENTS:

- 1. City Resolution
- 2. Installment Purchase Agreement
- 3. Assignment Agreement
- 4. Project Fund Agreement
- 5. Good Faith Estimates

NOTIFICATION:

N/A

ATTACHMENT 6

GOOD FAITH ESTIMATES

The good faith estimates set forth herein are provided with respect to the 2025 Broadband Revenue Loan in accordance with California Government Code Section 5852.1. Such good faith estimates have been provided to the City by NHA Advisors, its municipal advisor (the "Municipal Advisor").

<u>Principal Amount</u>. The Municipal Advisor has informed the City that, based on the City's financing plan and current market conditions, its good faith estimate of the aggregate principal amount of the 2025 Broadband Revenue Loan to be sold is \$7,879,810.41 (the "Estimated Principal Amount"). Based on the Estimated Principal Amount, the following good faith estimates are provided:

- (a) <u>True Interest Cost of the 2025 Broadband Revenue Loan</u>. The Municipal Advisor has informed the City that, assuming that the Estimated Principal Amount of the 2025 Broadband Revenue Loan is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the true interest cost of the 2025 Broadband Revenue Loan, which means the rate necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received for the 2025 Broadband Revenue Loan, is 4.85%
- (b) <u>Finance Charge of the 2025 Broadband Revenue Loan</u>. The Municipal Advisor has informed the City that, assuming that the Estimated Principal Amount of the 2025 Broadband Revenue Loan is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the finance charge for the 2025 Broadband Revenue Loan, which means the sum of all fees and charges paid to third parties, is \$197,500.
- (c) Amount of Proceeds to be Received. The Municipal Advisor has informed the City that, assuming that the Estimated Principal Amount of the 2025 Broadband Revenue Loan is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the amount of proceeds expected to be received by the City for sale of the 2025 Broadband Revenue Loan, less the finance charges set forth in (b) above, and any reserves or capitalized interest to be paid or funded with proceeds of the 2025 Broadband Revenue Loan, together with any premium received, is \$6,930,000.
- (d) <u>Total Payment Amount</u>. The Municipal Advisor has informed the City that, assuming that the Estimated Principal Amount of the 2025 Broadband Revenue Loan is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the total payment amount, which means the sum total of all payments the City will make to pay debt service on the 2025 Broadband Revenue Loan, plus the finance charge for the 2025 Broadband Revenue Loan as described in (b) above not paid with the proceeds of the 2025 Broadband Revenue Loan, calculated to the final maturity of the 2025 Broadband Revenue Loan, is \$12,722,595.53 (\$750,541 of which will be paid for from capitalized interest and \$673,198 of which will be paid for from the Debt Service Reserve Fund).

The foregoing estimates constitute good faith estimates only. The actual principal amount of the 2025 Broadband Revenue Loan issued and sold, the true interest cost thereof, the finance charges

thereof, the amount of proceeds received therefrom and total payment amount with respect thereto may differ from such good faith estimates due to (a) the actual date of the sale of the 2025 Broadband Revenue Loan being different than the date assumed for purposes of such estimates, (b) the actual principal amount of 2025 Broadband Revenue Loan sold being different from the Estimated Principal Amount, (c) the actual amortization of the 2025 Broadband Revenue Loan being different than the amortization assumed for purposes of such estimates, (d) the actual market interest rates at the time of sale of the 2025 Broadband Revenue Loan being different than those estimated for purposes of such estimates, (e) other market conditions, or (f) alterations in the City's financing plan, or a combination of such factors. The actual date of sale of the 2025 Broadband Revenue Loan and the actual principal amount of 2025 Broadband Revenue Loan sold will be determined by the City based on the timing of the need for proceeds of the 2025 Broadband Revenue Loan and other factors. The actual interest rates borne by the 2025 Broadband Revenue Loan will depend on market interest rates at the time of sale thereof. The actual amortization of the 2025 Broadband Revenue Loan will also depend, in part, on market interest rates at the time of sale thereof. Market interest rates are affected by economic and other factors beyond the control of the City.



City of Fort Bragg

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

Text File

File Number: 25-141

Agenda Date: 5/12/2025 Version: 1 Status: Business

In Control: City Council File Type: Staff Report

Agenda Number: 8C.

Receive Report and Provide Direction to Staff Regarding Street Project Planning and the Use of Unassigned Reserves; Including 1) Local Streets and Roads and Funding Sources, 2) 2025 Pavement Preservation Project Direction 3) Stop-Gap Patch Paving Project, 4) Purchasing Equipment for Self-Performing Work, and 5) Escalating the 2027 Revitalization Project Design



TO: City Council DATE: May 12, 2025

DEPARTMENT: Public Works Department

PREPARED BY: Isaac Whippy, City Manager & Chantell O'Neal, Assistant

Director, Engineering

PRESENTER: Isaac Whippy, City Manager & Chantell O'Neal, Assistant

Director, Engineering

AGENDA TITLE: Strategic Planning for Street Improvements and Use of Unassigned Reserves:

- 1) Local Streets and Roads and Funding Sources,
- 2) 2025 Pavement Preservation Project
- 3) Stop-Gap Patch Paving Project,
- 4) Purchasing Equipment for Self-Performing Work,
- 5) Escalating the 2027 Revitalization Project Design

RECOMMENDATION

Provide direction for using Unassigned Reserve Funding and Local Streets and Roads (LSR) Funding.

Provide direction regarding the release of the 2025 Project Bid Packet as currently designed.

Establish the list of streets to be designed in the 2027 Revitalization Project.

BACKGROUND

During the mid-year budget discussion in March, the City Manager recommended allocating \$800,000 from unassigned reserves to improve the pavement condition of local streets. The City Council subsequently directed staff to bring this item to the Public Works and Facilities Committee (PWFC) to further develop the project scope and determine the most effective use of the funds.

PWFC met on March 31, 2025, and established that their highest priority was to get the streets in the worst condition repaired and recommended we proceed forward with a Stop-Gap Patch Paving project (which is discussed more in attachment 3) and evaluate further

the option for the City's Maintenance staff to self-perform pavement work (attachment 4). During the PWFC meeting, we also discussed including the streets that were left off of the 2025 project to be designed as their own 2026 project, which was an idea met with less enthusiasm than the first two items. The inclusion of these project locations in the 2027 streets project is discussed more in Attachment 5. In order to make this a comprehensive overview of the upcoming street project construction work planned, we will also briefly discuss the use of pavement management program strategies and the 2025 Streets project (attachment 2) as well as seek direction on the use of the City's Local Streets and Roads (LSR) gas tax money (attachment 1).

DISCUSSION AND ANALYSIS

See the individual Reports for specific analysis of each topic.

FISCAL IMPACT/FUNDING SOURCE

Attachment 1 provides an in-depth review of the Health of the Street Sales Tax Revenue Account, as well as the City's annual distribution of LSR gas tax money. There is also a brief financial review for each project described in attachments 2-5.

ENVIRONMENTAL ANALYSIS:

This report does not have any impact on the environment as each project will be evaluated individually for compliance with regulatory laws.

STRATEGIC PLAN/COUNCIL PRIORITIES/GENERAL PLAN CONSISTENCY

Street Project Planning, funding, and construction aligns with numerous policies in to the General Plan or the City's Strategic Plan as listed below:

- ➤ The Strategic Plan Goal focuses on securing, operating, and maintaining essential and sustainable public infrastructure for the community's well-being and future growth. Goal 2F is to maintain resilient and walkable streetscapes that provide safety and attract travelers, pedestrians, cyclists, and businesses by coordinating all improvements. z Cooperatively schedule Road Maintenance with Water and Wastewater Enterprise activities to efficiently improve maintenance and inspections of under-roadway infrastructure.
- ➤ General Plan Policy: Program C-15.1.6: Carry out an ongoing inventory of transportation system needs to be included in the City's Capital Improvement Plan. Policy C-9.2 Improve East-West Arterials: Improve Oak Street, Chestnut Street, and Redwood Avenue to provide safe and efficient circulation between Main Street and east Fort Bragg.

COMMUNITY OUTREACH

While the development of street projects typically begins with data from the Pavement Management Plan (PMP), the streets lists are vetted with the City Council before any street

project goes into the design phase. Staff maintains a list of street projects in the Capital Improvement Plan, posts information on street projects on the website, and maintains open communication regarding project updates through social media and press releases.

COMMITTEE REVIEW AND RECOMMENDATIONS

Public Works and Facilities Committee recommended we proceed with the Stop-Gap Paving Project and evaluate the opportunity to purchase equipment to enable the maintenance crews to self-perform more substantial street repairs.

ALERNATIVES:

Alternatives can be discussed in during each report.

ATTACHMENTS:

- 1 Report on Local Streets and Roads Funding Sources and the Health of the Street Sales Tax Revenue Account
- 2 Report on 2025 Pavement Preservation Project and the Importance of Long-Term, Data-Driven Street Maintenance Strategy
- 3 Report on Stop-Gap Patch Paving Project
- 4 Report on Consideration of Equipment Purchase to Enhance City Capacity for Self-Performed Asphalt Pothole Repairs
- 5 Report on 2027 Revitalization Project

NOTIFICATION:

Street Construction



TO: City Council DATE: May 12, 2025

DEPARTMENT: Public Works Department

PREPARED BY: Chantell O'Neal, Assistant Director, Engineering

PRESENTER: Chantell O'Neal, Assistant Director, Engineering

AGENDA TITLE: Overview and Direction Regarding FY 2025-26 Local Streets and Roads (LSR) Annual Distribution and the Health of the Street Sales Tax Revenue Account

RECOMMENDATION

Receive the report on the Local Streets and Roads (LSR) program annual distribution and provide direction on how to allocate the FY 2025-26 LSR funds so that staff can prepare a resolution for adoption by City Council adoption on May 27, 2025 meeting. The Resolution must be submitted to the state by July 1, 2025, in order for the City to remain eligible to receive its annual allocation.

SUMMARY

The City of Fort Bragg qualifies as a *Self-Help City* under the LSR Program due to the voter-approved local sales tax restricted for street repair and maintenance. This qualifies the City to receive a fair share distribution under the Local Streets and Roads program.

The State Board of Equalization has estimated that Fort Bragg's FY 2025-26 allocation will be **\$188,354.00**. To receive these funds, the City must adopt and submit a resolution to the state by **July 1, 2025**, detailing the projects and uses of the funds in accordance with program requirements.

Staff will prepare the required resolution for the May 27, 2025 City Council meeting. We request direction at tonight's meeting regarding how Council would like to allocate these funds so this item can be placed on the consent calendar.

BACKGROUND

The Local Streets and Roads Program was established under SB 1 – The Road Repair and Accountability Act of 2017 – to fund road maintenance, safety improvements, and rehabilitation projects throughout California. As part of the program:

- Funding is distributed through Road Maintenance and Rehabilitation Program (RMRP) based on formulas and eligibility.
- Self-help cities are prioritized for funding based on their commitment to invest local revenue into street infrastructure.
- Eligible uses include maintenance and rehabilitation, safety projects, traffic control devices, and drainage repairs, among others.
- Further program information is available at the State Controller's website: https://www.sco.ca.gov/aud_road_maintenance_sb1.html

The City of Fort Bragg has received and programmed LSR funds every year since 2017. The funds have historically been used to reimburse staff time and materials for city crews performing RMRP-eligible street and road maintenance projects in compliance with state laws and guidelines.

PROPOSED OPTIONS FOR FY 2025-26 LSR FUNDS

Staff is requesting Council direction on how to program the upcoming allocation. Options include:

- 1. **Continue past practice**: Reimburse city staff time and materials for RMRP-eligible work performed in-house.
- Fund the Stop-Gap Pavement Repair Project: this focused repair effort to prolong pavement life in failing sections is described further in attachment 3 as part of this overall report.
- 3. **Cover equipment purchases**: Contribute toward the cost of equipment for the Maintenance Crew to self-perform asphalt and pavement work (discussed in attachment 4).
- 4. **Apply toward a programmed capital project**: Use for the 2025 or 2027 streets project programmed in the Capital Improvement Program.
- 5. **Explore other eligible uses**: Brainstorm additional potential uses that meet LSR criteria.

The selected approach will be reflected in the May 27, 2025 Resolution to ensure timely submission to the state.

PROGRAM REQUIREMENTS FOR RESOLUTION

To comply with LSR program guidelines, the Resolution must include:

- A brief, non-technical project description
- Project location(s)
- Estimated schedule for completion
- Estimated useful life of the improvement(s)

These requirements are outlined in SB 1 and further clarified in the Streets and Highways Code, as well as the State Controller's program guidelines.

FISCAL IMPACT: STREET SALES TAX FUND REVIEW AND RESERVES

In order to better understand the potential uses of these funds, below is an overview of the cuurent Street Sales Tax Revenue Account, upcoming expenditures, and related funds.

- The current fund balance in the Street Sales Tax Fund is \$1,249,578 as of 4/30/25.
- The estimated future cost from the Streets Sales tax fund for the 2025 Pavement Preservation Project (based on the engineers estimate and the LPP programmed funds) is \$1,245,000. This amount does not include funds expended in previous fical year which was \$233,000 for the projects design.
- The estimated cost from the Streets Sales tax fund account for the 2027 Roadway Revitalization Project (based on a rough order of magnitude estimate and the LPP programmed funds) is \$1,664,000.
- Based on the direction provided by Council at the Mid-Year Budget Review on March 20, 2025, another \$800,000 of unassigned funds may be programmed toward upcoming streets work.
- The FY 2025-26 estimated LSR allocation of **\$188,354.00** will be incorporated into the City's FY 2025-26 budget upon approval.

This financial picture is important for Council to consider as part of the broader discussion on funding priorities for road maintenance and equipment investment.

NEXT STEPS

- Staff will return on **May 27, 2025**, with a Resolution for Council consideration and adoption.
- Direction provided tonight will determine the recommended use of LSR funds in that Resolution.
- Upon adoption, the City will submit the required materials to the State by July 1, 2025, preserving Fort Bragg's eligibility.



TO: City Council DATE: May 12, 2025

DEPARTMENT: Public Works Department

PREPARED BY: Chantell O'Neal, Assistant Director, Engineering

PRESENTER: Chantell O'Neal, Assistant Director, Engineering

AGENDA TITLE: Discussion of 2025 Pavement Preservation Project and Street

Maintenance Strategy

BACKGROUND

As part of our long-term strategy to maintain and improve the City's street network, the Public Works Department follows recommendations outlined in the City's Pavement Management Program (PMP). One of the key aspects of this approach is the prioritization of preventive maintenance treatments, such as slurry seal and microsurfacing, on streets that are currently in good condition. Understandably, this approach may appear counterintuitive when there are other streets in visibly worse condition. However, there are important reasons for this strategy, rooted in asset management principles and cost-effective use of public funds.

Preserving Good Pavement Is the Most Cost-Effective Strategy

Pavement is a depreciating asset—once constructed, it begins to deteriorate. A key principle of pavement management is that it is significantly less expensive to keep good streets in good condition than to restore failed ones.

For example:

- Applying slurry seal to a street in good condition might cost \$5-\$6.50 per square yard.
- In contrast, full rehabilitation or reconstruction of a failed street can cost \$114-\$145
 per square yard, 18 29 times more expensive.

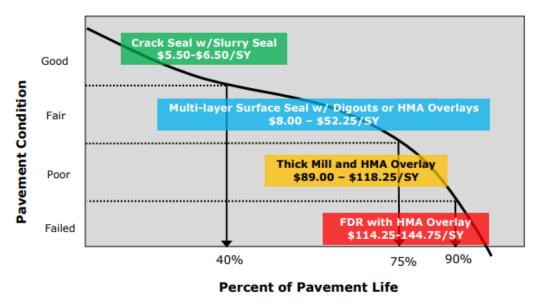


Figure 5. Costs of Maintaining Pavements Over Time

Figure Above from the Fort Bragg Pavement Management Program Update 2021

By spending a relatively small amount today to preserve streets that are still in good condition, we **avoid large costs tomorrow**. When we delay maintenance, good streets can fall into fair or poor condition, and the cost to bring them back rises exponentially. This strategy extends pavement life and maximizes the return on the City's initial investment.

Asset Management Approach to Pavement

The PMP treats pavement as a long-term capital asset. Streets are evaluated using a Pavement Condition Index (PCI) on a 0–100 scale. The PMP gives us a data-driven approach to determine which streets receive which type of treatment and when. It allows us to:

- Prioritize treatments that deliver the highest network-wide PCI improvement per dollar spent.
- Stabilize overall network condition to prevent accelerated decline.
- Avoid the "worst first" trap, which drains budgets on expensive reconstruction while more cost-effective preservation work is neglected.

A balanced PMP typically includes:

- Preservation treatments for streets rated PCI 70 and above
- Minor rehabilitation for streets rated PCI 50–70
- Reconstruction for streets rated PCI below 50

Focusing only on failed roads quickly becomes financially unsustainable. PMP helps us plan for both today's needs and tomorrow's costs.

Strategic Project Delivery: Bundling "Like Work"

Another important cost-saving strategy is **grouping similar types of pavement work into separate, focused projects**. This improves both cost efficiency and contractor performance.

Examples include:

- A **slurry seal project** covering only streets requiring surface treatment
- A mill-and-overlay project focused on streets needing structural restoration

Benefits of bundling include:

- Lower unit costs due to larger bid quantities and streamlined contractor mobilization
- Better quality control by using contractors with specific expertise in the treatment type
- Fewer staging delays and more predictable project timelines

When we combine "like work" across neighborhoods or street segments, we **gain economy of scale** and reduce the burden on staff and the public.

2025 Pavement Preservation Project: Long-Term Planning in Action

The upcoming **2025 Pavement Preservation Project** is a prime example of applying these pavement management strategies in a real, long-term capital planning context. This project was **developed 2.5 years in advance of its anticipated construction year**, aligning with the funding cycle of the Local Partnership Program (LPP). Below is a list of key milestones in the projects timeline:

- October 24, 2022 <u>City Council adopted Resolution 4617</u>, programming the 2025 street locations.
- **November 14, 2022** Project submitted to the California Transportation Commission (CTC) for programming.
- **February 26, 2024** City Council approved the Scope of Work for the <u>2025 Streets</u> Rehabilitation Project Design, including a table showing the list of selected streets.
- April 19, 2024 Timely Use of Funds Extension request submitted to CTC to allow flexibility in award timing.
- April 22, 2024 <u>City Council awards Design contract</u> to Lumos & Associates.
- June 13, 2024 <u>Public Works and Facilities Committee</u> approved revised street list for final design.
- February 2025 Bid packet finalized.

- March 17, 2025 Bid packet submitted to CTC for May 16, 2025, Fund Allocation vote.
- May 19, 2025 Bid Packet Release for solicitation.

The project has been carefully timed to meet state funding requirements, which include strict allocation and expenditure deadlines. It cannot be solicited for construction until allocation is granted, and any changes to scope or timing must be managed carefully to maintain eligibility and avoid loss of funding.

RECOMMENDATION

The 2025 Pavement Preservation Project illustrates the importance of **staying the course with long-range, data-driven pavement management planning**. The PMP not only helps us preserve more streets at a lower cost, but also positions the City to **secure and effectively utilize state and regional funds** by aligning with multi-year programming cycles.

Diverting from this plan at the final hour—especially by shifting priorities to focus solely on failed streets—would risk undermining years of planning, forfeiting cost-saving strategies, and potentially jeopardizing funding. We urge the Council to continue supporting this proactive and sustainable approach that reflects industry best practices and responsible public stewardship.



TO: City Council DATE: May 12, 2025

DEPARTMENT: Public Works Department

PREPARED BY: Chantell O'Neal, Assistant Director, Engineering

PRESENTER: Chantell O'Neal, Assistant Director, Engineering

AGENDA TITLE: Patch Paving - Pothole Stop Gap Project

RECOMMENDATION

Receive staff presentation and provide direction regarding:

- 1. Approval of a limited-scope patch paving project targeting the worst pothole condition streets using stop-gap strategies;
- 2. Authorization to solicit competitive bids for construction; and
- 3. Confirmation of street locations for inclusion in the bid package.

BACKGROUND

During the Mid-Year Budget meeting of March 20, 2025, the City Council discussed the urgent need to improve the drivability of streets in poor condition throughout the City. At that time, staff recommended the use of unassigned reserves for targeted street maintenance to address the most critical locations.

In response, staff is proposing a limited-scope "stop-gap" project to perform patch paving repairs at the most deteriorated locations that are appropriate for this treatment and not otherwise scheduled for repair in the 5-year Capital Improvement Plan. This project will be developed by the City's On-Call Engineers using minimal funds for design with a limited scope of tasks.

PROJECT DESCRIPTION

The Patch Paving – Pothole Stop-Gap Project will focus exclusively on two techniques:

- 1. Linear Wheel Path Cracking Repair
- 2. Standard Pothole Patching

These strategies are intended to significantly improve drivability without the need for extensive engineering design or utility coordination, as would be required in a full roadway reconstruction or rehabilitation project.

The City has retained Lumos Engineers under its On-Call Services Contract to prepare technical specifications for the project. The Lumos contract amendment 1, authorized on April 28, 2025, included \$8,500 for the design services of the Stop-Gap Project.

Staff proposes to use up to \$350,000 of unassigned reserves to fund the construction of the patch paving work. Alternately, Local Streets and Roads (LSR) money could fund a portion of this project.

A **competitive bid solicitation process** will be used in accordance with City procurement requirements. Staff will ensure that the advertisement for bids is published for a minimum of **15 days** prior to bid opening.

DISCUSSION

The key distinctions between this proposed stop-gap patch paving project and a full reconstruction project include:

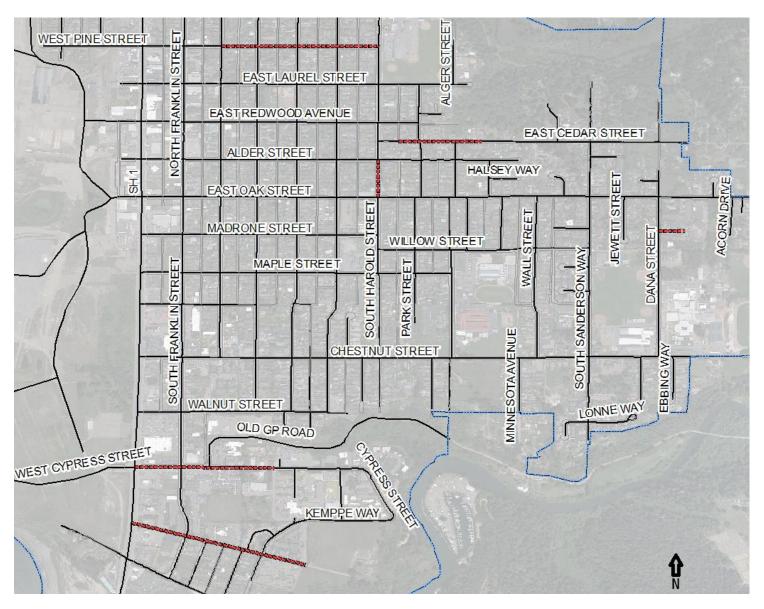
- Design Requirements: Stop-gap patching requires minimal design and can be addressed using general specifications prepared by the City's On-Call Engineer. Reconstruction typically requires detailed civil engineering plans and review of subsurface utilities and drainage.
- Cost and Scope: Stop-gap projects are limited in scope and cost, allowing the City to stretch funds across a wider area. Reconstruction efforts would target fewer streets and cost significantly more per location.
- **Timeline:** With minimal design and no utility work, patch paving can be completed quickly, offering more immediate improvement to drivability.

NEXT STEPS & COUNCIL DIRECTION NEEDED

Staff seeks Council direction on the following:

 Confirm Locations and Priority: A draft list of streets for inclusion in the patch paving project is below. Council direction is requested to finalize the list for bidding Page 2 in the order of priority in the event that the funding allocated does not allow for all identified locations.

Roadway	Beginning	End	
South Street	Main Street	End of City-Owned Pavement	
Cypress Street	Main Street	2025 Project Limit	
Pine Street	N McPherson	N Harold	
	Alley East of		
Cedar Street	Harold	Speed hump east of Otis Johnson Park	
North Harold			
Street	Oak Street	Alder Street	
Taubold Court	Beginning	End	



Page 3

- 2. **Specify Amount and Fund Source**: Staff seeks confirmation that the \$350,000 is the appropriate amount for us on this project and requests clarification if this project is to be funded by the unassigned reserves earmarked at mid-year budget.
- 3. **Authorize Bid Advertisement:** Staff recommends that the Council authorize release of the bid solicitation as soon as possible to allow work to occur during the upcoming construction season.
- 4. **Award of Contract:** Following bid opening, staff will return to Council with a recommendation for contract award.

FISCAL IMPACT

The project will be funded using up to \$350,000 from unassigned reserves, as previously discussed and recommended at the Mid-Year Budget Review. Specifications development is funded through the On-Call Engineering contract with Lumos Engineers.



TO: City Council DATE: May 12, 2025

DEPARTMENT: Public Works Department

PREPARED BY: Chantell O'Neal, Assistant Director, Engineering

PRESENTER: Chantell O'Neal, Assistant Director, Engineering

AGENDA TITLE: Report on Consideration of Equipment Purchase to Enhance City

Capacity for Self-Performed Asphalt Pothole Repairs

RECOMMENDATION

That the City Council review and consider the benefits of purchasing equipment to support the Public Works Maintenance Division's ability to self-perform more asphalt pothole repair work, and provide direction to staff on whether to proceed with procurement.

BACKGROUND

Currently, the City addresses minor asphalt repairs using cold patch materials applied and compacted in the field by driving over the patch. Larger-scale street repairs are contracted out as part of capital improvement projects. However, City Council and community members have expressed increasing concern over the pace of street degradation and the City's limited ability to respond quickly to pothole complaints.

In response, the City Manager directed staff to assess the feasibility and practicality of improving the City's in-house street maintenance capabilities. The City Manager and Public Works staff met with three senior Maintenance Division employees to evaluate current limitations and identify opportunities for increased efficiency and effectiveness. These discussions revealed that targeted equipment investments, combined with internal workforce capacity, could significantly enhance the City's responsiveness and quality of repairs.

DISCUSSION:

The maintenance team provided valuable insights into the practical, operational, and logistical implications of expanding our self-performed asphalt work. Key considerations are outlined below:

1. Equipment and Operational Logistics

- Staff identified several pieces of equipment that could enhance our ability to complete higher-quality pothole repairs in-house. A cost estimate table has been prepared (see attached).
- Equipment maintenance, mechanic support, and secure storage space will need to be planned and budgeted.

2. Renting vs. Purchasing

 A preliminary cost-benefit analysis suggests that while rental is a viable short-term solution, long-term cost savings and operational flexibility may justify purchasing the equipment outright.

3. Staffing and Training

- Currently, only one staff member has formal training in asphalt placement.
 Additional training will be essential to ensure repairs meet safety and quality standards.
- Only one maintenance employee holds a Class A driver's license, which is required to operate some of the proposed equipment.
- A seasonal laborer recruitment is underway. This role will temporarily relieve existing staff of custodial duties and allow for broader participation in complex field work, increasing departmental capacity and offering professional development opportunities.

4. Safety and Regulatory Compliance

 Handling hot-mix asphalt and operating heavy machinery requires strict adherence to Cal/OSHA safety protocols. Implementation of a training program and acquisition of proper PPE will be necessary before field deployment.

5. Construction Season and Competing Demands

- The City is entering an unusually active construction season. While major paving
 work will still be outsourced, City maintenance staff are frequently called upon to
 support these projects with urgent, on-call tasks (e.g., USA utility marking, site
 verifications, pipe inspections, and emergency repairs).
- These responsibilities will increase during upcoming broadband and street improvement projects, potentially limiting staff availability for self-performed pothole work unless staffing levels are adjusted.

6. Material Availability

Hot-mix asphalt must be sourced from Ukiah, requiring a 2.5-hour round trip. While
a tac pot can extend the usability of the mix to approximately three days, scheduling
and material waste must be managed carefully.

FISCAL IMPACT:

An estimated cost breakdown of the proposed equipment is shown below for Council review. Items with an asterisk* are estimated costs only; other costs are actuals based on recent quotes from local vendors. Funding options for this purchase may include using the unassigned funds earmarked for street project work at the mid-year budget, Local Streets and Roads (LSR) funds, or other opportunities.

	Common Name	Machinery	New/Used	Cost
		Compact Track		
1	Skid steer &Grinder	Loader	New	\$ 121,804.81
2	Ditch Attachment*		U/K	\$ 6,500.00
3	Roller	Paving and Compaction	Used	\$ 45,727.50
4	Heavy Duty Trailer*	For Hauling equipment to the work site	U/K	\$ 25,000.00
5	Tac-Pot*	Oil Tackifier	U/K	\$ 15,000.00
	Insulated Asphalt	Thermo-Lay Slide		
6	Trailer*	In	New	\$ 140,000.00
			Total	\$ 354,032.31

CONCLUSION:

Enhancing the City's ability to self-perform asphalt repairs could offer greater responsiveness to community complaints, improve repair quality, and support internal staff development. However, these benefits must be weighed against staffing limitations, safety requirements, and the logistical challenges of hot-mix acquisition. Staff seeks Council direction on whether to proceed with equipment acquisition and expand self-performed pothole repair capabilities.



TO: City Council DATE: May 12, 2025

DEPARTMENT: Public Works Department

PREPARED BY: Chantell O'Neal, Assistant Director, Engineering

PRESENTER: Chantell O'Neal, Assistant Director, Engineering

AGENDA TITLE: Review and Confirmation of the 2027 Roadway Revitalization

Project Scope

RECOMMENDATION

Receive the staff presentation on the 2027 Roadway Revitalization Project and provide direction to confirm or update the list of street segments previously approved in November 2024.

SUMMARY

In November 25, 2024, <u>City Council adopted a Resolution</u> authorizing the programming of specific street segments for inclusion in the 2027 Roadway Revitalization Project under the Local Partnership Program - Formulaic (LPP-F) and Competitive (LPP-C) fund applications submitted to the California Transportation Commission (CTC). The project scope for programming LPP grants, must be submitted to the state well in advance of performing work on the project in accordance with grant timelines.

The purpose of this agenda item is to:

- Confirm the list of streets originally approved for the 2027 project,
- Consider adding street segments previously left off the 2025 project list,
- Discuss incorporation of Azalea and Pentitini Streets (designed for 2022 project but not included in the contract award due to budget shortfall), and
- Recommend adding underground utility work—specifically, two valves on the City Water Main along Oak Street—in coordination with draft Water Master Plan recommendations.

Based on the recent increased interest in upcoming street projects, staff seeks to ensure that the current scope aligns with Council's goals and expectations before design begins.

BACKGROUND

- November 25, 2024: City Council adopted a Resolution programming the 2027 LPP-F Roadway Project and discussed the submittal of an LPP-Competitive (LPP-C) application.
- June 26–27, 2025: California Transportation Commission (CTC) will consider programming and funding recommendations for both the LPP-F and LPP-C components.
- **July 2025**: Pending CTC approval, the City can proceed with design-phase solicitation.
- January 2027: Project tentatively scheduled to go to bid for construction.

The 2027 project was programmed approximately 2.5 years prior to its target construction year. Once programmed by the CTC, funds must be allocated within two fiscal years of eligibility notification and expended within three fiscal years from the date of project construction award in order to remain eligible.

PROJECT SCOPE

The original list of street segments programmed for the 2027 Roadway Revitalization Project as well as a detiled scope of work is discussed at length in the staff report found here: https://cityfortbragg.legistar.com/View.ashx?M=F&ID=13566485&GUID=E58936D2-DBE6-4FBC-A749-17E3DC574152

Council is asked to confirm the previously approved segments and consider the following additions:

- Segments previously excluded from the 2025 project (sections described in the Public Works and Facilities Agenda from March 31, 2025:
 https://cityfortbragg.legistar.com/View.ashx?M=F&ID=13993327&GUID=5E33118F-19AA-4838-9A2E-2C24F5273960 see slide 5 and slide 7).
- Azalea and Pentitini Streets, which were designed in 2022 but not constructed
- Water system improvements in Oak Street, specifically the installation of two valves on the City's water main, coordinated with pavement work

DIRECTION REQUESTED FROM COUNCIL

1. **Confirm** the street segments authorized in November 2024.

- 2. Provide direction on whether to include:
 - Streets previously left off the 2025 project.
 - Azalea and Pentitini Streets (fully designed).
 - Oak Street water main valve installation.
- 3. Advise staff on any other streets or infrastructure that may merit inclusion.

Staff will use Council's direction to finalize the project scope for design procurement in fiscal year 25/26.

FISCAL IMPACT

The 2027 Roadway Revitalization Project is anticipated to be funded through:

- Local Partnership Program Formulaic (LPP-F)
- A pending application for LPP Competitive (LPP-C)
- Additional funding may be supported by the City's Street Sales Tax Fund, Local Streets and Roads gas tax revenues, or some of the unassigned reserves programmed for street reconstruction work.

Adding new segments or underground utility work may require additional funding or phasing depending on design and cost estimates.

Paoli, Diana

From: Jacob Patterson <jacob.patterson.esq@gmail.com>

Sent: Sunday, May 11, 2025 4:43 PM

To: City Clerk

Subject: Public Comment -- 5/12/25 CC Mtg., Item No. 8C, Streets Projects

Attachments: Extended Warranty Response Letter.pdf; 2022-FB-Streets-Slurry-Ltr.pdf; 20240917-

ExtendWarrantLTR.pdf

City Council,

I am not going to write much about this except to say I have discussed this topic in detail with Isaac and his recommendations are not reflected in most of the memos, which are flawed and outdated, IMO. I have attached two interesting letters concerning the 2022 Streets Project about the unsuitability of slurry seal as a treatment for Franklin Street, which was largely a design issue, which was, in turn, the result of direction from City staff to the project engineers based on budget, etc., rather than practical effectiveness. We should not replicate the same mistakes even though that is recommended in some of the agenda item attachments. I fully endorse preventative maintenance as the most efficient and cost-effective approach to pavement rehabilitation. However, I only support it where it makes sense to take that approach and a lot of the planned project locations are similarly ill-suited to this treatment according to experts who actually understand paving, including local paving issues due to climate, etc., including Steve Baxman who has way more experience with paving than anyone else at the City. I support whatever he recommends.

If you read the attached closeout letters, I am appalled that we suggested a minimal credit for the slurry seal work for only a single block when the entire length of Franklin Street is defective, not just the 300 Block. That makes it challenging for us to try to enforce our legal remedies. Of course, any such efforts would be further undercut by other documentation about the project that shows the City was aware of some of the issues prior to the defective work being done and directed the contractors to proceed anyway. Because of our own actions, I fear we will be on the hook for very expensive repairs that will eat up a bunch of our scarce paving funding. Please don't go down this road again.

Best,

--Jacob



Reference: 423039

July 15, 2024

John Carlisle Project Manager Argonaut Constructors 360 Sutton Place Santa Rosa, CA 95407

Subject: Fort Bragg 2022 Streets Rehab Project – Slurry Seal Issues, 300 Block

N. Franklin St.

Dear Mr. Carlisle:

As the Engineer of Record for City of Fort Bragg 2022 Streets Rehabilitation Project, I need to call to your attention the on-going issue with the slurry seal placement on the 300 Block of N. Franklin St. (N. Franklin St. from Redwood Ave. to Laurel St.). As you are aware slurry seal was first placed at this project area on June 11, 2024, which after inspection was found to be deficient. The material was not curing, and the work did not meet Project specifications. In an attempt to resolve this issue Argonaut's subcontractor American Pavement Solutions (APS), who completed the work, met with the Project team (Argonaut, City, and SHN) and assured the City that they could correct the deficiencies at this location. On June 27, 2024, APS attempted to correct the failing slurry. Many steps were taken to ensure proper placement and curing time, as administered and performed by APS. A final inspection of this project area was conducted on July 10, 2024, and was found to be deficient and does not meet Project specifications.

At this time the City will accept a credit for slurry seal work per SF for the 300 block of N. Franklin St, which is approximately 13,992 SF. The City will properly correct the slurry seal issues in this area during a future project. Neither a credit nor these statements void or exempt this project area from the one (1) year maintenance bond or warranty.

Please feel free to call me at 707-459-4518 if you have any questions or need additional information.

Sincerely,

SHN

Jason Island, PE Regional Principal

Jason Asland









Reference: 423039

September 17, 2024

John Carlisle Project Manager Argonaut Constructors 360 Sutton Place Santa Rosa, CA 95407

Subject: Request for Extended Warranty on Slurry Seal Application

Dear John Carlisle:

I hope this letter finds you well. I am writing to formally request an extension of the warranty period for the slurry seal application completed for City of Fort Bragg 2022 Streets Rehabilitation Project [Project No PWP-00120]. Our objective is to further evaluate the performance of the slurry seal to ensure that it meets the expected service life and to address several concerns that have arisen since its application.

Technical Summary of Observations

1. Application and Initial Observations

During the slurry seal application, several issues were noted that suggest deviations from the recommended product application requirements. The subcontractor's requests for extended closures of roadways and parking areas appeared excessive, raising concerns about potential underlying issues with the application process.

2. Application Issues

Numerous visual observations were made during and immediately after the application, including:

- Uneven Distribution: There was a noticeable uneven distribution of solids within the slurry mix.
- **Oil Separation**: Separation of oils from the aggregate mixture was evident, leading to significant runoff into gutters.
- **Oil Saturation**: Despite the protective material placed on the red crosswalks, oil saturated through and stained crosswalks.

3. Post-Placement Concerns

Several issues were observed shortly after placement:

- Discoloration: Browning of various sections of material indicative of aggregate and oil separation.
- Extended Cure Times: In some areas, the material had not set even after 48 hours.
- Tire Marks: Deep scars from tire marks appeared as soon as the roadway was opened.



John Carlisle **Request for Extended Warranty on Slurry Seal Application**September 17, 2024

Page 2

4. Subsequent Observations

- Traffic Stripes and Street Marking: The primary roadway striping/thermoplastic marking was
 placed approximately two weeks after the initial slurry application. Despite the two weeks of
 inactivity, traffic stripes and street markings began immediately exhibiting stains from the
 ongoing oil separation.
- Red Stamped Crosswalks: Two months after placement (August 13, 2024), the red stamped
 crosswalks required re-painting due to persistent staining. The repainted crosswalks quickly
 began showing new stains from continued oil separation.
- **Surface Flushing**: Between two and three months post-application, ongoing flushing of the surface material was observed particularly near intersections, with a noticeable sheen and wet appearance in the absence of precipitation.

5. Rainfall Impact

Three months after the application (September 11, 2024), the city experienced its first rain of measurable quantity, which resulted in significant pooling of water in divots left behind by the material application.

Request for Extended Warranty

Given the observations and issues outlined, we are concerned that the slurry seal may not be performing to the standards expected. To ensure the longevity and performance of the application, we respectfully request an extension of the warranty period by one additional year. This extension will allow us to continue monitoring the performance of the slurry seal and address any issues that may arise.

Let us know if you require any additional information or if a site visit is necessary to discuss in further detail. We appreciate your prompt attention to this matter and look forward to your response.

Please call me at 707-459-4518 if you have any questions.

Sincerely,

SHN

9/17/24



Jason G. Island, PE 64809 Senior Civil Engineer

JGI:amg



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October 14, 2024, Job# 23-016

SHN ENGINEERING 329 Redwood Ave Fort Bragg, CA 95437

Attn: Jason Island

Re: 2022 Street Rehabilitation Project

Project PWP-00120 Argonaut Job#2023-016

Subject: Extended Warranty Response

Dear Jason,

Argonaut has received SHN's extended warranty request, dated September 17, 2024, and passed this request to its subcontractor, American Pavement Systems (APS), the contractor responsible for installing the type II slurry seal on this project.

After careful review, I must inform you that APS, and subsequently Argonaut, cannot extend our warranty beyond what was stipulated in the contract documents at the bidding time. Both APS and Argonaut have already made several concessions to accommodate the City of Fort Bragg, including completing the necessary corrective work, refreshing the striping and crosswalk paint, and accepting the credit requested for the footage of concern. These actions were part of our agreed-upon resolution for closing out the project.

It is important to note that the request for an additional one-year warranty was not included in the original contract and was never discussed before this request. Moreover, extending the warranty on a section of roadway that was credited and not paid for raises further challenges.

Additionally, the use of type II slurry seal in this application creates problems that must be understood during the design phase. The material in question is not intended to be an equivalent replacement for asphalt concrete. At a fraction of the cost, type II slurry does not provide the same structural integrity as asphalt concrete on roadways, especially those including close-quarter parking areas with aggressive turning maneuvers.

We appreciate your understanding of our position and want to reiterate our commitment to fulfilling our obligations under the current agreement. Should you have any further questions or wish to discuss this matter, please do not hesitate to contact us.

Respectfully.

John Carlisle Project Manager

John Carlisle

(707) 332-4002



City of Fort Bragg

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

Text File

File Number: 25-162

Agenda Date: 5/12/2025 Version: 1 Status: Business

In Control: City Council File Type: Staff Report

Agenda Number: 8D.

Consider Approval of the Purchase of Mendocino Community Network (MCN), Acceptance of the Due Diligence Report, and Authorization for the City Manager to Finalize and Execute the

Purchase Agreement; CEQA Exempt 15378(b)(4).



TO: City Council DATE: May 12, 2025

PREPARED BY: Isaac Whippy, City Manager

PRESENTER: Isaac Whippy, City Manager

AGENDA TITLE: Consider Approval of the Purchase of Mendocino Community Network (MCN), Acceptance of the Due Diligence Report, and Authorization for the City Manager to Finalize and Execute the Purchase Agreement to Support the City's

Broadband Utility

RECOMMENDATION

Adopt the attached Resolution approving the purchase of Mendocino Community Network (MCN) for \$300,000, accepting the due diligence report, and authorizing the City Manager to finalize and execute the Purchase Agreement and all necessary documents to transition MCN operations under the City's Broadband Utility.

BACKGROUND

The City of Fort Bragg is moving forward with the development and implementation of a City-owned broadband utility to provide affordable, reliable, and high-speed internet to residents and businesses. The City has already secured over \$10 million in grant funding through the California Public Utilities Commission to build the necessary fiber infrastructure.

As part of the City's broader broadband strategy, staff identified the Mendocino Community Network (MCN), currently operated by the Mendocino Unified School District (MUSD), as a valuable acquisition opportunity. MCN has provided internet services to coastal Mendocino County for over two decades and possesses a robust customer base, operational experience, and regional infrastructure that aligns with the City's vision for an integrated municipal broadband system.

In March 2025, City staff initiated formal due diligence, including a financial and operational review of MCN's assets, agreements, obligations, and customer base. The results of that due diligence are now complete and have informed the terms of the proposed acquisition.

PURCHASE TERMS

Under the negotiated agreement with MUSD, the City will acquire MCN for a total purchase price of \$300,000, payable under the following terms:

- \$100,000 due at the close of the transaction;
- \$50,000 due annually for the following four years.

Additional provisions include:

- Continuation of internet service by MCN to existing customers, including those outside City limits;
- Retention of key MCN staff to support the transition;
- Coordination between MUSD and the City during the operational handoff;
- Use of existing MCN infrastructure and customer billing systems to maintain service continuity.

DISCUSSION AND ANALYSIS

The acquisition of MCN will expedite the launch of the City's Broadband Utility by:

- Leveraging existing infrastructure and customer service operations;
- Reducing startup time and costs associated with building new systems from scratch;
- Immediately establishing a customer base and revenue stream to support the broadband enterprise;
- Enhancing local control and long-term sustainability of internet service in Fort Bragg.

The purchase aligns with the City's adopted Strategic Plan goals to expand digital infrastructure, foster economic development, and ensure equitable access to essential services for all residents.

FISCAL IMPACT/FUNDING SOURCE

The total purchase price for Mendocino Community Network (MCN) is \$300,000. The City will finance this acquisition through a structured debt arrangement, with annual payments of \$100,000 at closing and \$50,000 annually over the next four years.

The debt financing structure uses the General Fund as collateral to secure the financing. While this creates a short-term encumbrance on the General Fund, the obligation is expected to sunset within three years, contingent on the Broadband Utility achieving a sustainable Debt Service Coverage Ratio (DSCR). Once the broadband enterprise demonstrates adequate revenue generation and financial stability, the General Fund will be released from the collateral requirement.

The repayment schedule will be budgeted through the Broadband Utility Fund and is expected to be supported by future utility revenue and secured broadband grant funding. There is no immediate impact to General Fund reserves or operations.

This approach allows the City to move forward with the acquisition without drawing down reserves and with a pathway to shifting the financial liability fully to the Broadband Utility within a three-year horizon.

ENVIRONMENTAL ANALYSIS

The proposed action to purchase Mendocino Community Network (MCN) and transition operations under the City's Broadband Utility is not considered a project under the California Environmental Quality Act (CEQA), as defined in CEQA Guidelines Section 15378(b)(4). This action involves the funding and administrative acquisition of an existing business operation and does not have a potential for a significant effect on the environment.

Future broadband infrastructure projects involving physical construction or ground disturbance may be subject to CEQA review and will be evaluated for environmental compliance at the time those specific projects are brought forward.

STRATEGIC PLAN/COUNCIL PRIORITIES/GENERAL PLAN CONSISTENCY

Broadband deployment aligns with City Council Goals & Strategic Planning 2024-2028+:

Goal 1: INVIGORATE ECONOMIC OPPORTUNITY AND COMMUNITY VIBRANCY

- 1D. Develop and maintain affordable and reliable high-speed fiber-optics infrastructure to support and attract diverse businesses, online education, and remote employment that will connect Fort Bragg to the world.
- Construct, manage, and maintain a municipal broadband utility that provides citywide access to underground networks with industry-leading speeds to provide secondary communications during emergencies and support businesses.
- Consider establishing a broadband Joint Power Agreement with the County to expedite connectivity.
- Provide free Wi-Fi downtown to encourage visitation, support local businesses, and accommodate remote workers

ALERNATIVES:

The City Council may choose to take one of the following alternative actions:

1. Decline to Approve the Purchase – The Council may choose not to approve the acquisition of MCN at this time. This would delay the City's broadband utility implementation and require development of new infrastructure, systems, and

- customer base from the ground up, potentially increasing project costs and timelines.
- 2. Modify the Terms of the Agreement The Council may direct staff to renegotiate specific terms of the purchase agreement, including payment structure, operational responsibilities, or service conditions. Any modification would require concurrence from the Mendocino Unified School District and could delay closing.
- 3. Request Additional Information The Council may continue the item to a future meeting and request additional financial, operational, or legal analysis prior to making a final decision.

Staff does not recommend these alternative actions, as the proposed acquisition provides an immediate opportunity to accelerate implementation of the Broadband Utility in a cost-effective and community-serving manner that is concurrent with the construction timeline.

ATTACHMENTS:

Attachment 1: Resolution

Attachment 2: MCN Due Diligence Report

NOTIFICATION:

- 1. Mendocino Unified School District Superintendent and Board Members
- 2. Mendocino Community Network
- 3. "Notify Me" Subscriber List: Economic Development Planning; Finance & Budgeting; Fort Bragg Downtown Businesses

RESOLUTION NO. -2025

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FORT BRAGG APPROVING THE PURCHASE OF MENDOCINO COMMUNITY NETWORK (MCN) FOR \$300,000 AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS TO FINALIZE THE TRANSACTION AND IMPLEMENT THE CITY'S BROADBAND UTILITY

WHEREAS, the City of Fort Bragg is committed to enhancing broadband access, reliability, and affordability for all residents and businesses; and

WHEREAS, the establishment of a municipal broadband utility is a strategic priority to ensure equitable access to high-speed internet and support economic development, education, and public safety; and

WHEREAS, the City of Fort Bragg has been awarded over \$10 million in grant funding from the California Public Utilities Commission and other sources to support the buildout and implementation of its municipal broadband infrastructure; and

WHEREAS, the Mendocino Community Network (MCN) is a long-standing internet service provider serving residents within and beyond City limits and offers infrastructure, customer base, and operational capacity to support the City's broadband goals; and

WHEREAS, the acquisition of MCN is a key component of the City's long-term broadband utility plan and will accelerate deployment of services, ensure continuity of operations, and leverage existing infrastructure and staffing capacity; and

WHEREAS, the City has completed its due diligence review of MCN and finds the acquisition aligns with the City's broadband strategy and financial planning; and

WHEREAS, the City and the Mendocino Unified School District (MUSD), the current owner of MCN, have negotiated a purchase price of \$300,000, with payment terms consisting of an initial payment of \$100,000 at closing, followed by annual payments of \$50,000 over four years; and

WHEREAS, the agreement includes a provision for MCN to continue operating and serving current customers, including those outside City limits, and to support the City's broadband utility during the transition and implementation period;

WHEREAS, the proposed action to purchase Mendocino Community Network (MCN) and transition operations under the City's Broadband Utility is not a project under the California Environmental Quality Act (CEQA), as defined in CEQA Guidelines Section 15378(b)(4). This action involves the funding and administrative acquisition of an existing business operation and does not have a potential for a significant effect on the environment.

WHEREAS, future broadband infrastructure projects involving physical construction or ground disturbance may be subject to CEQA review and will be evaluated for environmental compliance at the time those specific projects are brought forward.

NOW, THEREFORE, the City Council of the City of Fort Bragg hereby finds, determines, and resolves as follows:

- 1. The recitals set forth above are true and correct and incorporated herein as findings of fact.
- 2. Approves the purchase of Mendocino Community Network (MCN) for \$300,000 under the negotiated payment terms;
- 3. Accepts the findings of the due diligence report regarding the MCN acquisition;
- 4. Authorizes the City Manager to finalize and execute the Purchase Agreement and all necessary documents related to the acquisition;
- 5. Authorizes the City Manager to take all actions necessary to transition MCN operations into the City's Broadband Utility framework;
- 6. Directs staff to incorporate MCN into the City's broadband implementation plan and provide periodic updates to the City Council.

	solution was introduced by Councilmember onded by Councilmember, and
passed and adopted at a regu	ular meeting of the City Council of the City of Fort
Bragg held on the 12th day o	f May, 2025, by the following vote:
AYES:	
NOES:	
ABSENT:	
ABSTAIN:	
RECUSED:	
	JASON GODEKE
	Mayor
	Mayor
ATTEST:	
	_
Diana Paoli	
Citv Clerk	

AGREEMENT FOR PURCHASE AND SALE OF ASSETS

This agreement ("Agreement") is made as of __[date]__, at Fort Bragg, California, among the City of Fort Bragg ("City" or "Buyer"), a California municipal corporation, having its principal office at 416 North Franklin Street, Fort Bragg, CA 95437 and the Mendocino Unified School District ("District" or "Seller"), having its principal office at 44141 Little Lake Road, Mendocino, CA, 95460. City and District are collectively referred to in this Agreement as "Parties."

RECITALS

- A. District is the owner and operator of an internet service provider business known as Mendocino Community Network ("MCN")
- B. City wishes to purchase MCN from District and District wishes to sell MCN to City, on the terms and subject to the conditions of this Agreement in exchange for the consideration from City described in Section 3.
- C. It is the intent of the Parties that all existing services provided by MCN to customers outside of Fort Bragg will be continued in their current form as long as they remain financially viable, or until another service provider is identified and customers are offered comparable service. The City will conduct regular financial reviews to ensure sustainability.

AGREEMENT

In consideration of the mutual covenants, agreements, representations, and warranties contained in this Agreement, the parties agree as follows:

- **1. Definitions.** As used in this Agreement, the following defined terms have the following meanings:
 - a. "Closing" has the meaning set forth in Section 8 of this Agreement.
 - b. "Closing Date" has the meaning set forth in Section 8 of this Agreement.
 - c. "Encumbrance" means any lien, pledge, hypothecation, charge, mortgage, deed of trust, security interest, encumbrance, claim, infringement, option, right of first refusal, preemptive right, community property interest, or restriction of any nature on any asset;
 - d. "Entity" means a Person other than an individual;
 - e. "Governmental Authority" means any federal, state, local, or foreign court, administrative agency or commission, or other governmental authority or instrumentality;
 - f. "Intellectual Property Rights" means, collectively, all of the following worldwide intangible legal rights, acquired by ownership, license, or other legal operation: (1) all patents, patent applications, and patent rights, including all continuations, continuations-in-part, divisions, reissues, reexaminations, and extensions of them; (2) all trademarks, trade names, logos, and service marks, registered or not; (3) all rights associated with

works of authorship, including copyrights (registered or not), copyright applications, copyright registrations, moral rights, mask work rights, mask work applications, and mask work registrations; (4) all inventions (patentable or not), know-how, show-how, formulas, processes, techniques, confidential business information, trade secrets, and other proprietary information, technology, and intellectual property rights; and (5) all rights to sue or make any claims for any past, present, or future misappropriation or unauthorized use of any of the foregoing rights and the right to receive income, royalties, damages, or payments that are now or will later become due with regard to the foregoing rights.

- g. "Person" means any individual, District, partnership, estate, trust, company (including any limited liability company), firm, or other enterprise, association, organization, or Governmental Authority;
- h. "Proceeding" means any claim, action, suit, investigation, or administrative or other proceeding before any Governmental Authority or any arbitration or mediation:
- i. "Taxes" means any and all federal, state, local, or foreign taxes, assessments, and other governmental charges, duties, impositions, and liabilities relating to taxes of any kind, together with all interest, penalties, and additions imposed with respect to such amounts.
- 2. Sale and Transfer of Assets. Subject to the terms and conditions set forth in this Agreement, at the Closing, District shall sell, convey, transfer, assign, and deliver to City, and City shall purchase from District, all rights and title to, and interest in, the assets, properties, and business of District of every kind, character, and description, whether tangible, intangible, real, personal, or mixed, and wherever located, all of which are sometimes collectively referred to as the Assets, free and clear of all Encumbrances, including the following:
 - a. Cash equivalents and receivables;
 - b. Network infrastructure (fiber, cables, routers, etc.)
 - c. Customer contracts and agreements
 - d. /20 of ARIN Assigned IP Space: (216.150.240.0/20)
 - e. All internet domain names and registrations that are held or owned by District, including mcn.org and mcndigital.org
 - f. All inventory, finished goods, supplies, materials, and works in progress;
 - g. All office equipment, machinery, and furniture;
 - h. All claims and rights under leases, contracts, insurance policies, notes, evidences of indebtedness, and purchase and sales orders;

- i. All software programs, software code and technical documentation for all software program owned or licensed by District;
- j. All copies and tangible embodiments of the software programs and software code (in source and object code form), together with all documentation related to such programs and code;
- k. All Intellectual Property Rights exercisable or available in any jurisdiction of the world, and the exclusive right for City to hold itself out to be the successor to the business of District;
- I. All licenses to assets and properties of third parties (including licenses with respect to Intellectual Property Rights owned by third parties);
- m. Claims, causes of actions, royalty rights, deposits, and rights and claims to refunds (including Tax refunds) and adjustments of any kind (including rights to set-off and recoupment), and insurance proceeds;
- n. All franchises, permits, licenses, agreements, waivers, and authorizations from, issued, or granted by any Governmental Authority, where applicable;
- True and complete copies of District's business records for MCN, including general and financial records, marketing and sale information, and plans, pricing, and customer lists;
- p. All goodwill associated with District's MCN business and the Assets.
- q. Provided however, that notwithstanding the foregoing, the Assets shall not include, and City shall not purchase from District, nor shall District sell to City, any of the following assets or properties:
 - i. Those assets disposed of by District in the ordinary course of its business or as permitted by this Agreement during the time period beginning on the date of this Agreement and ending on the Closing Date:
 - ii. The cash and other property under this Agreement; and
 - iii. Amounts paid before the Closing Date for expenses incurred by District in negotiating this Agreement and in performing obligations and satisfying conditions under it, including any contemplated dissolution or liquidation of District.
- 3. Consideration From City at Closing. As full payment for the transfer of the Assets to City, City shall deliver to District at the Closing, the following (collectively, the Purchase Price):
 - a. A total purchase price of Five-Hundred Thousand Dollars (\$300,000.00) payable at closing by cash in the amount of One-Hundred Thousand Dollars (\$100,000) and a note to District in the amount of Two-Hundred Thousand Dollars (\$200,000.00) payable in annual installments of Fifty-Thousand Dollars (\$50,000.00) per year for 4 years.

- b. Payment of the funds due at closing will be completed in accordance with wire transfer instructions delivered by District to City at least 2 business days before Closing, in the amount of \$100,000.
- c. City's promissory note, dated as of the Closing Date, in the principal amount of \$200,000. This note shall be in the form of Exhibit 1.
- d. Failure of the City to pay the promissory note according to the agreed-upon terms constitutes a material breach of this Agreement. In addition to other breach of contract remedies available to the District, the City shall be assessed a 10% penalty for any late or missed payment.
- 4. Assumption of Liabilities. From and after the Closing, City shall assume all of District's rights and obligations arising after the Closing under those contracts (and only those contracts) provided, that City shall not be obligated to assume any such contract for which assignment to City requires the consent of the other party to such contract unless such consent has been obtained in writing and delivered to City on or before the Closing Date. District shall remain liable for all obligations arising under such contracts before the Closing. District shall have the right to require City to complete any sales order not assumed by City in that exhibit for District's account at a price to District equal to City's cost. It is expressly understood and agreed that City shall not be liable for any of the debts, obligations, or liabilities of District of any kind other than those specifically assumed by City under this paragraph and that District shall remain liable and responsible for any and all of its debts, obligations, and liabilities not expressly assumed by City under this Agreement.
- 5. Excise and Property Taxes. District shall pay all sales, use, and similar Taxes arising from the transfer of the Assets (other than Taxes on a party's income) and shall pay its portion, prorated as of the Closing Date, of state and local real and personal property Taxes of the business. City shall not be responsible for any business, occupation, withholding, or similar Tax, or any Taxes of any kind incurred by District related to any period before the Closing Date.

6. Representations and Warranties of District.

a. Authorization of District. District has all requisite power and authority to enter into this Agreement, perform its obligations hereunder and consummate the transactions contemplated hereby, and the execution and delivery of this Agreement, and any the general conveyance, assignment, bill of sale, and/or other assignment and closing documents in accordance with Section 8 hereof, and the consummation of the transactions contemplated hereby and the compliance by District with the terms of this Agreement do not and will not (i) conflict with or result in a breach of any term of, or constitute with the lapse of time or delivery of notice (or both) a default under, any agreement or instrument to which District is a party or by which District or any of the Assets are bound, or (ii) result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the Assets. This Agreement constitutes a valid and binding obligation of District, enforceable in accordance with its terms. With the exception of the Mendocino County LAFCO, no consent or approval of or notice to or other action by any federal,

- state, or local governmental entity or agency or any other person or entity is required in connection with the execution and delivery of the Agreement or the consummation of the transactions contemplated herein.
- b. Title to the Assets. Effective as of the execution of this Agreement, District shall have good and marketable title to the Assets, free and clear of all liens, mortgages, pledges, encumbrances, security interest, equities, and restrictions of any nature whatsoever. This Agreement gives City marketable title to the Assets, free and clear of all liens, mortgages, pledges, encumbrances, security interests, charges, and equities of any nature whatsoever as of the effective date.
- c. Litigation. There is no claim, litigation, action, suit, proceeding, investigation, or inquiry, administrative or judicial, pending or, to the best of District's knowledge, threatened against District involving the Assets, at law or in equity, before any federal, state, or local court or regulatory agency, or other governmental authority.
- d. Business Assets. No personal property used by District in connection with the operation of the Business is held under any lease, security agreement, conditional sales contract, or other title retention or security arrangement, or is located other than in the possession of District. District assigns to City all warranties relating to the equipment.
- e. Employment Contracts. There are no employment contracts, collective bargaining agreements, pension, retirement, bonus, profit-sharing, stock option, or other plan, agreement or arrangement providing for remuneration or benefits for employees of MCN to which District is bound.
- f. Liabilities. All accounts payable and other liabilities due on or before the Closing Date which might materially affect the Assets or City's ability to transact business shall be paid in full on or before the Closing. Notwithstanding the foregoing, if a liability incurred by District prior to Closing in connection with the Business has not become due and payable as of the Closing Date and is not specifically assumed by City hereunder, District shall promptly pay any such liability once due and payable. In the event District fails to pay any such liability, the amount of such liability shall be subject to City's right to seek reimbursement pursuant to this Agreement.
- g. Financial Statements. District has provided City with the last three years of financial statements for District's business. District represents they are accurate in all material respects and reflect the financial standing of District's business for the applicable periods to the best of District's knowledge.
- h. Disclosures. District has disclosed to City all material facts concerning the assets and the business operations of Mendocino Community Network and has disclosed all facts necessary to make any such disclosure to City not misleading.
- i. Conduct of Business. Prior to execution of this Agreement, District shall conduct the operation of the Business in the ordinary course. District shall

- make no extraordinary transactions or expenditures during such period without the prior written consent of City.
- j. District has complied in all material respects with all federal, state, and local statutes, laws, and regulations. District has not received any notice asserting any violation by either of them of any statute, law, or regulation that has not been remedied before the date of this Agreement
- k. District's Creditors. District represents and warrants that the transactions described in this Agreement have been undertaken by them in good faith, considering its obligations to any person or entity to whom District owes a right to payment in association with the Business, whether or not the right to payment is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured (collectively such persons with such claims are called "creditors" under this paragraph), and District has undertaken these transactions without any intent to hinder, delay, or defraud any such creditors, and either has disclosed in the ordinary course of business or will undertake to disclose to all such creditors associated with the Business the existence of this transaction, and Districts has not and will not conceal this transaction or the proceeds of this transaction from any such creditors.

7. Representations and Warranties of City.

- a. City represents and warrants to District that City is an entity in good standing; City has all requisite power and authority to enter into this Agreement and perform their obligations hereunder; City has taken all action necessary to enable City to execute and deliver this Agreement, acquire the Assets from District and otherwise carry out their obligations under this Agreement; and this Agreement constitutes the valid and binding obligation of City enforceable in accordance with its terms.
- b. Further, the execution and delivery of this Agreement, the other documents to be delivered by City in connection herewith, the consummation of the transactions contemplated hereby and the compliance by City with the terms of this Agreement do not and will not conflict with, result in a breach of any term of, or constitute with the lapse of time or notice or delivery of notice (or both) a default under, City's ordinances or any agreement or instrument to which City is a party.
- c. With the exception of the Mendocino County LAFCO, no consent or approval of or notice to or other action by any federal, state, or local governmental entity or agency, or any other person or entity, is required in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated herein.

8. Closing Date; Closing Obligations.

a. For purposes of this Agreement, the "Closing" shall be defined as the consummation of the transaction contemplated by this Agreement and "Close of Escrow" shall be defined as the date that the City delivers the cash payment and the promissory note to the District.

- b. The Closing Date shall be June 30th, 2025.
- c. On or prior to the Closing Date, District shall deliver to City:
 - i. The Assets;
 - ii. A current tax certificate from the county treasurer relating to the personal property to be conveyed hereunder showing that property taxes are current; and
 - iii. Evidence reasonably satisfactory to City that District's payroll withholding taxes owed to the Internal Revenue Service, the State of California, and any other applicable entity have been paid in full, or arrangements therefor has been made, and that all other creditors of District have been paid in full.
 - iv. District shall present to City originally executed releases of all liens attached to the assets as of the Closing.
 - v. District shall also execute and deliver to City at the Closing or at any time and from time to time thereafter such other and further documents and instruments of conveyance, bill of sale, assignment, or transfer, and shall take, or cause to be taken, such other or further actions as City may reasonably request to vest more fully, confirm or evidence in City title to all or any part of the Assets.
- d. On or prior to the Closing Date, City shall deliver to District:
 - i. The cash payment in the amount of \$100,000.
 - ii. The fully executed promissory note in the amount of \$200,000.
- e. The obligations of City to consummate the transactions contemplated by this Agreement are subject to all representations and warranties of District being true on the Closing as though made at that time and District having performed and satisfied all covenants, agreements and conditions required by this Agreement.
- f. The obligations of City to consummate the transactions contemplated by this Agreement are subject to the condition that MCN's assets and business operations remain materially unchanged through the closing date.
- g. The obligations of District to consummate the transactions contemplated by this Agreement are subject to all representations and warranties of City being true on the Closing as though made at that time and City having performed and satisfied all covenants, agreements and conditions required by this Agreement.
- h. District's signature on this Agreement constitutes a Bill of Sale and Assignment conveying the assets to City free and clear of all security interests, liens, charges, and encumbrances whatsoever.
- The City of Fort Bragg will onboard MCN employees to positions with the City of Fort Bragg at greater or equal to the same rate of pay, subject to a 6month probationary period in compliance with the City of Fort Bragg personnel policies.

- j. The Parties will negotiate in good faith the terms of a transition plan for the MCN business operations which at a minimum will address i) a transition team designated to oversee the transition process; ii) a detailed timeline with milestones for the transfer of assets, migration of services, and integration of employees,; and iii) a Customer Communication for notifying customers about the change and ensuring uninterrupted service.
- **9. Post closing service obligations of the City.** The City shall continue to provide the following services to the District:
 - a. Existing Digital Voice Telephone Service to the Mendocino Unified School District will continue at the current rate, excluding changes in taxes, until all payments from the City of Fort Bragg have been completed.
 - b. Staff Email Accounts for District staff will be provided at no charge until all payments from the City have been completed.
- **10. Facility Rental.** The city may use the current MCN facility free of charge for the first three months (July 1st, 2025 September 30th, 2025) and \$2500/month from October 1st, 2025 December 31st, 2025. The City will be responsible for all utility payments during the entire time they are using the current MCN facility.
- **11. Risk of Loss.** In the event the Assets shall be damaged by fire or other casualty prior to the Closing Date, this Agreement may be terminated at the option of City as City's sole remedy.
- **12. Survival.** Notwithstanding any investigation conducted at any time with regard thereto, all representations and warranties of District and City in this Agreement shall survive the Closing date and the execution, delivery, and performance of this Agreement.

13. Hold Harmless.

- a. Seller shall defend (with counsel reasonably acceptable to City), indemnify and hold City and its councilpersons, officers, attorneys, agents, contractors, and employees (collectively, the "Indemnified Parties") harmless from and against all losses, costs and expenses (including, without limitation, reasonable attorneys' fees and costs), damages (including, without limitation, consequential damages), claims and liabilities arising from and against any challenges to the validity of this Agreement. The obligations of Seller under this Section shall survive the expiration or any earlier termination, as applicable, of this Agreement.
- b. Each party shall defend (with counsel reasonably acceptable to the other), indemnify and hold the other party and its councilpersons, board members, officers, attorneys, agents, contractors, and employees (collectively, the "Indemnified Parties") harmless from and against all losses, costs and expenses (including, without limitation, reasonable attorneys' fees and costs), damages (including, without limitation, consequential damages), claims and liabilities arising from this Agreement, excluding liability due to the Indemnified Parties' conduct and any challenge to the validity of this Agreement as more specifically set forth in subparagraph a. above. The obligations under this Section shall survive the expiration or any earlier termination, as applicable, of this Agreement.

14. Limited Assumption of Obligations; Indemnification.

- a. Buyer shall not, by the execution and performance of this Agreement or otherwise, assume or otherwise be responsible for any liability or obligation of any nature of Seller, or claims of such liability or obligation, matured or unmatured, whether arising out of occurrences prior to, at or after the execution of this Agreement except for those obligations and liabilities expressly set forth herein. Notwithstanding the foregoing, after Closing, Buyer may, at its option and in its sole discretion, elect to pay any unpaid obligation of Seller incurred by Seller in connection with the Business prior to Closing, provided that Seller's third party creditor has made a claim against Buyer with respect to such unpaid obligation or the obligation otherwise may have an adverse impact on Buyer, and Buyer shall have provided Seller with a reasonable opportunity to pay or contest the obligation to pay the same. In the event Buyer makes such payment, Buyer shall have the right to seek reimbursement from Seller for all such payments. Notwithstanding the foregoing, if Buyer, in its reasonable prudent judgment, determines an immediate payment is required so as not to adversely affect the operation of the Business, such notice to Seller shall not be required.
- b. Notwithstanding any investigation at any time made by or on behalf of Buyer, Seller agrees to defend and indemnify Buyer, Buyer's members, managers, officers, successors and assigns harmless from and against any and all losses, claims, causes of action, suits, demands, damages, liabilities, expenses, and costs of any kind or amount whatever (including reasonable attorneys' fees), whether matured or contingent, whether accrued or to accrue, whether known or unknown, which results, either before, on or after Closing, from:
 - Any material inaccuracy in any representation or breach of any warranty of Seller under this Agreement or failure by Seller, under this Agreement or failure by Seller, after ten (10) days written notice, to perform and observe any term, provision, covenant, agreement, or condition under this Agreement;
 - ii. Any liability of Seller not assumed by Buyer as transferee of the Assets;
 - iii. Any material misrepresentation in, or any omission from any certificate or other document furnished or to be furnished by or on behalf of Seller pursuant to the terms of this Agreement; or
 - iv. Any event or occurrence related to the Business happening or arising on or prior to Closing.
- c. Notwithstanding any investigation at any time made by or on behalf of Seller, Buyer agrees to defend and indemnify Seller and Seller's members, managers, officers, successors and assigns harmless from and against any and all losses, claims, causes of action, suits, demands, damages, liabilities, expenses, and costs of any kind or amount whatever (including reasonable attorneys' fees), whether matured or contingent, whether accrued or to

accrue, whether known or unknown, which results, either before, on or after the Closing Date, from:

- Any contractual obligations of Seller assumed by Buyer pursuant to this Agreement and related to events or occurrences happening or arising after the Closing Date;
- ii. Any material inaccuracy in any representation or breach of any warranty of Buyer under this Agreement or failure by Buyer after ten (10) days written notice, to perform and observe any term, provision, covenant, agreement, or condition under this Agreement;
- iii. Any material misrepresentation in, or any omission from any certificate or other document furnished or to be furnished by or on behalf of Buyer pursuant to the terms of this Agreement;
- iv. Any event or occurrence relating to the operations of Buyer happening or arising on or after Closing.

15. Disputes.

- a. If a party has a dispute with the other party, the aggrieved party must promptly notify the other party of the dispute in writing and provide sufficient documentation to enable the other party to intelligently evaluate the claim.
- b. If the parties are unable to resolve any dispute within fourteen days of notice, they agree to participate in non-binding mediation, with each party to pay one-half the mediation costs. This is a prerequisite to the filing of any lawsuit.
- **16. Litigation / Venue / Waiver of Jury**. The exclusive venue for any legal action arising out of this Agreement shall be in Mendocino County unless change of venue is agreed to in writing by both parties. The parties waive trial by jury.
- 17. Attorneys' Fees and Costs. If the services of any attorney are required by any party to secure the performance of this Agreement or otherwise upon the breach or default of another party, or if any judicial remedy or arbitration is necessary to enforce or interpret any provisions of this Agreement or the rights and duties of any person in relation to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and other expenses, in addition to any other relief to which such party may be entitled. Prevailing party includes (a) a party who dismisses an action in exchange for sums allegedly due; (b) the party that receives performance from the other party of an alleged breach of covenant or a desired remedy, if it is substantially equal to the relief sought in an action; or (c) the party determined to be prevailing by a court of law.

Whenever provision is made in this Agreement for the payment of attorney's fees, such fees shall be payable whether the legal services are rendered by a salaried employee for the party or by independent counsel and shall include such fees as are incurred in connection with any pretrial proceeding, trial or appeal of the action. Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law.

18. No Broker. District and City each represent and warrant to the other that the warranting party has had no dealing with any dealer, broker, or agent to entitle such

dealer, broker or agent to any commission or fee in connection with the sale of the Assets to City. If for any reason any such commission or fee shall become due, the party dealing with such dealer, broker or agent shall pay any such commission or fee and agrees to indemnify and save the other party harmless from all claims for any such commissions or fees and from any attorneys' fees and litigation or other expenses relating to any such claim.

- 19. Entire Agreement. This Agreement embodies the entire agreement and understanding of the parties hereto with respect to the subject matter herein contained. All prior discussions are merged into this Agreement. There are no promises or representations other than those set forth in this Agreement.
- **20. Exhibits**. The Exhibits attached hereto are hereby incorporated herein by this reference for all purposes.
- 21. Required Actions of Buyer and Seller. Buyer and Seller agree to execute such instruments and documents and to diligently undertake such actions as may be required in order to consummate the purchase and sale herein contemplated and shall use good faith efforts to accomplish the Close of Escrow in accordance with the provisions hereof.
- **22. Time of Essence**. Time is of the essence of each and every term, condition, obligation and provision hereof.
- **23. Captions**. The section headings of this Agreement are inserted for convenience only and shall not constitute a part of this Agreement in construing or interpreting any provision hereof.
- **24. Expenses of Transactions**. Districts shall pay all costs and expenses incurred by it in connection with this Agreement, including without limitation, the fees, and expenses of its professional advisors. City shall pay all costs and expenses incurred by it in connection with this Agreement, including without limitation, the fees and expenses of their professional advisors.
- **25. Waiver**. No waiver of any of the provisions or conditions of this Agreement or any of the rights of a party hereto shall be effective or binding unless such waiver shall be in writing and signed by the party claimed to have given or consented thereto.
- **26. Modification**. No modifications of this Agreement shall be binding unless they are in writing and signed by the parties.
- **27. Governing Law**. The laws of the State of California govern this Agreement.
- 28. Jointly Drafted. It is agreed among the parties that this Agreement was jointly negotiated and jointly drafted by the Parties and their respective counsel, and that it shall not be interpreted or construed in favor of or against any party solely on the ground that it drafted the Agreement. It is also agreed and represented by all Parties that said Parties were of equal or relatively equal bargaining power and that in no way whatsoever shall this Agreement be deemed to be a contract of adhesion, or unreasonable or unconscionable.

- 29. Independent Legal Counsel. Each party acknowledges that it has been represented by independent legal counsel of its own choice throughout all of the negotiations that preceded the execution of this Agreement or has knowingly and voluntarily declined to consult legal counsel, and that each Party has executed this Agreement with the consent and on the advice of such independent legal counsel.
- 30. Further Cooperation. The parties herein agree to execute any and all agreements, documents or instruments as may be reasonably necessary in order to fully effectuate the agreements and covenants of the Parties contained in this Agreement, or to evidence this Agreement as a matter of public record, if required to fulfill the purposes of this Agreement. The Parties further agree to mutually cooperate with one another in carrying out the purposes of this Agreement.
- **31. Binding Effect**. This Agreement shall be binding upon, and inure to the benefit of the parties and their respective legal representatives, heirs, successors and permitted assigns.
- **32. No Third-Party Beneficiaries**. Nothing herein, expressed or implied, is intended or shall be construed to confer upon or give to any person, firm, District, or legal entity, other than the parties hereto, any rights, remedies, or other benefits under or because of this Agreement.
- 33. Counterparts/Facsimile. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute the same instrument. This Agreement may be signed and transmitted electronically, and the parties agree that their signatures which are copies on the transmitted documents shall be binding as if they were original signatures.
- **34. Transmission by E-mail**. Any and all documents to be executed by any Party (including this Agreement) may when executed be transmitted to the other Party and to Escrow Holder (as applicable) by e-mail and such transmission shall constitute delivery of such document.
- **35. Partial Invalidity**. If any portion of this Agreement as applied to either Party or to any circumstances shall be adjudged by a court to be void or unenforceable, such portion shall be deemed severed from this Agreement and shall in no way effect the validity or enforceability of the remaining portions of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Execution Date.

[Signatures on next page]

"CITY"		CITY OF FORT BRAGG, CA a California Municipal Corporation
Date:	, 2025	By:
		Mayor
		Attest:
		Ву:
		City Clerk
		Approved as to form:
		Jones & Mayer
		By: Baron J. Bettenhausen, Esq. City Attorney
"DISTRICT"		MENDOCINO UNIFIED SCHOOL DISTRICT
Date:	, 2025	By:
		Approved as to form:
		By: MUSD General Counsel

PROMISSORY NOTE (Mendocino Community Network Purchase)

\$200,000

Fort Bragg, California May 6, 2025

FOR VALUE RECEIVED, the City of Fort Bragg, a California municipal corporation (the "Borrower"), promises to pay to the Mendocino Unified School District ("MUSD"), or order, the principal sum of Two-Hundred Thousand Dollars (\$200,000.00) payable in annual installments of Fifty-Thousand Dollars (\$50,000.00) per year for 4 years, pursuant to that certain Agreement for Purchase and Sale of Assets dated XXXX , as may be amended or implemented from time to time (collectively, the "Purchase Agreement").

- 1. <u>Borrower's Obligation</u>. This promissory note (the "Note") evidences the Borrower's obligation to pay the MUSD the principal amount of Two-Hundred Thousand Dollars (\$200,000.00) payable in annual installments of Fifty-Thousand Dollars (\$50,000.00) per year for 4 years (the "Loan" or the "MUSD Loan"), for the balance of the purchase price to finance the purchase of the Mendocino Community Network, ("MCN") from MUSD pursuant to the Agreement for Purchase and Sale of Assets dated XXXX (the "MCN Purchase Agreement"). All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the MCN Purchase Agreement.
- 2. <u>Interest</u>. The outstanding principal balance of this Note shall bear no interest provided, however, if an Event of Default occurs, interest on the principal balance shall begin to accrue, as of the date of the Event of Default (following expiration of applicable notice and cure periods), and continuing until such time as the Loan funds are repaid in full or the Event of Default is cured, at the default rate of ten percent (10%) compounded annually, or the highest rate permitted by law (whichever is lower).

3. Term and Repayment Requirements.

- (a) The term of this Note (the "Term") shall commence on the date set forth above and shall expire on the on the fifth (5th) anniversary of the effective date of the MCN Purchase Agreement or the date of an Event of Default as provided in Section 3(b) below.
- (b) Subject to the provisions of subsection (d) below, all principal and interest, if any, on the Loan shall, at the option of the MUSD, be due and payable upon the earliest of: (i) the occurrence of an Event of Default (following the expiration of any applicable notice and cure periods) for which the MUSD exercises its right to cause the MUSD Loan indebtedness to become immediately due and payable; or (ii) the expiration of the Term.

- (c) The Borrower shall make annual repayments of the MUSD Loan in an amount equal to Fifty Thousand and 00/100 Dollars beginning on or before the first anniversary date of the effective date of the MCN Purchase Agreement, and thereafter annually on or before the subsequent anniversary date of the effective date of the MCN Purchase Agreement, all in accordance with the MCN Purchase Agreement.
- (d) The Borrower shall have the right to prepay the MUSD Loan at any time without penalty or additional charge.
- 4. <u>No Assumption</u>. This Note shall not be assumable by the successors and assigns of Borrower without the prior written consent of the MUSD (which shall not be unreasonably withheld, delayed, or conditioned, except as otherwise set forth in the MCN Purchase Agreement.

5. Terms of Payment.

- (a) All payments due under this Note shall be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.
- (b) All payments on this Note shall be paid to the MUSD at the following address: 44141 Little Lake Road, Mendocino, CA, 95460, or to such other place as the MUSD may from time to time designate in writing.
- (c) All payments on this Note shall be without expense to the MUSD, and the Borrower agrees to pay all costs and expenses, including re-conveyance fees and reasonable attorney's fees of the MUSD, incurred in connection with the payment of this Note and the release of any security hereof.
- (d) Notwithstanding any other provision of this Note, or any instrument securing the obligations of the Borrower under this Note, if, for any reason whatsoever, the payment of any sums by the Borrower pursuant to the terms of this Note would result in the payment of interest which would exceed the amount that the MUSD may legally charge under the laws of the State of California, then the amount by which payments exceeds the lawful interest rate shall automatically be deducted from the principal balance owing on this Note, so that in no event shall the Borrower be obligated under the terms of this Note to pay any interest which would exceed the lawful rate.

6. Default.

- (a) Any of the following shall constitute an "Event of Default" under this Note:
- (i) Any failure to pay, in full, any payment required under this Note when due following written notice by the MUSD of such failure and ten (10) days opportunity to cure;

- (ii) Any failure in the performance by the Borrower of any other term, condition, provision or covenant set forth in the MCN Purchase Agreement subject to the applicable notice and cure period set forth therein; and
- (b) Upon the occurrence of such an Event of Default, the entire unpaid principal balance, together with all interest thereon, and together with all other sums then payable under this Note and the Deed of Trust shall at the option of the MUSD become immediately due and payable upon written notice by the MUSD to the Borrower without further demand.
- (c) The failure to exercise the remedy set forth in subsection 7(b) above or any other remedy provided by law upon the occurrence of one or more of the foregoing events of default shall not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other default. The acceptance by the MUSD hereof of any payment which is less than the total of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of the MUSD, except as and to the extent otherwise provided by law.

7. Waivers.

- (a) The Borrower hereby waives diligence, presentment, protest and demand, and notice of protest, notice of demand, and notice of dishonor of this Note. The Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time, and that the MUSD may accept further security or release any security for this Note, all without in any way affecting the liability of the Borrower.
- (b) No extension of time for payment of this Note or any installment hereof made by agreement by the MUSD with any person now or hereafter liable for payment of this Note shall operate to release, discharge, modify, change or affect the original liability of the Borrower under this Note, either in whole or in part.
- (c) The obligations of the Borrower under this Note shall be absolute and the Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

8. Miscellaneous Provisions.

(a) All notices to the MUSD or the Borrower shall be given to Borrower at 416 North Franklin Street, Fort Bragg, CA 95437 and to MUSD at 44141 Little Lake Road, Mendocino, CA, 95460, or to such addresses as the MUSD and the Borrower may hereinafter designate.

- (b) The Borrower promises to pay all costs and expenses, including reasonable attorney's fees and other professional service fees and costs, incurred by the MUSD in the enforcement of the provision of this Note, regardless of whether suit is filed to seek enforcement.
- (c) This Note may not be changed orally, but only by an agreement in writing signed by the Party against whom enforcement of any waiver, change, modification or discharge is sought.
- (d) This Note shall be governed by and construed in accordance with the laws of the State of California.
- (e) The times for the performance of any obligations hereunder shall be strictly construed, time being of the essence.
- (f) This Note, together with the MCN Purchase Agreement, contain the entire agreement between the Parties as to the MUSD Loan.

Signatures on Following Page

Borrower has executed this Note as of the date first written above.

BURRUWER:
CITY OF FORT BRAGG, CA., a California Municipal Corporation
By:
Mayor
Attest:
By:
City Clerk
Approved as to form:
Jones & Mayer
By: Baron J. Bettenhausen, Esq. City Attorney
"MUSD"
Date:, 2025
MENDOCINO UNIFIED SCHOOL DISTRICT
By:
Approved as to form: By: MUSD General Counsel
MUSD General Counsel

Due Diligence Report for MCN Acquisition

Prepared for:

City of Fort Bragg and Mendocino Unified School District

Prepared by:



Level Up Office Pro LLC – Sage Statham

Date: May 1st, 2025

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Executive Summary

This report summarizes findings from the due diligence review of the proposed acquisition of Mendocino Community Network (MCN), currently operated by the Mendocino Unified School District. The acquisition supports the City of Fort Bragg's strategic goal to build a municipally owned broadband network that delivers affordable, reliable, high-speed internet services to residents and businesses.

The analysis highlights MCN's operational potential alongside its structural and financial vulnerabilities. Despite strong customer loyalty and digital service offerings, MCN has experienced consistent operating losses and declining net position.

From FY20-21 through FY22-23, MCN showed resilience and financial recovery following the COVID-19 pandemic—despite its ineligibility for federal PPP assistance. However, a significant decline in FY23-24, both in net position and operating margin, as well as projected current year totals signals a reversal in this trend. Coupled with limited internal financial reporting in recent years, underscore the need for careful transition planning and fiscal oversight under City ownership.

Transaction Background and Objectives

The Mendocino Unified School District has agreed to transfer MCN to the City of Fort Bragg for \$500,000, payable over ten years. The City's objective is to modernize and expand broadband infrastructure, using MCN's assets as a foundation for municipal fiber deployment. The agreement includes operational assets, customer relationships, and staff.

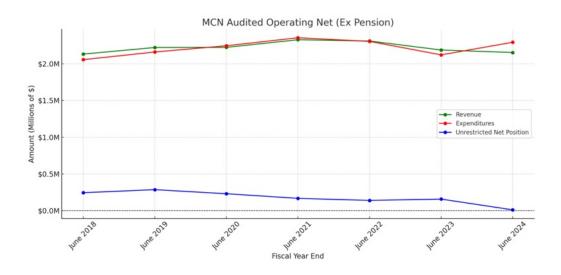
Financial Overview and Analysis

Revenue and Expense Trends

From FY17-18 through FY19-20, MCN had consistent financial performance, with operating revenue between \$2.1 million and \$2.3 million and modest year-end surpluses. During this time, the organization invested in fixed wireless infrastructure to support the launch of its Open Air service, which became operational in early FY20-21. These investments increased service and supply costs but were intended to transition MCN to a leaner, internally managed broadband model with stronger margins. In recent years operating losses became recurring, driven not by revenue decline but by a failure to scale down expenditures in line with the simplified Open Air service structure. By FY23-24, the organization recorded a \$167,531 loss and unrestricted net

position had fallen to just \$12,703, down from \$287,094 in FY18-19. These results reflect not only a structural imbalance between revenue and spending, but a lack of fiscal response to evolving business conditions.

In FY24–25 to date, actual monthly revenue has ranged from \$180K to \$193K, trailing the budgeted targets of \$210K+. Meanwhile, monthly expenses have consistently exceeded revenue, peaking near \$219K. This persistent gap has led to sustained monthly deficits and limits MCN's financial resilience. While MCN has not produced formal cash flow forecasts, it has implemented a price increase in an effort to improve revenue. However, this measure also carries risk, as it may accelerate customer attrition, particularly among Fusion users. Some of the revenue from the price increase began in March and the rest in April so we do not yet have accurate numbers on how this has impacted their financial trend.

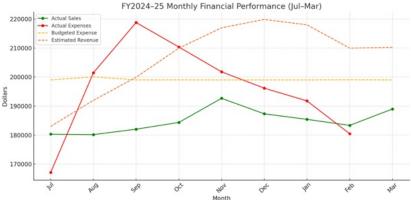


Source Data: Appendix A - MCN Audited Operating Net

Year-end data for FY23-24 shows that the Total Net Position (excluding pension) declined from \$198,111 in FY22-23 to just \$30,580—a drop of over \$167K. While the school district's broader solvency supports the fund's viability, this decline illustrates an unsustainable financial trajectory within the MCN operation itself.

Q1 and Q2 of FY2025 further illustrate this trend:

• Fiscal	Total Income	Total Expenses	Net Income
Quarter		_	
Q1 (Jul-Sep 2024)	\$540,650.33	\$570,087.00	-\$29,436.67
Q2 (Oct–Dec 2024)	\$564,725.92	\$616,766.00	-\$52,040.08
Q3 (Jan – Mar 2025)	\$557,766.54	-	



Net Position

The net position excluding pension for the period ending June 2024 was \$30,580—down significantly from \$198,111 in June 2023, marking a year-over-year decline of \$167,531. This shift followed three years of post-pandemic stabilization and signaled the beginning of a downward financial trend. That decline continued into FY24-25, with net losses of \$29,436.67 in Q1 and \$52,040.08 in Q2, resulting in a fully eroded net position and the fund now operating at a deficit. As operations transition from the school district to the City, this financial trajectory underscores the importance of a proactive stabilization strategy to ensure long-term sustainability under City management.



Source Data: Appendix B - MCN Audited Net Position

Valuation Estimate

The following valuation represents an updated estimate of MCN's fair market value based on tangible assets, customer goodwill, and identified liabilities. While MCN holds meaningful operational assets and an active customer base, the current financial trajectory, infrastructure age, and operational liabilities reduce its net valuation.

Asset Category	Estimated Value	Notes
IPv4 Address Block (/20)	\$160,000	Based on current secondary market valuations
Capital Equipment	\$100,000	Includes wireless radios, firewalls, servers, switches, VOIP handsets
Office Equipment & Furniture	\$15,000	Includes desks, chairs, shelving, routers, phones, etc.
Goodwill / Customer Base	\$100,000 - \$125,000	Estimated based on recurring hosted service revenues and brand loyalty
Adjustments / Liabilities:		
Category	Amount	Notes
Equipment Financing	-\$43,000	Outstanding lease/loan for capital equipment
Customer Credits	-\$55,092	Per FY2024 audit;

After adjustments, this yields a revised valuation estimate of: \$242,000 - \$327,000

Risk Discount

This updated range reflects the actual net value of MCN as of early 2025, incorporating both asset potential and known financial risks.

-\$35,000 to -\$75,000

transitional liability for

Accounts for aging Fusion infrastructure, end-of-life

pre-paid services

services, vacancies

Given that the proposed purchase price is \$500,000, the estimate indicates the offer exceeds current fair market value by approximately \$175K-\$260K

Human Resources and Personnel Review

Staffing

MCN currently employs seven full-time staff and one part-time employee, maintaining a staffing level just below the historical norm of eight FTEs. The team includes more technical personnel than in past years, positioning MCN to support infrastructure modernization such as fiber deployment. However, two key roles remain vacant, raising concerns about capacity and oversight.

Management

The MCN Manager brings strong technical expertise from his prior role as Operations Engineer and has been effective in maintaining core infrastructure. However, he was placed into a leadership role without a background in financial management or administrative oversight—and the support structures needed to bridge that gap were never fully established.

The Inside Operations Manager position, which historically provided key billing and financial support, has been vacant for several months. Even prior to that vacancy, the data suggests that the role had not been functioning effectively. The MCN Manager, with limited experience in financial administration, did not identify early indicators of performance issues, and concerns went largely unaddressed.

As a result, signs of deeper issues—reflected in the profit and loss statements and overall organizational performance—were not recognized until they had escalated and begun to impact broader operational stability. While technically capable, the Manager has not demonstrated the necessary capacity to oversee financial operations, enforce accountability, or implement timely corrective action. Strengthening administrative leadership and financial oversight will be essential to support a stable transition and future operational success.

Network Operations

A single Senior Network Administrator is responsible for maintaining MCN's entire infrastructure, including core servers, wireless links, virtual machines, and customer-facing systems. Historically, this responsibility was shared between two technical staff, allowing for coverage during absences and distributing the workload. Currently, the MCN Manager provides backup, which may not be sustainable long-term.

Looking ahead, network operations demand will increase significantly with the rollout of the new fiber infrastructure. The planning, configuration, testing, and deployment of fiber network equipment—including switches, routers, customer premise devices, and integration with existing systems—will require substantial engineering time and coordination. The current staffing level is not sufficient to meet these demands without risking service reliability or deployment delays. Reinstating a second technical operations position is strongly recommended.

Customer Support

The customer service team includes four full-time employees and one part-time technician. This team handles installations, phone/email support, and pre-sales technical inquiries. One employee

is bilingual—an asset to serving the region's diverse population. Two team members have four or more years of experience; the remaining staff have less than three years.

This staffing level is likely appropriate to support the City's planned rapid fiber deployment, especially given the increased customer onboarding and field service activity that will accompany infrastructure expansion. Maintaining or enhancing this team's capacity will be critical to supporting service continuity and growth.

Billing

Two positions are designated to support billing operations: an Inside Operations Manager (currently vacant) and an Inside Operations Agent. The Agent handles customer-facing billing support and front-office responsibilities. In the absence of the Operations Manager, oversight of billing systems, reconciliation, and budget adherence may be lacking. Currently, the Mendocino Unified School District's Chief Business Officer (CBO) provides assistance with higher-level financial oversight and support due to this vacancy.

Going forward, the City will want to keep a dedicated billing staff member, like the Inside Operations Agent, due to the high volume and technical nature of MCN's billing processes, which include complex service tiers, VOIP, storage subscriptions, and other technical billing issues. However, broader financial reporting, budgeting, and oversight functions could be absorbed by the City's existing finance department, assuming adequate coordination and knowledge transfer occur during transition.

Technology and Operations Assessment

Billing Systems

MCN uses Platypus ISP Billing Software, a specialized yet cost-effective platform for managing complex ISP billing requirements. The system supports dynamic service tiers, VOIP licenses, email storage, and tax applications, but requires experienced staff to maintain data integrity and accuracy.

Fusion

Fusion is a bundle of DSL internet and Plain Old Telephone Service (POTS). Fusion is a resold product provided by Sonic Telecom in Santa Rosa. Fusion currently is the largest budget item at MCN. Fusion customers can be transitioned to fiber and paired with MCN's Digital Voice service. Fusion is offered in a single speed that is distance sensitive. Customers are connecting at between 1.5 Mb/s to 150 Mb/s depending on their distance from the central office. Fusion also includes POTS with unlimited local and long distance and the phone works when the power is out. Fusion is billed to customers with both the data and phone service included in the price. Sonic is no longer selling Fusion service to new customers so new customers are being directed to Open Air and customers are upgrading their service from Fusion to Open Air.

Fusion	Monthly
Fusion Res Single	\$93.73 (Including Taxes)
Fusion Res Bonded	\$158.51 (Including Taxes)
Fusion Bus Single	\$105.73 (Including Taxes)
Fusion Bus Bonded	\$171.51 (Including Taxes)

Fusion Rental Equipment	
Single	\$6.00
Wireless	\$8.00
Bonded	\$10.00

This product line is in rapid decline industry-wide and is considered end-of-life. Sonic has the right to terminate service with only 90 days' notice. Migrating Fusion customers to alternative platforms is a high priority to prevent service disruption and revenue loss.

Open Air

Open Air Internet is a fixed wireless internet connection operating in the 5 GHZ wireless radio frequency (not to be confused with 5G cellular service). Open Air is a tiered service with speed offerings of 50 Mb/s -250 Mb/s and is data only. Customers transitioning from Fusion to Open Air can convert their POTS line to Digital Voice and are usually saving money in the process.

Open Air			
Residential 50Mb/s	\$54.95	Residential Long Range 6Mb/s	\$50.00
Residential 100Mb/s	\$74.95	Residential Long Range 12Mb/s	\$70.00
Residential 250 Mb/s	\$139.95	Residential Long Range 18Mb/s	\$90.00
Business 50Mb/s	\$64.95	Residential Long Range 25Mb/s	\$110.00
Business 100Mb/s	\$84.95	Business Long Range 6Mb/s	\$60.00
Business 250 Mb/s	\$159.95	Business Long Range 12Mb/s	\$80.00
Extenders	\$5.00	Business Long Range 18Mb/s	\$100.00
		Business Long Range 25Mb/s	\$120.00

Hosted Services

MCN provides standard hosting packages including Web Hosting, Domain Hosting, Domain Registration, Email, and Digital Voice phone service. Some of these items are currently bundled with connectivity services and all can be purchased separately. Hosted services provide nearly as much net revenue as connectivity services but are flat in sales other than Digital Voice.

Digital Voice	
Residential	\$20.00
Business	\$30.00

Fax To Email	\$6.00
Toll Free	\$6.00
Guest Ext	\$10.00

Web Services	
Domain Registration	\$19.95 (varies by TLD)
Domain Service	\$5.00
Web Hosting	\$5.00
MySQL Database	\$5.00
DNS Monthly Service	\$5.00

Email Storage	Bundled Account	Paid Account	Paid Account
Up to 250 MB	Included	Included	\$4.00
250 MB to 500 MB	\$1.00	Included	\$4.00
500 MB to 1 GB	\$2.00	Included	\$4.00
1 GB to 2 GB	\$3.50	\$1.00	\$5.00 total
2 GB to 5 GB	\$5.00	\$2.50	\$6.50 total
5 GB to 20 GB	\$8.95	\$6.50	\$10.50 total
20GB to 50GB	\$10.95	\$8.50	\$12.50 total
50GB to 80GB	\$12.95	\$10.50	\$14.50 total
80GB to 125GB	\$14.95	\$12.50	\$16.50 total

Customer Churn and Growth Rates

Service	YTD	Previous Year Churn		
	Churn			
DNS	3%	12%		
Email	4%	0%		
Fusion (DSL)	10%	11%		
Open Air (Wireless)	-2%	-11%		
VOIP	-14%	-11%		

Customer trends reflect a clear divergence between legacy services and growth opportunities. Fusion, MCN's resold DSL product, shows consistent decline, with churn of 10–11% over both timeframes, reinforcing the urgency of transitioning customers to modern platforms before further erosion. Email services remain stable with only minor fluctuation, while DNS shows short-term growth but significant long-term decline, which may stem from service consolidation or changing customer behavior. In contrast, Open Air wireless and VOIP services have experienced net customer growth over the last one to two years, suggesting these product lines may represent scalable opportunities under City ownership. These trends support prioritizing investment in VOIP and wireless expansion while accelerating deprecation of Fusion.

Cybersecurity

MCN maintains firewalls at both its main office and its colocation facility, providing a strong perimeter defense for network traffic. Data is stored on multiple servers within the colocation environment, with built-in redundancy. A NetApp NAS device provides network-attached storage for daily operations and serves as a backup repository. These servers are firewalled, SSH key protected, and access is IP-restricted in accordance with best practices. While these safeguards offer meaningful protections, a full cybersecurity audit is recommended post-acquisition to evaluate current vulnerabilities, enhance monitoring protocols, and ensure systems remain up to date.

Risk Management and Compliance

Vendor Continuity

It is assumed that all major vendors (e.g., Sonic, TPX) will allow the City to assume existing service agreements. However, formal confirmations should be secured during contract review.

Customer Credits

MCN's 2024 audit identifies \$55,092 in customer credits, which should be accounted for as part of the City's transitional liability planning.

Service Transition

There is no anticipated service disruption during transfer, as equipment and infrastructure will remain at their current colocation facilities. IP space is actively in use, though a portion is available for expansion or reassignment under City control.

Insurance Risk Exposure

MCN currently maintains general liability insurance (Appendix D: Certificate of Insurance) and has also provided a copy of its professional liability policy, which includes cyber liability coverage (Appendix E: Professional Insurance). This coverage helps mitigate potential City exposure related to past network incidents, data breaches, or operational failures. However, to fully evaluate risk, the City should review both policies' terms, limits, exclusions, and any active or prior claims. Despite the presence of cyber and professional liability coverage, it remains prudent for the City to include indemnification clauses in the purchase agreement to protect against liabilities arising from pre-acquisition events that may fall outside the scope of coverage.

Regulatory Agencies

The City must register as a service provider with the Universal Service Administrative Company (USAC) and establish new accounts for E-rate participation and other relevant Universal Service Fund programs. The City will also need to register with the FCC and maintain compliance with 911 obligations, number portability, CALEA, and other VoIP-specific regulations.

Equipment and Asset Inventory

As part of the acquisition, the City of Fort Bragg will assume ownership of a broad inventory of equipment that supports MCN's broadband, VOIP, and hosted service operations. This includes fixed wireless infrastructure at regional access points, long-range outdoor radios, customer premises equipment, VOIP handsets and adapters, and high-performance hardware such as Palo Alto firewalls, NetApp storage systems, and SuperMicro virtualization servers housed at MCN's Sacramento colocation facility. The inventory also includes essential office hardware—routers, switches, battery backup systems, provisioning tools, and structured cabling—as well as all office furniture, shelving, and workstation equipment needed for day-to-day operations. While this document summarizes key categories of equipment, it is not intended to be exhaustive. The assumption guiding this transition is that all equipment and materials currently used or stored by MCN will be transferred to the City, unless the Mendocino Unified School District (MUSD) provides a specific exclusion list identifying items to be retained.

Wireless Access Point Equipment

Location	Key Equipment
MCN Office / Swithenbank	CRS310, A5C, Wave AP, RB40
PFI Chestnut / Main St	UB60, A5C, B24, BATT
Harbor Lite / Sports Club	WS12, N45X2, UB60LR, BATT
Colombi's Market / Redwood	CCR, A5C, UB60LR, Wave AP
Mendo Litho / North Coast	N5360, A5X, UB60LR, C5X
RCSC Senior Center	CAB, WS12, UB60LR, Power Units
Bald Hill / Bruhel / Berger	N5X20, B5C, LITHBATT, TP Mounts

Open Air Inventory – Approximate Stock

Device	Qty
C5X Radio	26
C5C	4
C5	4
A5X	6
B24	3
Wave LR	2
UB60-LR	5
LiteBeamACXR	1
WiFrost CPE	5
PBE M5 620	2
Wave AP	3
Wave AP Micro	4
Wave Nano	4
Wave Pico	1
Nano Beam 5AC	4
Lite Beam 5AC	4
RB4011	3
RB5011	3
Mikrotik MDU	5
Mikrotik MDU PRO	5
Nano Station	8

N5X16 (Antenna)	3
N5X20 (Antenna)	16
N5X25 (Antenna)	12
Mimosa NID	14
J-Arm Small	20
J-Arm Medium	25
J-Arm Large	22

Open Air Long Range Equipment

Device	Qty
airFiber 5X	2
airFiber 5XHD	2
ISO Station 5AC	1
LiteAP GPS	1
LiteBeam 5AC Gen2	4
NanoBeam 5AC 16	2
NanoBeam 5AC Gen2	24
NanoBeam M5 16	3
NanoBridge M5	1
NanoStation 5AC loco	12
NanoStation loco M5	1
NanoStation loco M900	2
NanoStation M2	2
PowerBeam 5AC 400	1
PowerBeam 5AC 500	2
PowerBeam 5AC Gen2	10
PowerBeam 5AC ISO Gen2	3
PowerBeam M5 300	1
PowerBeam M5 400	6
Rocket 5AC Lite	1
Rocket M5	5
Rocket M900	2
Rocket Prism 5AC Gen2	1
RBD53iG-5HacD2HnD	3
RBD52G-5HacD2HnD	1
RB952Ui-5ac2nD	28
Netonix WS-6	1
Mikrotik Powerbox Pro	1
Rocket Dish 2' (to bruhel)	1
Rocket Dish 2' (to bald)	1
Mikrotik Hex-S	1
Netonix WS-12-250-DC	1
Meanwell NDR-480-24	1
100AH AGM Battery	2
Din fuse block	1
Din breakers	2
RF Ultradish TP-27	3
RF Elements Asym 30° Horn	1

Ubiquiti Edgerouter-X SFP	1
Tycon TP-DIN Voltage monitor	1
Tycon SCPOE-2424-HP	1
Ubiquiti 13dbi 5GHz Omni	1

Colocation Facility Equipment

Device	Qty
Palo Alto Edge Firewall	1
Mikrotik Router Edge Device	1
Cisco Switches	2
Cisco Router	1
PDU Strips	4
KVM w/ Monitor & Keyboard	1
NetApp Filer 2020	1
NetApp Filer 2552	1
NetApp Filer AFF250	1
NetApp Cluster Switches	2
SuperMicro 1U (VMWare)	3
SuperMicro Admin Server	1

Grandstream VOIP Inventory

Device	Qty
GRP2636	16
GRP2634	17
GRP2616	19
WP822	17
GRP611	27
GRP621W	7
GXP2130	8
GXP2170	2
GXP2200 EXT	1
HT802/1	22
HT814	10
DP750	5
DP720	2
TP Link SW	7
TP Link WiFi Adaptor	2

Office Equipment

Item	Qty	
3-way Phone Splitters	25	
Single Line Filters	142	
Dual Line Filter	1	
TP-Link Travel Router	3	
TP-Link Switch	7	
Power Strip	1	
Cyber Power Battery	1	

Assorted Ethernet Cables	200
Ethernet Surface Jack	40

Office Furniture

Item	Qty	Description	Condition
Computer Desk	12	Wood laminate, 5'	Good
		wide, mixed sizes	
Standing Desk	8	Ergo Desktop	Good
Mounts		Electric Kangaroo	
		Elite	
Rolling Office Chair	13	Mixed brands and	Fair-Good
		condition	
Misc. Table Piece	5	Wood laminate,	Good
		mixed sizes	
Filing Cabinet	7	Wood laminate,	Good
		mixed sizes	
Bookshelf	5	Wood laminate,	Good
		mixed sizes	
Drafting Table	1	Wood laminate, table	
		top only, 8' long	
Metro Shelving	7	Constructed shelving	
		units, mixed sizes	

Appendices and Supporting Documentation

- Appendix A MCN Audited Operating Net
- Appendix B MCN Audited Net Position
- Appendix C Fiscal Year 23-24 Audit Report
- Appendix D Certificate of Insurance
- Appendix E Professional Insurance

Appendix A - MCN Audited Operating Net

MCN Audited Operating Net (ex Pension)

Operating Net	June 2024	June 2023	June 2022	June 2021	June 2020	June 2019	June 2018
Operating Revenue	2,153,148	2,187,053	2,309,537	2,326,647	2,223,364	2,221,115	2,131,734
Total Revenue	2,153,148	2,187,053	2,309,537	2,326,647	2,223,364	2,221,115	2,131,734
Salary/Benefits (ex Pension)*	830,020	752,024	857,932	837,753	802,654	784,370	720,667
Supplies/Materials	128,520	104,946	96,195	78,909	107,186	65,690	53,954
Professional Services	1,294,820	1,224,747	1,324,755	1,410,855	1,327,318	1,288,884	1,260,011
Depreciation	39,328	39,328	25,730	25,730	7,719	21,242	21,243
Total Expenditures	2,292,688	2,121,045	2,304,612	2,353,247	2,244,877	2,160,186	2,055,875
Total Operating Income/(Loss)	(139,540)	66,008	4,925	(26,600)	(21,513)	60,929	75,859
Non-Operating Net							
Interest Income	2,990	(1,246)	271	532	2,817	2,689	1,532
Transfers in	9,019	8,866	9,094	9,194	8,365	8,729	8,753
Net donation to district	(40,000)	(40,000)	(40,000)	(40,000)	(40,000)	(40,000)	(40,000)
Total Non-Operating Rev/(Exp)	(27,991)	(32,380)	(30,635)	(30,274)	(28,818)	(28,582)	(29,715)
Operating Net (ex Pension) - Profit/(Loss)	(167,531)	33,628	(25,710)	(56,874)	(50,331)	32,347	46,144
Balance Sheet Net Position (ex Pension)	(167,531)	33,628	(25,710)	(56,874)	(50,331)	32,347	46,144
*Salary/Benefit Adjustmenf for Pension	17,146	(87,504)	68,646	(93,850)	(93,268)	(45,237)	(26,968)

Appendix B - MCN Audited Net Position

Net Position - ex Pension	June 2024	June 2023	June 2022	June 2021	June 2020	June 2019	June 2018
Current Assets	151,177	188,377	197,914	232,847	306,371	347,880	303,709
Non-Current Assets	81,963	121,291	54,032	79,762	15,439	23,158	44,400
Total Assets	233,140	309,668	251,946	312,609	321,810	371,038	348,109
Current Liabilities	109,287	33,765	75,220	60,083	43,520	47,329	43,207
Non-Current Liabilities	93,273	77,792	12,243	62,333	31,223	26,311	39,851
Total Liabilites	202,560	111,557	87,463	122,416	74,743	73,640	83,058
excl Pension Costs							
Net Position (ex Pension)	30,580	198,111	164,483	190,193	247,067	297,398	265,051
Change in Net Position (ex Pension)	(167,531)	33,628	(25,710)	(56,874)	(50,331)	32,347	46,144
Components of Net Position (ex Pension)							
Net Investment Capital Assets	17,877	39,438	23,908	21,097	15,439	10,304	19,346
Unrestricted	12,703	158,673	140,575	169,096	231,628	287,094	245,705

Appendix C - Fiscal Year 23-24 Audit Report

MENDOCINO COMMUNITY NETWORK

(A PROPRIETARY FUND OF THE MENDOCINO UNIFIED SCHOOL DISTRICT)
MENDOCINO, CALIFORNIA

AUDIT REPORT June 30, 2024

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FINANCIAL SECTION

REPORT ON THE AUDIT OF THE FINANCIAL STATEMENTS

Independent Auditors' Report

Governing Board Mendocino Community Network Mendocino Unified School District Mendocino, California

Report on the Audit of the Financial Statements

Opinion

We have audited the accompanying Financial Statements of the Mendocino Community Network, a Proprietary Fund within the Mendocino Unified School District, for the year ended June 30, 2024, and the related notes to the financial statements as listed in the table of contents.

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the Mendocino Community Network, as of June 30, 2024, and the respective changes in financial position and cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinion

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Our responsibilities under those standards are further described in the Auditors' Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Mendocino Unified School District and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards and *Government Auditing Standards* will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgement made by a reasonable user of the financial statements.

In performing an audit in accordance with generally accepted auditing standards and Government Auditing Standards, we:

- Exercise professional judgement and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are
 appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of
 the Mendocino Unified School District's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

Report on Summarized Comparative Information

We have previously audited the Mendocino Community Network's 2022-23 financial statements, and we expressed an unmodified audit opinion on those audited financial statements in our report dated February 29, 2024. In our opinion, the summarized comparative information presented herein as of and for the year ended June 30, 2023, is consistent, in all material respects, with the audited financial statements from which it has been derived.

Other Information

Management is responsible for the other information included in the annual report. The other information comprises the Organization/Board of Education/Administration but does not include the basic financial statements and our auditor's report thereon. Our opinions on the basic financial statements do not cover the other information, and we do not express an opinion or any form of assurance thereon.

In connection with our audit of the basic financial statements, our responsibility is to read the other information and consider whether a material inconsistency exists between the other information and the basic financial statements, or the other information otherwise appears to be materially misstated. If, based on the work performed, we conclude that an uncorrected material misstatement of the other information exists, we are required to describe it in our report.

Other Reporting Required by Government Auditing Standards

In accordance with *Government Auditing Standards*, we have also issued our report dated March 26, 2025 on our consideration of the Mendocino Unified School District's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters specific to the Mendocino Community Network. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Mendocino Unified School District internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering Mendocino Unified School District's internal control over financial reporting and compliance specific to the Mendocino Community Network.

San Diego, California March 26, 2025

Christy White, Inc.

MENDOCINO COMMUNITY NETWORK STATEMENT OF NET POSITION JUNE 30, 2024 (WITH COMPARATIVE TOTALS AS OF JUNE 30, 2023)

	June 30, 2024		Jun	e 30, 2023
ASSETS	<u> </u>			
Current assets				
Cash and investments	\$	135,481	\$	165,469
Accounts receivable		11,977		18,414
Prepaid expenses		3,719		4,494
Total current assets		151,177		188,377
Non-current assets				
Capital assets, net of accumulated depreciation		81,963		121,291
Total non-current assets		81,963		121,291
Total Assets		233,140		309,668
DEFERRED OUTFLOWS OF RESOURCES				
Deferred outflows related to pensions		331,604		331,674
Total Deferred Outflows of Resources		331,604		331,674
LIABILITIES				
Current liabilities				
Accrued liabilities		34,740		2,289
Unearned revenue		55,092		13,709
Financed purchases, current portion		19,455		17,767
Total current liabilities		109,287		33,765
Non-current liabilities				
Net pension liability		1,114,437		1,135,712
Financed purchases, non-current portion		44,631		64,086
Compensated absences		48,642		13,706
Total non-current liabilities		1,207,710		1,213,504
Total Liabilities		1,316,997		1,247,269
DEFERRED INFLOWS OF RESOURCES				
Deferred inflows related to pensions		125,811		121,752
Total Deferred Inflows of Resources		125,811		121,752
NET POSITION				
Net investment in capital assets		17,877		39,438
Unrestricted		(895,941)		(767,117)
Total Net Position	\$	(878,064)	\$	(727,679)

MENDOCINO COMMUNITY NETWORK STATEMENT OF REVENUES, EXPENSES, AND CHANGES IN NET POSITION FOR THE YEAR ENDED JUNE 30, 2024 (WITH COMPARATIVE TOTALS FOR THE YEAR ENDED JUNE 30, 2023)

	Jur	ne 30, 2024	June 30, 2023		
OPERATING REVENUE					
Charges for services	\$	2,153,148	\$	2,187,053	
Total operating revenues		2,153,148		2,187,053	
OPERATING EXPENSE					
Salaries and benefits		812,874		839,528	
Supplies and materials		128,520		104,946	
Professional services		1,294,820		1,224,747	
Depreciation		39,328		39,328	
Total operating expenses		2,275,542		2,208,549	
Operating income/(loss)		(122,394)		(21,496)	
NON-OPERATING REVENUES/(EXPENSES)					
Interest income		2,990		(1,246)	
Transfers in from District		9,019		8,866	
Net donation to District		(40,000)		(40,000)	
Total non-operating revenues/(expenses)		(27,991)		(32,380)	
CHANGE IN NET POSITION		(150,385)		(53,876)	
Net Position - Beginning		(727,679)		(673,803)	
Net Position - Ending	\$	(878,064)	\$	(727,679)	

MENDOCINO COMMUNITY NETWORK STATEMENT OF CASH FLOWS FOR THE YEAR ENDED JUNE 30, 2024 (WITH COMPARATIVE TOTALS FOR THE YEAR ENDED JUNE 30, 2023)

	Jur	ne 30, 2024	Ju	ne 30, 2023
Cash flows from operating activities				
Cash received from user charges	\$	2,200,968	\$	2,183,583
Cash payments for payroll, insurance, and operating costs		(2,185,198)		(2,113,846)
Net cash provided by (used for) operating activities		15,770		69,737
Cash flows from non-capital financing activities				_
Interfund transfers in (out)		(30,981)		(31,134)
Net cash provided by (used for) non-capital financing activities		(30,981)		(31,134)
Cash flows from capital and related financing activities				
Financed purchase payments		(17,767)		(54,858)
Net cash provided by (used for) in capital and related financing activities		(17,767)		(54,858)
Cash flows from investing activities		_		
Interest received		2,990		(1,246)
Net cash provided by (used for) investing activities		2,990		(1,246)
NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS		(29,988)		(17,501)
CASH AND CASH EQUIVALENTS				
Beginning of year		165,469		182,970
End of year	\$	135,481	\$	165,469
Reconciliation of operating income (loss) to cash				
provided by (used for) operating activities				
Operating income (loss)	\$	(122,394)	\$	(21,496)
Adjustments to reconcile operating income (loss) to net cash		(, ,		, ,
provided by (used in) operating activities:				
Depreciation		39,328		39,328
Changes in assets, liabilities, deferred outflows, deferred inflows:				
(Increase) decrease in accounts receivable		6,437		(3,470)
(Increase) decrease in prepaid expenses		775		(4,494)
(Increase) decrease in deferred outflows of resources		70		(137,548)
Increase (decrease) in accrued liabilities		32,451		(26,359)
Increase (decrease) in unearned revenue		41,383		(2,739)
Increase (decrease) in compensated absences		34,936		1,463
Increase (decrease) in net pension liability		(21,275)		433,063
Increase (decrease) in deferred inflows of resources		4,059		(208,011)
Net cash provided by (used for) operating activities	\$	15,770	\$	69,737

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A. Financial Reporting Entity

The Mendocino Community Network (MCN) was established by the Mendocino Unified School District (District) in 1994 to provide internet services to the school district and not-for-profit organizations within the community.

MCN has developed a solid customer base of analog dialup subscribers, DSL, web hosting, and local and long-distance phone service in the Mendocino and Fort Bragg areas. MCN is a proprietary fund of the District. The financial statements present only MCN and do not purport to, and do not, present fairly the financial position of the District as a whole.

B. Basis of Accounting - Measurement Focus

These statements are prepared on the accrual basis of accounting. Under this method, revenues from services and interest are recognized when earned and expenses are recognized when goods or services have been rendered.

The accounts of MCN are organized on the basis of funds, each of which is considered a separate accounting entity. MCN only maintains one fund, the Mendocino Community Network Fund. This fund is a proprietary fund type, which is a fund that is used to account for activities similar to those found in the private sector, where determination of net income is necessary or useful to sound financial administration.

C. Assets, Deferred Outflows of Resources, Liabilities, Deferred Inflows of Resources, and Net Position

Cash and Cash Equivalents

MCN's cash and cash equivalents consist of cash on hand, demand deposits and short-term investments with original maturities of three months or less from the date of acquisition. Cash equivalents also include cash with county treasury balances for purposes of the statement of cash flows.

Receivables

All receivables are reported at their gross value and, where appropriate, are reduced by the estimated portion that is expected to be uncollectible. Management considers all accounts receivable outstanding less than 60 days to be fully collectable. At June 30, 2024 and 2023 all accounts over 60 days old are excluded from the balance of accounts receivable.

Capital Assets

Capital assets are capitalized at cost (or estimated historical cost) and updated for additions and retirements during the year. Donated fixed assets are recorded at their acquisition value as of the date received. MCN maintains a capitalization threshold of \$5,000. MCN does not own any infrastructure as defined in GASB Statement No. 34. Improvements are capitalized; the costs of normal maintenance and repairs that do not add to the value of the asset or materially extend an asset's life are not capitalized. All reported capital assets, except for land and construction in progress, are depreciated. Improvements are depreciated over the remaining useful lives of the related capital assets. Depreciation is computed using the straight-line method over 3 to 20 years depending on asset type:

Compensated Absences

Accumulated unpaid employee vacation benefits are accrued as a liability as the benefits are earned. Accumulated sick leave benefits are not recognized as liabilities of MCN. MCN's policy is to record sick leave as an operating expense in the period taken because such benefits do not vest, nor is payment probable; however, unused sick leave is added to the creditable service period for calculation of retirement benefits when the employee retires.

MENDOCINO COMMUNITY NETWORK NOTES TO FINANCIAL STATEMENTS, continued JUNE 30, 2024

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

C. <u>Assets, Deferred Outflows of Resources, Liabilities, Deferred Inflows of Resources, and Net Position, (continued)</u>

Deferred Outflows/Deferred Inflows of Resources

In addition to assets, MCN will sometimes report a separate section for deferred outflows of resources. This separate financial statement element, deferred outflows of resources, represents a consumption of net position that applies to a future period and so will not be recognized as an outflow of resources (expense/expenditure) until then.

In addition to liabilities, MCN will sometimes report a separate section for deferred inflows of resources. This separate financial statement element, deferred inflows of resources, represents an acquisition of net position that applies to a future period and so will not be recognized as an inflow of resources (revenue) until that time.

Pensions

For purposes of measuring the net pension liability, deferred outflows of resources and deferred inflows of resources related to pensions, and pension expense, information about the fiduciary net position of the defined benefit pension plan (the Plan) of the California Public Employees' Retirement System (CalPERS) and additions to/deductions from the Plan's fiduciary net position have been determined on the same basis as they are reported by the Plan. For this purpose, benefit payments (including refunds of employee contributions) are recognized when due and payable in accordance with the benefit terms. Investments are reported at fair value.

Net Position

Net Position equals assets and deferred outflows of resources minus liabilities and deferred inflows of resources. Net investment in capital assets consists of capital assets, net of accumulated depreciation, reduced by the outstanding balances of any borrowings used for the acquisition, construction or improvement of those assets. The net position should be reported as restricted when constraints placed on its use are either externally imposed by creditors (such as through debt covenants), grantors, contributors, or laws or regulations of other governments or imposed by law through constitutional provisions or enabling legislation.

D. Estimates

The preparation of the financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results may differ from those estimates.

E. Income Taxes

MCN is a political subdivision of the State of California and is not liable for Federal and State income taxes.

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

F. New Accounting Pronouncements

GASB Statement No. 99 – In April 2022, GASB issued Statement No. 99, *Omnibus 2022*. The objectives of this statement are to enhance comparability in accounting and financial reporting and to improve the consistency of authoritative literature by addressing (1) practice issues that have been identified during implementation and application of certain GASB Statements and (2) accounting and financial reporting for financial guarantees. The statement addresses various practice issues, including: (a) clarification of provisions in Statement No. 87, *Leases*, as amended, related to the determination of the lease term, classification of a lease as a short-term lease, recognition and measurement of a lease liability and a lease asset, and identification of lease incentives, (b) disclosures related to nonmonetary transactions; clarification of provisions in Statement No. 34, *Basic Financial Statements—and Management's Discussion and Analysis—for State and Local Governments*, as amended, related to the focus of the government-wide financial statements, (c) terminology updates related to certain provisions of Statement No. 63, *Financial Reporting of Deferred Outflows of Resources, Deferred Inflows of Resources, and Net Position*, and (d) terminology used in Statement 53 to refer to resource flows statements. A portion of this statement was effective upon issuance, while the remaining portions of this statement were effective for periods beginning after June 15, 2022 and for periods beginning after June 15, 2023. MCN has fully implemented this Statement as of June 30, 2024.

GASB Statement No. 100 – In June 2022, GASB issued Statement No. 100, *Accounting Changes and Error Corrections* – an amendment of GASB Statement No. 62. The primary objective of this statement is to enhance accounting and financial reporting requirements for accounting changes and error corrections to provide more understandable, reliable, relevant, consistent, and comparable information for making decisions or assessing accountability. This statement is effective for periods beginning after June 15, 2023. MCN has fully implemented this Statement as of June 30, 2024.

GASB Statement No. 101 – In June 2022, GASB issued Statement No. 101, *Compensated Absences*. The objective of this statement is to better meet the information needs of financial statement users by updating the recognition and measurement guidance for compensated absences. That objective is achieved by aligning the recognition and measurement guidance under a unified model and by amending certain previously required disclosures. This statement is effective for periods beginning after December 15, 2023. MCN has not yet determined the impact on the financial statements.

GASB Statement No. 102 – In December 2023, GASB issued Statement No. 102, *Certain Risk Disclosures*. This Statement requires a government to assess whether a concentration or constraint makes the primary government reporting unit or other reporting units that report a liability for revenue debt vulnerable to the risk of a substantial impact. Additionally, this Statement requires a government to assess whether an event or events associated with a concentration or constraint that could cause the substantial impact have occurred, have begun to occur, or are more likely than not to begin to occur within 12 months of the date the financial statements are issued. This statement is effective for periods beginning after June 15, 2024. The MCN has not yet determined the impact on the financial statements.

GASB Statement No. 103 – In April 2024, GASB issued Statement No. 103, *Financial Reporting Model Improvements*. The objective of this Statement is to improve key components of the financial reporting model to enhance its effectiveness in providing information that is essential for decision making and assessing a government's accountability. This Statement also addresses certain application issues. The statement is effective for periods beginning after June 15, 2025. The MCN has not yet determined the impact on the financial statements.

NOTE 2 – CASH AND INVESTMENTS

Cash and investments consisted of the following:

	June 30, 2024		June	2023 • 30, 2023 • 30,
Investment in county treasury	\$	69,151	\$	73,535
Fair value adjustment		-		(1,340)
Cash on hand and in banks		51,330		78,274
Cash in revolving fund		15,000		15,000
Total cash and investments	\$	135,481	\$	165,469

Custodial Credit Risk

Custodial credit risk is the risk that in the event of a bank failure, MCN's deposits may not be returned to it. MCN does not have a policy for custodial credit risk for deposits. However, the California Government Code requires that a financial institution secure deposits made by state or local governmental units by pledging securities in an undivided collateral pool held by a depository regulated under state law. The market value of the pledged securities in the collateral pool must equal at least 110 percent of the total amount deposited by the public agencies. California law also allows financial institutions to secure public deposits by pledging first trust deed mortgage notes having a value of 150 percent of the secured public deposits and letters of credit issued by the Federal Home Loan Bank of San Francisco having a value of 105 percent of the secured deposits. As of June 30, 2024, MCN's bank balance was not exposed to custodial credit risk.

Interest Rate Risk

Interest rate risk is the risk that changes in market interest rates will adversely affect the fair value of an investment. Generally, the longer the maturity of an investment, the greater the sensitivity of its fair value to changes in market interest rates. MCN manages its exposure to interest rate risk by investing in the County Treasury. MCN maintains a pooled investment with the County Treasury with an amortized cost of \$69,151 and a fair value of approximately \$68,986 at June 30, 2024. The average weighted maturity for this pool is 485 days.

NOTE 2 – CASH AND INVESTMENTS (continued)

Fair Value

MCN categorizes the fair value measurements of its investments based on the hierarchy established by generally accepted accounting principles. The fair value hierarchy is based on the valuation inputs used to measure an asset's fair value. The following provides a summary of the hierarchy used to measure fair value:

Level 1 - Quoted prices (unadjusted) in active markets for identical assets.

Level 2 - Observable inputs other than Level 1 prices such as quoted prices for similar assets in active markets, quoted prices for identical or similar assets in markets that are not active, or other inputs that are observable, either directly or indirectly.

Level 3 - Unobservable inputs should be developed using the best information available under the circumstances, which might include MCN's own data. MCN should adjust that data if reasonable available information indicates that other market participants would use different data or certain circumstances specific to MCN are not available to other market participants.

Uncategorized - Investments in the Mendocino County Treasury Investment Pool are not measured using the input levels above because MCN's transactions are based on a stable net asset value per share. All contributions and redemptions are transacted at \$1.00 net asset value per share.

MCN's fair value measurements at June 30, 2024 were as follows:

	Unca	tegorized
Investment in county treasury	\$	68,986
Total	\$	68,986

NOTE 3 – ACCOUNTS RECEIVABLE

Accounts receivable at June 30, 2024 and 2023 consisted of the following:

	June	30, 2024	June 30, 2023			
Fees for service	\$	11,977	\$	18,414		
Total	\$	11,977	\$	18,414		

NOTE 4 - CAPITAL ASSETS

Capital asset activity for the year ended June 30, 2024 was as follows:

	E	Balance				E	Balance
	July	01, 2023	Additions	Deletions		Jun	e 30, 2024
Capital assets being depreciated							
Buildings & improvements	\$	66,234	\$ -	\$	-	\$	66,234
Furniture & equipment		341,930	-		-		341,930
Total Capital Assets Being Depreciated	·	408,164	-		-		408,164
Less Accumulated Depreciation							
Buildings & improvements		66,234	-		-		66,234
Furniture & equipment		220,639	39,328		-		259,967
Total Accumulated Depreciation		286,873	39,328		-		326,201
Capital Assets, net	\$	121,291	\$ (39,328)	\$	-	\$	81,963

NOTE 5 – LONG-TERM DEBT

A schedule of changes in long-term debt for the year ended June 30, 2024 consisted of the following:

	Balance y 01, 2023	Additions	Deductions	Balance June 30, 2024	alance Due n One Year
Financed purchases	\$ 81,853	\$ -	\$ 17,767	\$ 64,086	\$ 19,455
Compensated absences	13,706	34,936	-	48,642	-
Net pension liability	1,135,712	-	21,275	1,114,437	-
Total	\$ 1,231,271	\$ 34,936	\$ 39,042	\$ 1,227,165	\$ 19,455

Financed purchase

Mendocino Community Network entered into an agreement for networking and storage devices which provides for title to pass upon expiration of the agreement period. Future minimum payments at June 30, 2024 were as follows:

Year Ended June 30,		ayment
2025	\$	25,543
2026		25,543
2027		25,543
Total minimum payments		76,629
Less amount representing interest		(12,543)
Present value of minimum payments	\$	64,086

Compensated absences

Total unpaid employee compensated absences as of June 30, 2024 amounted to \$48,642.

Net pension liability

MCN's beginning net pension liability was \$1,135,712 and decreased by \$21,275 during the year ended June 30, 2024. The ending net pension liability at June 30, 2024 was \$1,114,437. See Note 8 for additional information regarding the net pension liability.

MENDOCINO COMMUNITY NETWORK NOTES TO FINANCIAL STATEMENTS, continued JUNE 30, 2024

NOTE 6 – UNEARNED REVENUE

Unearned revenue in the amount of \$55,092 and \$13,709 as of June 30, 2024 and 2023, respectively, consists of prepayments of service fees collected in advance.

NOTE 7 – DONATION TO THE DISTRICT/INTERFUND TRANSFERS

MCN made the following donations to the Mendocino Unified School District's governmental operations:

	June	e 30, 2024	June 30, 2023			
Contribution to the District's General Fund	\$	40,000	\$	40,000		
Total	\$	40,000	\$	40,000		

Mendocino Unified School District transferred the following amounts from other District Funds to MCN for telephone services:

	June	June 30, 2023		
Transfer in from District	\$	9,019	\$	8,866
Total	\$	9,019	\$	8,866

NOTE 8 - PENSION PLANS

Qualified employees are covered under multiple-employer contributory retirement plans maintained by agencies of the State of California. Classified employees are members of the California Public Employees' Retirement System (CalPERS). MCN reported its proportionate share of the net pension liabilities, pension expense, deferred outflow of resources, and deferred inflow of resources as follows:

	Ne	Net pension		eferred ows related	Deferred inflows related to		Pension		
	liability		to pensions		pensions		expense		
CalPERS	\$	1,114,437	\$	331,604	\$	125,811	\$	110,293	
Total	\$	1,114,437	\$	331,604	\$	125,811	\$	110,293	

MENDOCINO COMMUNITY NETWORK NOTES TO FINANCIAL STATEMENTS, continued JUNE 30, 2024

NOTE 8 – PENSION PLANS (continued)

California Public Employees' Retirement System (CalPERS)

Plan Description

MCN contributes to the School Employer Pool under the California Public Employees' Retirement System (CalPERS); a cost-sharing multiple-employer public employee retirement system defined benefit pension plan administered by CalPERS. The plan provides retirement and disability benefits, annual cost-of-living adjustments, and death benefits to plan members and beneficiaries. Benefit provisions are established by state statutes, as legislatively amended, within the Public Employees' Retirement Laws. CalPERS issues a separate comprehensive annual financial report that includes financial statements and required supplementary information. Copies of the CalPERS annual financial report may be obtained from the CalPERS Executive Office, 400 P Street, Sacramento, CA 95811.

Benefits Provided

The benefits for the defined benefit plan are based on members' years of service, age, final compensation, and benefit formula. Benefits are provided for disability, death, and survivors of eligible members or beneficiaries. Members become fully vested in their retirement benefits earned to date after five years of credited service.

Contributions

Active plan members who entered into the plan prior to January 1, 2013, are required to contribute 7.0% of their salary. The California Public Employees' Pension Reform Act (PEPRA) specifies that new members entering into the plan on or after January 1, 2013, shall pay the higher of fifty percent of normal costs or 7.0% of their salary. Additionally, for new members entering the plan on or after January 1, 2013, the employer is prohibited from paying any of the employee contribution to CalPERS unless the employer payment of the member's contribution is specified in an employment agreement or collective bargaining agreement that expires after January 1, 2013.

MCN is required to contribute an actuarially determined rate. The actuarial methods and assumptions used for determining the rate are those adopted by the CalPERS Board of Administration. The required employer contribution rate for fiscal year 2024 was 26.68% of annual payroll. Contributions to the plan from MCN were \$127,439 for the year ended June 30, 2024.

Pension Liabilities, Pension Expense, and Deferred Outflows of Resources and Deferred Inflows of Resources Related to Pensions

At June 30, 2024, MCN reported a liability of \$1,114,437 for its proportionate share of the net pension liability. The net pension liability was measured as of June 30, 2023, and the total pension liability used to calculate the net pension liability was determined by applying update procedures to an actuarial valuation as of June 30, 2022 and rolling forward the total pension liability to June 30, 2023. The MCN's proportion of the net pension liability was based on a projection of the MCN's long-term share of contributions to the pension plan relative to the projected contributions of all participating school districts, actuarially determined. At June 30, 2023, the MCN's proportion was 0.003 percent, which did not change from its proportion measured as of June 30, 2022.

NOTE 8 – PENSION PLANS (continued)

California Public Employees' Retirement System (CalPERS) (continued)

Pension Liabilities, Pension Expense, and Deferred Outflows of Resources and Deferred Inflows of Resources Related to Pensions (continued)

For the year ended June 30, 2024, MCN recognized pension expense of \$110,293. At June 30, 2024, MCN reported deferred outflows of resources and deferred inflows of resources related to pensions from the following sources:

	 red Outflows Resources	Deferred Inflows of Resources		
Differences between projected and actual earnings on plan investments Differences between expected and	\$ 111,151	\$	-	
actual experience Changes in assumptions Changes in proportion and differences between MCN contributions and	37,975 47,940		15,982 -	
proportionate share of contributions MCN contributions subsequent	7,099		109,829	
to the measurement date	\$ 127,439 331,604	\$	<u>-</u> 125,811	

The \$127,439 reported as deferred outflows of resources related to pensions resulting from MCN contributions subsequent to the measurement date will be recognized as a reduction of the net pension liability in the year ended June 30, 2025. Other amounts reported as deferred outflows of resources and deferred inflows of resources related to pensions will be recognized in pension expense as follows:

	Deferred Outflows Deferred Inflo			red Inflows
Year Ended June 30,	of	Resources	of Resources	
2025	\$	62,487	\$	31,606
2026		50,921		17,332
2027		85,434		8,981
2028		5,323		67,892
	\$	204,165	\$	125,811

Actuarial Assumptions

The total pension liability was determined by applying update procedures to an actuarial valuation as of June 30, 2022, and rolling forward the total pension liability to June 30, 2023 using the following actuarial assumptions, applied to all periods included in the measurement:

Inflation	2.30%
Discount Rate	6.90%
Salary Increases	Varies by Entry Age and Service

CalPERS uses custom mortality tables to best fit the patterns of mortality among its members. These custom tables are derived using CalPERS' membership data for all funds. The table includes 15 years of mortality improvements using the Society of Actuaries Scale 80% of scale MP 2020.

NOTE 8 – PENSION PLANS (continued)

California Public Employees' Retirement System (CalPERS) (continued)

Actuarial Assumptions (continued)

The actuarial assumptions used in the June 30, 2022, valuation were based on the results of an actuarial experience study for the period from 2000 through 2019.

The long-term expected rate of return on pension plan investments was determined using a building block method in which best estimate ranges of expected future real rates of return (expected returns, net of pension plan investment expense and inflation) are developed for each major asset class. In determining the long-term expected rate of return, both short-term and long-term market return expectations as well as the expected pension fund cash flows were taken into account. Such cash flows were developed assuming that both members and employers will make their required contributions on time and as scheduled in all future years. Using historical returns of all the funds' asset classes, expected compound (geometric) returns were calculated over the short-term (first 10 years) and the long-term (11+ years) using a building block approach. Using the expected nominal returns for both short-term and long-term, the present value of benefits was calculated for each fund. The expected rate of return was set by calculating the single equivalent expected return that arrived at the same present value of benefits for cash flows as the one calculated using both short-term and long-term returns. The expected rate of return was then set equivalent to the single equivalent rate calculated above and adjusted to account for assumed administrative expenses.

The table below reflects long-term expected real rate of return by asset class. The rate of return was calculated using the capital market assumptions applied to determine the discount rate and asset allocation. These geometric rates of return are net of administrative expenses.

	Assumed Asset	Real Return
Asset Class	Allocation	Years 1 – 10*
Global Equity – cap-weighted	30.0%	4.54%
Global Equity – non-cap-weighted	12.0%	3.84%
Private Equity	13.0%	7.28%
Treasury	5.0%	0.27%
Mortgage-backed securities	5.0%	0.50%
Investment grade corporates	10.0%	1.56%
High yield	5.0%	2.27%
Emerging market debt	5.0%	2.48%
Private debt	5.0%	3.57%
Real assets	15.0%	3.21%
Leverage	(5.0)%	(0.59)%
	100.0%	

^{*}An expected inflation of 2.30% used for this period. Figures are based on the 2021-22 CalPERS Asset Liability Management Study

Discount Rate

The discount rate used to measure the total pension liability was 6.90 percent. A projection of the expected benefit payments and contributions was performed to determine if assets would run out. The test revealed the assets would not run out. Therefore, the long-term expected rate of return on pension plan investments was applied to all periods of projected benefit payments to determine the total pension liability for the Schools Pool. The results of the crossover testing for the Schools Pool are presented in a detailed report that can be obtained at CalPERS' website.

MENDOCINO COMMUNITY NETWORK NOTES TO FINANCIAL STATEMENTS, continued JUNE 30, 2024

NOTE 8 – PENSION PLANS (continued)

California Public Employees' Retirement System (CalPERS) (continued)

Sensitivity of MCN's Proportionate Share of the Net Pension Liability to Changes in the Discount Rate

The following presents MCN's proportionate share of the net pension liability calculated using the discount rate of 6.90 percent, as well as what the MCN's proportionate share of the net pension liability would be if it were calculated using a discount rate that is 1-percentage-point lower (5.90 percent) or 1-percentage-point higher (7.90 percent) than the current rate:

	1% Decrease (5.90%)		Current		1%	
			Dis	count Rate (6.90%)	Increase (7.90%)	
MCN's proportionate share of			-	,		,
the net pension liability	\$	1,611,188	\$	1,114,437	\$	703,884

Pension Plan Fiduciary Net Position

Detailed information about the pension plan's fiduciary net position is available in the separately issued CalPERS financial report.

NOTE 9 – CONTINGENT LIABILITIES AND SUBSEQUENT EVENTS

In November 2024, Mendocino Unified School District accepted a proposal from the City of Fort Bragg to purchase MCN for \$500,000, to be paid over ten years. Under the proposal, the City of Fort Bragg has stated it "would continue to service MCN customers, including those residing outside city limits, maintaining the same high-quality service MCN customers have come to rely on. Additionally, all current MCN staff members would become the City of Fort Bragg employees, ensuring continuity in operations and customer support, pending approval by the Fort Bragg City Council. The anticipated closing date of the sale is June 30, 2025.

There are no known material contingent liabilities or additional significant subsequent events relating to the Mendocino Community Network. Management has evaluated subsequent events through March 26, 2025, the date on which the financial statements were available to be issued.

OTHER INFORMATION

MENDOCINO COMMUNITY NETWORK ORGANIZATION/BOARD OF EDUCATION/ADMINISTRATION JUNE 30, 2024

The Mendocino Unified School District was established in 1964 and is comprised of an area of approximately 420 square miles located in Mendocino County. There were no changes in the boundaries of the District during the current year. The District operates three elementary schools, one high school, one continuation high school, one preschool and one alternative education K-12. Mendocino Community Network is a proprietary fund of the District.

GOVERNING BOARD

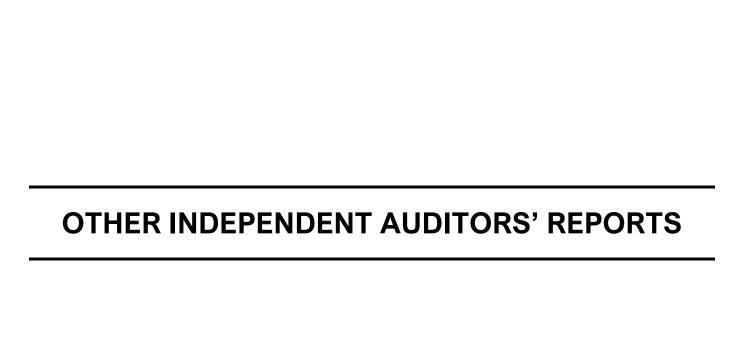
COVERNING BOARD						
Member	Office	Term Expires				
Emily Griffen	President	November 2026				
Windspirit Aum	Clerk	November 2024				
Lisa James	Member	November 2024				
Mark Morton	Member	November 2024				
Michael Schaeffer	Member	November 2024				

DISTRICT ADMINISTRATORS

Jason Morse Superintendent/Secretary to the Board

> Meg Kailikole Chief Business Officer

> > Rob Buch MCN Manager



REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS

Independent Auditors' Report

Governing Board Mendocino Community Network Mendocino Unified School District Mendocino. California

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of Mendocino Community Network a proprietary fund of the Mendocino Unified School District (the District), as of and for the year ended June 30, 2024, and the related notes to the financial statements, which collectively comprise the Mendocino Community Network's basic financial statements, and have issued our report thereon dated March 26, 2025.

Report on Internal Control over Financial Reporting

In planning and performing our audit of the financial statements of the Mendocino Community Network, we considered the District's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of District's internal control. Accordingly, we do not express an opinion on the effectiveness of District's internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses or significant deficiencies may exist that were not identified.

Report on Compliance and Other Matters

As part of obtaining reasonable assurance about whether Mendocino Community Network's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

San Diego, California March 26, 2025

Christy White, Inc.

Appendix D - Certificate of Insurance

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Appendix E - Professional Insurance



Insurance for Technology Professionals

A seamless integrated insurance solution for professionals.

Please read this wording, together with any endorsements and the Declarations, very carefully. If anything is not correct, please notify us immediately. Please note the full extent of your and our rights and duties.

Our promise to you

In return for the premium you have paid, we agree to insure you in accordance with the terms and conditions of the policy.

Your policy documents

Declarations Page

This contains a summary of policy information including the limits of liability and retention amounts you have selected.

General Terms and Conditions

This contains terms and conditions which apply to the entire policy.

Coverage Parts

This contains terms and conditions which apply only to the Coverage Part in which they appear.

Endorsements

These documents modify the Declarations page, General Terms and Conditions, and/or Coverage Parts.

These documents provide information that may affect your coverage as required by applicable law.

Complimentary training and risk management services

As a complimentary service that comes with this policy, we are pleased to provide a free confidential risk management and loss prevention service, consisting of an initial consultation and up to one hour of legal services to assist you in better understanding and minimizing risks that commonly lead to the types of claims covered under this policy. If you have a question about minimizing these types of liability risks in your business, please email your question to us at riskmanagement@hiscox.com, along with your policy number. A Hiscox representative will get back to you within one business day with a referral to a nationally recognized law firm with a practice specifically focused on your industry.

Additionally, your purchase of this policy qualifies you for complimentary access to the following:

Hiscox CyberClear Academy, an online interactive suite of training modules designed to reduce the risk that your company will become victim of a cyber event. Training is tailored to each employee's experience and role, and covers existing and emerging threats. This government-certified training program is unique to Hiscox, and will help you meet the requirements of regulators and train your employees to be prepared to better understand cyber-related threats.

To access Hiscox CyberClear Academy: www.hiscoxcyberclearacademy.com.

Access to breach prevention services through eRisk Hub® powered by NetDiligence®, a full suite of educational and technical resources that can assist in the prevention of cyber losses to your organization. Register at Hiscox eRisk Hub®: www.eriskhub.com/hiscox.php Use access code: 08663. Questions? Hiscox@eriskhub.com



Insurance for Technology Professionals

A comprehensive panel of breach response resources, featuring eRisk Hub® Breach Response Resource and Information Web Portal, powered by NetDiligence®, the industry standard of response and protection. Plus, public relations support, legal services, credit monitoring, extortion protection and more. These resources will help your clients comply with regulations and protect their reputation, should a breach occur.

For more information, visit https://www.hiscox.com/risk-management-cyber.

Reporting a claim

Please inform us immediately if you have a claim or loss to report and refer to the claim reporting provisions in each Coverage Part for further details.

Email: hiscoxclaims@hiscox.com



30 North LaSalle Street, Suite 1760, Chicago, IL 60602 (646) 452-2353

Insurance for Technology Professionals DECLARATIONS

NOTICE: YOUR POLICY CONTAINS CLAIMS-MADE LIABILITY COVERAGE. CLAIMS-MADE COVERAGE APPLIES ONLY TO CLAIMS THAT ARE FIRST MADE DURING THE POLICY PERIOD OR DISCOVERY PERIOD, IF PURCHASED, AND REPORTED IN ACCORDANCE WITH THE TERMS OF THE POLICY.

THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES WILL BE REDUCED AND MAY BE EXHAUSTED BY CLAIMS EXPENSES. FURTHERMORE, CLAIMS EXPENSES WILL BE APPLIED AGAINST THE RETENTION.

PLEASE READ YOUR POLICY CAREFULLY AND CONSULT YOUR INSURANCE ADVISOR ABOUT ANY QUESTIONS YOU MIGHT HAVE.

Broker No.: US 0000126 AmWINS Brokerage (Manhattan Beach,

CA)

 Policy No.:
 MPL1790263.24
 1600 Rosecrans Ave, Ste 100

 Renewal of:
 MPL1790263.23
 Manhattan Beach, CA 90266-3708

1. Named Insured: Mendocino Unified School District dba Mendocino Community Network

Address: 10700 Ford St

Mendocino, CA 95460

2. Policy Period: Inception Date: 08/08/2024 Expiration Date: 08/08/2025

Inception date shown shall be at 12:01 A.M. (Standard Time) to Expiration date shown above at

12:01 A.M. (Standard Time) at the address of the Named Insured.

3. General terms and PLP P0001 CW (07-19)

conditions wording: The General terms and conditions apply to this policy in conjunction with the specific wording

detailed in each section below.

4. Endorsements: E6017.3 - Nuclear Incident Exclusion Clause-Liability-Direct (Broad) Endorsement, E6020.4

- War, Civil War, Cyberwarfare, and NCBR Exclusion Endorsement, E9003.2 - California Amendatory Endorsement, E6085.1 - Full Prior Acts Endorsement, E8511.3 - Cyber Crime & Cyber Deception Endorsement (DBPSL), E8627.1 - Intellectual Property Enhancement Endorsement, E8621.2 - Breach of Contract Enhancement Endorsement (Tech), E8530.1 - Telephone Toll Fraud Sublimit Endorsement, E8531.1 - Amend Personally Identifiable Information and Regulatory Action Endorsement (EU General Data Protection Regulation), E6314.2 - Coverage Enhancement Amendatory Endorsement, E9998.2 - TRIA Not Purchased Endorsement, E8673.2 - Cyber Incidents (Tech), and E6065.3 - Change of Mailing Address

Endorsement

5. Optional Extension

Period:

Extended Reporting Period of 12/24/36 months at 75/150/225 percent of the annual premium.

6. Notification of Hiscox Claims

claims to: 5 Concourse Parkway, Suite 2150

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Insurance for Technology Professionals DECLARATIONS

Atlanta GA, 30328 Fax: 678-731-9501

Email: HiscoxClaims@Hiscox.com

Notification of cyber claims and events:

Hiscox Cyber Claims

5 Concourse Parkway, Suite 2150

Atlanta GA, 30328 Fax: 678-731-9501

Email: cyberclaimsUSA@Hiscox.com

If you experience a cyber **event**, please also contact the Breach Coach® at 1-855-HISCO-BR (1-855-447-2627). Provide your company name and any other companies/individuals involved.

Additional Notification requirements:

see Endorsement E8643 for additional notification requirements under the Cyber Enhancement

Coverage Part

7. Policy Premium: \$4,464 Premium Allocated to TRIA: \$0 State Surcharge: N/A

8. Specified Terms for Cyber Coverage Part:

Your CyberClear policy includes complimentary access to our risk management and breach response services, including:

• Cyber Training with Paladin Shield, a powerful cybersecurity platform that is entirely free for Hiscox insureds. Paladin Shield provides software protections, live consultative services, and security training content including phishing simulations, all under one log-in. Nearly all cyber attacks are instigated by human error. Paladin's training teaches best practices on current security topics with engaging videos and interactive quizzes. Training includes topics such as data privacy, dangers in your inbox, incident preparedness and response, and online safety 101.

To access Paladin cyber training: hiscox.meetpaladin.com.

• Access to breach prevention services through eRisk Hub® powered by NetDiligence®, a full suite of educational and technical resources that can assist in the prevention of cyber losses to your organization.

To register at Hiscox eRisk Hub®, visit https://eriskhub.com/hiscox and use access code: 08663. Questions? Hiscox@eriskhub.com

A comprehensive panel of breach response resources, including public relations support, legal services, credit
monitoring, extortion protection, and more. These resources will help you address Extortion matters quickly, comply with
regulations and protect your reputation, should an event occur.

For more information, visit www.hiscox.com/risk-management-cyber.

Technology Professional Liability Claims-Made and Reported Coverage Part: PLPTCH P0001 CW (01/20)

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Insurance for Technology Professionals DECLARATIONS

Covered Professional Services: Providing access to the internet, and Telecom Billing Services, for others for a fee.

Technology Professional Liability (TL): \$1,000,000 Each Claim / \$1,000,000 Aggregate

Retroactive Date: 08/08/2003

 Retention:
 \$ 2,500

 TL Premium:
 \$ 2,658

Endorsements: E9182.1 - California Amendatory Endorsement

Media Liability Claims-Made and Reported Coverage Part: PLP P0005 CW (06-14)

Covered Professional Services: Providing access to the internet, and Telecom Billing Services, for others for a fee.

Media Liability (ML): \$ 1,000,000 Each Claim / \$ 1,000,000 Aggregate

Retroactive Date: Full Prior Acts

 Retention:
 \$ 2,500

 ML Premium:
 \$ 151

Endorsements: E9122.1 - California Amendatory Endorsement

Data Breach and Privacy Security Liability Claims-Made/Breach Occurring Coverage Part: PLP P0004 CW (06-14)

Data Breach & Privacy Security

Liability (DBPSL):

\$ 1,000,000 DBPSL Each Claim and/or Breach / \$ 1,000,000 Aggregate

Regulatory Action: \$ 1,000,000 Aggregate

Regulatory Compensatory: \$ 1,000,000 Aggregate

PCI Fine/Penalties: \$ 1,000,000 Aggregate

PCI Assessments: \$ 1,000,000 Aggregate
Computer Forensics Costs: \$ 1,000,000 Aggregate

Notification Costs: \$ 1,000,000 Aggregate

Credit or Identity Protection Costs: \$ 1,000,000 Aggregate

Crisis Management & Public

Relations Cost:

\$ 1,000,000 Aggregate

Retroactive Date: Full Prior Acts

Retention: \$ 2,500

DBPSL Premium: \$ 1,505

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HPADECADREN134



30 North LaSalle Street, Suite 1760, Chicago, IL 60602 (646) 452-2353

Insurance for Technology Professionals DECLARATIONS

Endorsements: E9102.1 - California Amendatory Endorsement

Cyber Enhancement Loss Occurring and Discovered Coverage Part: PLP P0006 CW (06-14)

Cyber Business Interruption (CBI): \$ 1,000,000 Aggregate

Cyber Business Interruption

Consulting Costs:

\$50,000 Aggregate

Cyber Business Interruption Hourly

Loss Amount:

\$ 10,000 Minimum Per hour

Retention: 10 hours

CBI Premium: \$ 50

Cyber Extortion (CE): \$ 1,000,000 Aggregate

Retention: \$ 2,500 CE Premium: \$ 50

Hacker Damage (HD): \$ 1,000,000 Aggregate

Hacker Damage Consulting Costs: \$50,000 Aggregate

Retention: \$ 2,500 HD Premium: \$ 50

E8643.2 - Cyber Enhancements Notification Endorsement, and E8649.1 - Amend **Endorsements:**

Definition of Business Interruption Costs (Remove Hourly Loss Amount)

IN WITNESS WHEREOF, the Insurer indicated above has caused this Policy to be signed by its President and Secretary, but this Policy shall not be effective unless also signed by the Insurer's duly authorized representative.

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30 North LaSalle Street, Suite 1760, Chicago, IL 60602 (646) 452-2353

Insurance for Technology Professionals

DECLARATIONS

President

Secretary

Authorized Representative Kevin Kerridge

July 15, 2024

Hiscox Inc.



General Terms and Conditions

Our promise to you

In consideration of the premium charged, and in reliance on the statements made and information provided to **us**, **we** will pay **covered amounts** as defined in this policy, provided **you** properly notify **us** of **claims**, **breaches**, **events**, or **occurrences**, and meet **your** obligations to **us** in accordance with the terms of this policy.

II. Limits of liability

Regardless of the number of Coverage Parts **you** have purchased, the maximum **we** will pay for all **covered amounts** will be as follows:

Coverage part limit

Each Coverage Part purchased will be subject to a **coverage part limit** (if one is stated in the Declarations), which is the maximum amount **we** will pay for all **covered amounts** under that Coverage Part, other than coverage enhancements or other items **we** have expressly agreed to pay in addition to the limit. The **coverage part limit** will be in excess of any applicable **retention**.

B. Each claim limit

The Each Claim Limit identified in the Declarations is the maximum amount **we** will pay for all **covered amounts** for each covered **claim**, unless a lower sublimit is specified, in which case the sublimit is the maximum amount **we** will pay for the type of covered **claim** to which the sublimit applies. The Each Claim Limit, or any sublimit, will be in excess of any applicable **retention** and will be a part of, and not in addition to, any applicable **coverage part limit**.

C. Each breach limit

The Each Breach Limit identified in the Declarations (if **you** have purchased a relevant Coverage Part) is the maximum amount **we** will pay for all **covered amounts** for each covered **breach**, unless a lower sublimit is specified, in which case the sublimit is the maximum amount **we** will pay for the type of covered **breach** or costs to which the sublimit applies. The Each Breach Limit, or any sublimit, will be in excess of any applicable **retention** and will be a part of, and not in addition to, any applicable **coverage part limit**.

D. Each occurrence limit

The Each Occurrence Limit identified in the Declarations (if you have purchased a relevant Coverage Part) is the maximum amount we will pay for all covered amounts for each covered occurrence, unless a lower sublimit is specified, in which case the sublimit is the maximum amount we will pay for the type of covered occurrence to which the sublimit applies. The Each Occurrence Limit, or any sublimit, will be in excess of any applicable retention and will be a part of, and not in addition to, any applicable coverage part limit.

E. General liability coverage part limits

If **you** have purchased a General Liability Coverage Part, additional rules for applying limits are contained in Section IV. Limits of liability, of that Coverage Part.

F. Related claims

All **related claims**, regardless of when made, will be treated as one **claim**, and all subsequent **related claims** will be deemed to have been made against **you** on the date the first such **claim** was made. If, by operation of this provision, the **claim** is deemed to have been made during any period when **we** insured **you**, it will be subject to only one **retention** and one Each Claim Limit regardless of the number of claimants, **insureds**, or **claims** involved.

G. Shared limits

If you have purchased more than one of the following Coverage Parts:

- 1. Cyber Coverage Part;
- 2. Technology Professional Liability Coverage Part; or
- 3. Digital Media Liability Coverage Part,

then the **coverage part limits** applicable to those Coverage Parts will be shared, and any payments **we** make under one Coverage Part, other than coverage enhancements or other items **we** have expressly agreed to pay in addition to the limit, will reduce the **coverage part limits** for all Coverage Parts.

If the applicable **coverage part limits** are different, the maximum amount **we** will pay for **covered amounts** under all Coverage Parts combined, other than coverage enhancements or other items **we** have expressly agreed to pay in addition to the limits, will be the highest available **coverage part limit**.

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General Terms and Conditions

III. Your obligations to us

A. Named insured responsibilities

It will be the responsibility of the **named insured** (or, if there is more than one **named insured**, the first one listed on the Declarations) to act on behalf of all **insureds** with respect to the following:

- 1. timely giving and receiving notice of cancellation or non-renewal;
- 2. timely payment of premium;
- 3. receipt of return premiums;
- 4. timely acceptance of changes to this policy; and
- 5. timely payment of retentions.
- B. Your duty to cooperate

You must cooperate with us in the defense, investigation, and settlement of any claim, potential claim, breach, event, occurrence, or other matter notified to us, including but not limited to:

- notifying us immediately if you receive any settlement demands or offers, and sending us copies of any demands, notices, summonses, or legal papers;
- 2. submitting to examination and interrogation under oath by **our** representative and giving **us** a signed statement of **your** answers;
- 3. attending hearings, depositions, and trials as we request;
- assisting in securing and giving evidence and obtaining the attendance of witnesses;
- 5. providing written statements to **our** representative and meeting with such representative for the purpose of investigation and/or defense;
- providing all documents and information we may reasonably request, including authorizing us to obtain records; and
- 7. pursuing **your** right of recovery from others.
- Your obligation not to incur any expense or admit liability

You must not make any payment, incur any expense, admit any liability, assume any obligation, or enter into any settlement negotiations or agreements without **our** prior consent. If **you** do so, it will be at **your** own cost and expense.

D. Your representations

You warrant that all representations made and all materials submitted by **you** or on **your** behalf in connection with the **application** for this policy are true, accurate, and not misleading, and agree they were relied on by **us** and were material to **our** decision to issue this policy to **you**. If **we** learn any of the representations or materials were untrue, inaccurate, or misleading in any material respect, **we** are entitled to treat this policy as if it had never existed.

IV. Optional extension period

- 1. If we or the named insured cancel or non-renew this policy, then the named insured will have the right to purchase an optional extension period for the duration and at the percentage of the expiring premium stated in Item 5 of the Declarations. The optional extension period, if purchased, will start on the effective date of cancellation or non-renewal. However, the right to purchase an optional extension period will not apply if:
 - a. this policy is canceled by **us** for nonpayment of premium; or
 - b. the total premium for this policy has not been fully paid.
- 2. The optional extension period will apply only to **claims** that:
 - a. are first made against you and reported to us during the optional extension period; and
 - arise from your professional services performed, or a breach, data breach, offense, or occurrence that takes place, on or after the retroactive date but prior to the effective date of cancellation or non-renewal of this policy.
- 3. The additional premium will be fully earned at the inception of the optional extension period.

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General Terms and Conditions

4. Notice of election and full payment of the additional premium for the optional extension period must be received by us within 30 days after the effective date of cancellation or nonrenewal, otherwise any right to purchase the optional extension period will lapse.

The limits of liability applicable during any purchased optional extension period will be the remaining available **coverage part limit**. There will be no separate or additional limit of liability available for any purchased optional extension period.

The right to purchase an optional extension period will apply only to Coverage Parts **you** have purchased that include coverage written on a claims-made or loss occurring and discovered basis, and not to any Coverage Parts written on an occurrence basis.

V. Other provisions affecting coverage

The following provisions apply to all Coverage Parts **you** have purchased. If there is a conflict between any of the provisions here and a provision contained in a Coverage Part, then the provision in the Coverage Part will govern the coverage provided under that Coverage Part.

A. Alteration and assignment

No change in, modification of, or assignment of interest under this policy will be effective unless made by written endorsement to this policy signed by **our** authorized representative.

B. Bankruptcy or insolvency

Your bankruptcy or insolvency will not relieve us of any of our obligations under this policy.

C. Cancellation

- This policy may be canceled by the named insured by giving written notice, which must include the date the cancellation will be effective, to us at the address stated in the Declarations.
- 2. This policy may be canceled by us by mailing to the named insured by registered, certified, or other first class-mail (or by email where allowed by applicable law), at the named insured's address (or email address) stated in Item 1 of the Declarations, written notice which must include the date the cancellation will be effective. The effective date of the cancellation will be no less than 60 days after the date of the notice of cancellation, or ten days if the cancellation is due to nonpayment of premium.
- 3. The mailing (or emailing) of the notice will be sufficient proof of notice, and this policy will terminate at the date and hour specified in the notice.
- 4. If this policy is canceled by the **named insured**, **we** will retain the customary short rate proportion of the premium.
- 5. If this policy is canceled by **us**, **we** will return a pro rata proportion of the premium.
- Payment or tender of any unearned premium by us will not be a condition precedent to the cancellation, but such payment will be made as soon as possible.

D. Change in control

If, during the policy period identified in Item 2 of the Declarations, the **named insured** consolidates with, merges into, or sells all or substantially all of its assets to any other person or entity, or any other person or entity acquires ownership or control of the **named insured**, then the **named insured** will provide **us** written notice no later than 30 days after the effective date of such change in control, together with any other information **we** may require.

We will not cancel this policy solely because of a change in control, but unless you and we agree in writing otherwise, after the effective date of any change in control, this policy will cover only claims arising from professional services performed, or breaches, data breaches, offenses, or occurrences that took place, prior to the change in control.

E. Coverage territory

This policy will apply to **your professional services** performed, and **breaches**, offenses, **events**, or **occurrences** that take place, anywhere in the world, provided that any action, arbitration, or other proceeding (if **you** have purchased a relevant Coverage Part) is brought within the United States, its territories or possessions, or Canada.

F. Estates, heirs, legal representatives, spouses, and domestic partners

In the event of an **employee's** death or disability, this policy will also apply to **claims** brought against the **employee's**:

1. heirs, executors, administrators, trustees in bankruptcy, assignees, and legal

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General Terms and Conditions

representatives; or

2. lawful spouse or lawful domestic partner;

but only:

- a. for a covered claim arising from the scope of the employee's work for you; or
- b. in connection with their ownership interest in property which the claimant seeks as recovery in a covered **claim** arising from the scope of the **employee's** work for **you**.
- G. False or fraudulent claims

If any **insured** commits fraud in connection with any **claim**, **potential claim**, **breach**, offense, **event**, or **occurrence**, whether regarding the amount or otherwise, this insurance will become void as to that **insured** from the date the fraud is committed.

H. Other insurance

Any payment due under this policy is specifically excess of and will not contribute with any other valid and collectible insurance, unless such other insurance is written specifically as excess insurance over this policy. However, if **you** have purchased a General Liability Coverage Part, rules for how that Coverage Part will be treated when there is other valid and collectible insurance are contained in Section V. Other provisions affecting coverage, D. Other insurance, of that Coverage Part.

If the same **claim** or **related claims**, **breach**, **event** or **related events**, or **occurrence** is covered under more than one Coverage Part, **we** will pay only under one Coverage Part, which will be the Coverage Part that provides the most favorable coverage.

Subrogation

In the event of any payment by **us** under this policy, **we** will be subrogated to all of **your** rights of recovery to that payment.

You will do everything necessary to secure and preserve **our** subrogation rights, including but not limited to the execution of any documents necessary to allow **us** to bring suit in **your** name.

You will do nothing to prejudice our subrogation rights without our prior written consent.

Any recovery first will be paid to **you** up to the amount of any **retention you** have paid, and then to **us** up to the amount of any **covered amounts we** have paid.

J. Titles

Titles of sections of and endorsements to this policy are inserted solely for convenience of reference and will not be deemed to limit, expand, or otherwise affect the provisions to which they relate.

VI. Definitions applicable to all Coverage Parts

The following definitions apply to all Coverage Parts **you** have purchased. If the same term is defined here and in a Coverage Part, then the definition in the Coverage Part will govern the coverage provided under that Coverage Part.

Application

means the signed application for the policy and any attachments and materials submitted with that application. If this policy is a renewal or replacement of a previous policy issued by **us**, **application** also includes all previous signed applications, attachments, and materials.

Coverage part limit

means the amount stated in the Declarations as the aggregate limit applicable to each Coverage Part **you** have purchased which is subject to an aggregate limit.

Covered amounts

means any amounts \mathbf{we} have expressly agreed to pay under any Coverage Part \mathbf{you} have purchased.

Employee

means any past, present, or future:

- employee (including any part-time, seasonal, leased, or temporary employee or any volunteer);
- 2. partner, director, officer, or board member (or equivalent position); or
- 3. independent contractor;

of a named insured, but only while in the course of their performance of work or services on

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Named insured

Policy period

General Terms and Conditions

behalf of or at the direction of the named insured.

means the individual, corporation, partnership, limited liability company, limited partnership, or other entity identified in Item 1 of the Declarations.

means the period of time identified in Item 2 of the Declarations, and any optional extension period, if purchased.

Professional services means those services identified as Covered Professional Services under any Coverage Part on

the Declarations containing such a description.

Related claims means all **claims** that are based upon, arise out of, or allege:

> 1. a common fact, circumstance, situation, event, service, transaction, cause, or origin;

2. a series of related facts, circumstances, situations, events, services, transactions, sources, causes, or origins;

a continuous or repeated act, error, or omission in the performance of your professional 3. services; or

the same breach, event, occurrence, or offense. 4.

The determination of whether a claim is related to another claim or claims will not be affected by the number of claimants or insureds involved, causes of action asserted, or duties involved.

Retention means the amount or time identified as such in the Declarations.

Retroactive date means the date identified as such in the Declarations.

We, us, or our means the Company identified on the Declarations as issuing this policy.

means any individual or entity expressly described as an insured in any Coverage Part you have You, your, or insured

purchased.

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I. Insuring agreement -What is covered

We will pay up to the coverage part limit for damages and claim expenses in excess of the retention for covered claims against you resulting from the performance of your technology services by you or anyone on your behalf (including your subcontractors or outsourcers) on or after the retroactive date, for any actual or alleged:

- 1. breach of contract:
- 2. indemnity:
- 3. negligence;
- 4. fraud:
- 5. breach of confidentiality;
- 6. invasion of privacy;
- 7. intellectual property infringement;
- 8. unfair practices:
- 9. defamation; or
- 10. unintentional infliction of emotional distress, but only when asserted in conjunction with and based on the same allegations as a claim for negligent publication, invasion of privacy, or defamation,

provided the claim is first made against you during the policy period and is reported to us in accordance with Section V. Your obligations.

II. Coverage enhancements and sublimits

We will also make the following payments, provided you report such matters to us in accordance with Section V. Your obligations:

Contractual fees

- If your client refuses to pay your contractually agreed fees (including any amount you owe to a subcontractor on the date your client first refuses to pay) for your technology services performed on or after the retroactive date, and you satisfy us that:
 - you do not have reasonable grounds to legally compel payment of the amount owed:
 - there is written evidence from your client that they intend to make a claim against 2 you that is reasonably likely to result in covered damages greater than the amount that you are owed; and
 - our payment is reasonably likely to fully and finally resolve all known claims and potential claims by that client,

then we will pay the amount you are owed in excess of the retention stated in the Declarations, not including any amount for your lost profit, mark-up, or tax liabilities.

If a claim is still made against you after we have paid your outstanding fees, our obligation to pay any damages and claim expenses resulting from such claim will be reduced by the amount we paid.

Any payment we make under this subsection A will be a part of, and not in addition to, the coverage part limit.

Declaratory relief

- B. If a claimant has advised you, in writing, that you are committing copyright or trademark infringement; and
 - directly in response to that written assertion, you file a declaratory relief action and 2. the claimant files a counterclaim against you alleging copyright or trademark infringement; and
 - the counterclaim is covered under this policy and pending against you while you are prosecuting your declaratory relief action,

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then **we** will pay reasonable attorney fees **you** incur in excess of the **retention** stated in the Declarations to prosecute that declaratory relief action.

Any payment we make under this subsection B will be a part of, and not in addition to, the coverage part limit.

Pre-claim assistance

C. We will pay for reasonable and necessary fees, costs, and expenses we incur to investigate or monitor a potential claim arising out of your technology services performed on or after the retroactive date, provided you first become aware of the circumstances leading to the potential claim during the policy period. Our obligation to make any payments under this subsection C will cease when a claim is made against you arising out of the same circumstances as the potential claim we investigated or monitored.

No **retention** will apply to amounts **we** pay under this subsection C, and such amounts will be in addition to, and not part of, the **coverage part limit**.

Service credits

D. If your client makes a claim against you, and providing service credits to the client as part of or as the entire settlement will fully and finally resolve all known claims and potential claims by that client, then we will also pay for the value of your service credits (less any profit or mark-up), but only if the service credits are agreed to by us as part of the settlement.

Any payment **we** make under this subsection D is subject to the **retention** stated in the Declarations, and such payments will be a part of, and not in addition to, the **coverage part limit**.

Supplemental payments

E. We will pay reasonable expenses, including loss of wages and a \$250 travel per diem, incurred by you if we require you to attend depositions, arbitration proceedings, or trials in connection with the defense of a covered claim, but we will not pay more than an aggregate of \$10,000 per claim for such expenses, regardless of the number of insureds.

No **retention** will apply to amounts **we** pay under this subsection E, and such amounts will be in addition to, and not part of, the **coverage part limit**.

III. Who is an insured

For purposes of this Coverage Part, you, your, or insured means a named insured, subsidiary, employee, executive, acquired entity, or additional insured as defined below:

Named insured

means the individual, corporation, partnership, limited liability company, limited partnership, or other entity identified in Item 1 of the Declarations.

Subsidiary

means any entity of which the **named insured** has majority ownership before or as of the inception of the **policy period**.

Employee

means any past, present, or future person employed by the **insured organization** as a permanent, part-time, seasonal, leased, or temporary employee, or any volunteer, but only while in the course of their performance of **technology services** on behalf of or at the direction of such **insured organization**.

Executive

means any past, present, or future partner, director, officer, or board member (or the equivalent positions) of the **insured organization**, but only while in the course of their performance of **technology services** on behalf of such **insured organization**.

Acquired entity

means any entity:

- 1. in which the named insured:
 - a. acquires substantially all of the assets;
 - acquires the majority of its voting securities, as a result of which it becomes a subsidiary; or

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- c. merges and leaves the **named insured** as the surviving entity; or
- that the named insured creates as a subsidiary,

during the policy period.

With respect to an **acquired entity** whose revenues exceed 20% of the **named insured's** revenues (as reported in **your** most recent fiscal year-end financial statements prior to inception of this policy) at the time of its creation or acquisition, any coverage under this policy will expire 90 days after the effective date of its creation or acquisition unless, within such 90 day period:

- a. the **named insured** provides **us** with written notice of such creation or acquisition;
- the named insured provides us with information related to such creation or acquisition as we may reasonably require;
- the named insured accepts any special terms, conditions, exclusions, or additional premium charge as we may reasonably require; and
- d. **we** agree by written endorsement to provide such coverage.

This policy will apply to an **acquired entity** only with respect to **your technology services** performed after the acquisition, merger, or creation. If a **claim** results from **technology services** performed both before and after the acquisition, merger, or creation of an **acquired entity**, this policy will apply only to that portion of the **claim** attributable to the **technology services** performed after the acquisition, merger, or creation.

Additional insured

means any person or organization **you** have agreed in a written contract or agreement to add as an additional insured to a policy providing the type of coverage afforded by this Coverage Part, provided the contract or agreement:

- 1. is currently in effect or becomes effective during the policy period; and
- was executed before the technology services out of which the claim arises were performed.

Coverage is available for **additional insureds** solely for their liability arising out of **your** negligence or of those acting on **your** behalf and not for any liability arising out of the sole negligence of the **additional insured**.

IV. Defense and settlement of claims

Defense

We have the right and duty to defend any covered **claim**, even if such **claim** is groundless, false, or fraudulent.

We have the right to select and appoint counsel to defend **you** against a covered **claim**. **You** may request in writing that **we** appoint defense counsel of **your** own choice, but whether to grant or deny such a request will be at **our** sole discretion.

Settlement

We have the right to solicit and negotiate settlement of any claim but will not enter into a settlement without your consent, which you agree not to withhold unreasonably. We agree that you may settle any claim where the total claim expenses and damages does not exceed the retention, provided the entire claim is resolved and you obtain a full release on behalf of all insureds.

If you withhold consent to a settlement recommended by us and acceptable to the party who made the claim, the most we will pay for that claim is the sum of:

- 1. the amount of **our** recommended settlement;
- 2. **claim expenses** incurred up to the date of **our** recommendation;
- 3. 70% of all claim expenses incurred after our recommendation; and

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4. 70% of all **damages** in excess of the settlement amount recommended by **us**.

V. Your obligations

Notifying us of claims and coverage enhancements

You must give written notice to **us** of any **claim**, or any other matter covered under Section II. Coverage enhancements, as soon as possible once such **claim** or other matter is known to an **executive**, but in any event, no later than 60 days after the end of the **policy period**.

All such notifications must be in writing and include a copy of the **claim** or other covered matter, and must be submitted to **us** via the designated email address or mailing address identified in Item 6 of the Declarations.

Notifying us of potential claims

You have the option of notifying us of potential claims that may lead to a covered claim against you.

In order to do so, **you** must give written notice to **us** as soon as possible and within the **policy period**, and the notice must, to the greatest extent possible, identify the details of the **potential claim**, including identifying the potential claimant(s), the likely basis for liability, the likely demand for relief, and any additional information about the **potential claim we** may reasonably request.

The benefit to **you** of notifying **us** of a **potential claim** is that if an actual **claim** arises from the same circumstances as the properly notified **potential claim**, then **we** will treat that **claim** as if it had first been made against **you** on the date **you** properly notified **us** of it as a **potential claim**, even if that **claim** is first made against **you** after the **policy period** has expired.

All **potential claim** notifications must be in writing and submitted to **us** via the designated email address or mailing address identified in Item 6 of the Declarations.

Retention

Our obligation to pay **damages** and **claim expenses** under this Coverage Part is in excess of the **retention**, which **you** must pay in connection with each covered **claim** or other covered matter, if applicable.

VI. Exclusions – What is not covered

We will have no obligation to pay any sums under this Coverage Part, including any damages or claim expenses, for any claim:

Antitrust/deceptive trade practices

- 1. based upon or arising out of any actual or alleged:
 - a. false, deceptive, or unfair trade practices;
 - b. unfair competition, impairment of competition, restraint of trade, or antitrust violations:
 - violation of the Sherman Anti-Trust Act, the Clayton Act, the Robinson-Patman Act, all including as may be amended, or any similar foreign, federal, state, or local statutes, rules, or regulations; or
 - d. deceptive or misleading advertising.

However, this exclusion will not apply to a **claim** for **unfair practices** otherwise covered under part 8 of Section I. Insuring agreement – What is covered.

Bodily injury

 based upon or arising out of any actual or alleged bodily injury; however, this exclusion will not apply to a claim for emotional distress otherwise covered under part 10 of Section I. Insuring agreement - What is covered.

Ceased product/service

3. based upon or arising out of any actual or alleged commercial decision to cease providing a particular product or service.

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Chargeback

4. based upon or arising out of any actual or alleged chargeback, liability, or fee incurred by you or your client as a result of a merchant service provider, including any credit card company or bank, wholly or partially reversing or preventing a payment transaction.

Collection of data without knowledge/ consumer privacy

- 5. based upon or arising out of any actual or alleged:
 - collection of personally identifiable information by you (or others on your behalf) without the knowledge or permission of the person to whom the personally identifiable information relates: or
 - violation of any privacy law or consumer data protection law protecting against the b. use, collection, retention, or disclosure of any information about a person or any confidential corporate information.

Commercial dispute

- based upon or arising out of any actual or alleged commercial dispute with your 6. business partner or business associate, including but not limited to any reseller, distributor, original equipment manufacturer, third-party sales agent, systems integrator, or joint venturer, but only to the extent such a **claim** is based upon:
 - a commission or royalty, or any other term upon which such partner or associate is to be compensated in connection with doing business with you, or any compensation or remuneration promised or owed by you pursuant to those terms;
 - your decision to cease doing business with such a partner or associate. b.

Competitor trade secrets/ confidential information

- based upon or arising out of any actual or alleged disclosure, misuse, or 7. misappropriation of any ideas, trade secrets, or confidential information that came into the possession of any person or entity:
 - before such person or entity became an employee, board member, trustee. a. director, or officer (or equivalent position) of the insured organization; or
 - after such person or entity became an employee, board member, trustee, director, or officer (or equivalent position) of the insured organization if the ideas, trade secrets, or confidential information was obtained by use of access credentials that were granted prior to their employment with the **insured organization**.

Criminal proceedings

8. brought in the form of a criminal proceeding, including but not limited to a criminal investigation, grand jury proceeding, or criminal action.

Employer liability/ third party discrimination/ fiduciary

- 9. based upon or arising out of any actual or alleged:
 - obligation under any workers' compensation, unemployment compensation, employers' liability, fair labor standards, labor relations, wage and hour, or disability benefit law, including any similar provisions of any foreign, federal, state, or local statutory or common law;
 - liability or breach of any duty or obligation owed by you as an employer or h prospective employer;
 - breach of any fiduciary duty owed by vou: or C.
 - d. harassment, wrongful termination, retaliation, or discrimination, including but not limited to adverse or disparate impact.

Excluded statutory violations

- based upon or arising out of any actual or alleged violation of the following laws: 10.
 - the Securities Act of 1933: a.
 - b. the Securities Exchange Act of 1934;
 - C. any state blue sky or securities laws:
 - d. any state or federal taxation law or regulation;
 - the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 et seq.; d.
 - the Employee Retirement Income Security Act of 1974;

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- f. the Children's Online Privacy Protection Act (COPPA);
- g. the Fair Debt Collection Practices Act; or
- h. the Fair Credit Reporting Act,

all including as may be amended, or any similar provisions of any foreign, federal, state, or local statutory or common law and any rules or regulations promulgated under such laws.

Exclusivity/non-compete

 based upon or arising out of any actual or alleged breach of any exclusivity, noncompetition, non-solicitation, or other similar commercial terms in your contract with a client.

False or misleading advertising

12. based upon or arising out of any actual or alleged false or misleading advertisement; however, this exclusion will not apply to any otherwise covered claim that is based on your alleged unauthorized use of another's trademark.

Funds transfer

- 13. for any actual or alleged loss, theft, or transfer of:
 - a. your funds, monies, or securities;
 - b. the funds, monies, or securities of others in your care, custody, or control; or
 - c. the funds, monies, or securities in the care, custody, or control of any third party, including but not limited to the value of any funds, monies, or securities transferred by **you** or others on **your** behalf.

Government investigation/ enforcement

14. based upon or arising out of any actual or alleged governmental investigation or enforcement of any state or federal regulation, including but not limited to any regulation promulgated by the Federal Trade Commission, Federal Communications Commission, or the Securities and Exchange Commission, or ASCAP, BMI, SESAC, or other similar licensing organization; however, this exclusion will not apply to any claim brought by a government agency in its capacity as a client.

Improper billing

based upon or arising out of any actual or alleged inaccurate, improper, or fraudulent billings or invoices, including but not limited to a qui tam action or any action under the False Claims Act, as may be amended, or any similar provisions of any foreign, federal, state, or local statutory or common law.

Infrastructure interruption

- based upon or arising out of any actual or alleged failure or interruption of service provided by an internet service provider, telecommunications provider, utility provider, including but not limited to any water, gas, electric, or other utility provider, or other infrastructure provider; however, this exclusion will not apply to:
 - a. a **claim** by **your client**, if **you** are an internet service provider, telecommunications provider, utility provider, or other infrastructure provider; or
 - b. a failure or interruption of service provided by a cloud computing provider, data center or colocation service provider, or other hosted computer resource provider.

Insured vs. insured

- 17. brought by or on behalf of one **insured** or **affiliate** against another **insured** or **affiliate**; however, this exclusion will not apply to a **claim** made by:
 - a. an insured or affiliate in their capacity as a client; or
 - any additional insured against another insured which is based upon or arises out of any other insured's performance of technology services for the additional insured.

Intentional acts

18. based upon or arising out of any actual or alleged fraud, dishonesty, criminal conduct, or any knowingly wrongful, malicious, or intentional acts or omissions, except that we will pay claim expenses until there is a final adjudication establishing such conduct.

However, this exclusion will not apply to an otherwise covered **claim** for **fraud**.

This exclusion will apply to the **named insured** only if the conduct was committed or

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allegedly committed by any:

- a. executive of the named insured; or
- employee of the named insured if any executive of the named insured knew or had reason to know of such conduct by the employee.

This exclusion will apply separately to each **insured** and will not apply to any **insured** who did not commit, participate in, acquiesce to, or ratify such conduct committed by another **insured**.

Patent infringement

 based upon or arising out of any actual or alleged infringement, use, or disclosure of any patent.

Pollution/environmental

20. based upon or arising out of any actual, alleged, or threatened discharge, dispersal, release, or escape of **pollutants**, including any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize **pollutants**.

Prior acts/notice/knowledge

- 21. based upon or arising out of any:
 - claim or potential claim that was the subject of any notice given under any other policy of which this policy is a renewal or replacement;
 - claim or potential claim that was the subject of, or is related to, any prior or pending litigation, claim, written demand, arbitration, administrative or regulatory proceeding or investigation, or licensing proceeding that was filed or commenced against you and of which any executive had notice prior to the policy period; or
 - c. other matter any **executive** had knowledge of prior to the **policy period**, and such **executive** had a reasonable basis to believe could result in a **claim**.

However, if this policy is a renewal or replacement of a previous policy **we** issued that provided materially identical coverage, and is part of an unbroken chain of successive policies issued by **us**, the **policy period** referred to in paragraphs b and c, above, will be the policy period of the first such policy **we** issued.

Property damage

22. based upon or arising out of any actual or alleged **property damage**; however, this exclusion will not apply to damage to data, or destruction or loss of use of data.

Repair/replace/recall

23. based upon or arising out of any actual or alleged repair, upgrade, correction, recall, replacement, withdrawal, removal, or disposal costs incurred by you or others; however, this exclusion will not apply to an otherwise covered claim alleging the loss of use of technology products.

Subsidiary outside control of named insured

- 24. a. based upon or arising out of **technology services** performed by or on behalf of a past or present **subsidiary** or **acquired entity** while the **named insured** does not have majority ownership or management control of it; or
 - made against a subsidiary or an acquired entity, or anyone acting on its behalf, while the named insured does not have majority ownership or management control of it.

Sweepstakes/gambling/ lotteries/redemption

- 25. based upon or arising out of any:
 - a. actual or alleged provision of any sweepstakes, gambling activities, or lotteries; or
 - price discounts, prizes, awards, money, or valuable consideration given in excess of a total contracted or expected amount, including but not limited to over redemption or under redemption of coupons, discounts, awards, or prizes.

Third party technology product defect

- 26. based upon or arising out of any actual or alleged defect in any **technology products** that is solely caused by a third party, including but not limited to any third party software supplier, manufacturer, or originator; however, this exclusion will not apply to:
 - claim expenses we pay on your behalf to defend such claims but only until (if
 ever) there is a finding in any legal proceeding (including any arbitration) or any
 admission that the defect at issue is solely caused by a third party, at which time

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our duty to defend you will end and you will reimburse us for all claim expenses that we have paid toward that claim; or

 any amount you satisfy us that you are legally able to recover under a written contract.

Unsolicited telemarketing

27. based upon or arising out of any actual or alleged violation of any federal, state, local, or foreign statutes, ordinances, or regulations relating to unsolicited telemarketing, solicitations, emails, faxes, text messages, or any other communications of any type or nature, including but not limited to the Telephone Consumer Protection Act, CAN-SPAM Act, or any "anti-spam" or "do-not-call" statutes, ordinances, or regulations.

VII. Definitions

The following definitions apply to this Coverage Part. Additional definitions are contained in Section III. Who is an insured, and in the General Terms and Conditions, Section VI. Definitions applicable to all Coverage Parts.

Affiliate

means any person or entity related to any **insured** through common ownership, control, or management as follows:

- 1. any person or entity:
 - a. which wholly or partly owns, operates, controls, or manages the **named insured**;
 - b. which was operated, controlled, or managed by the named insured; or
 - c. in which any **insured** has an ownership interest of 15% or more,

at any time during or after the performance of the **technology services** giving rise to the **claim**; or

2. any entity for which any **insured** is an officer or director at the time the **claim** is made.

Affiliate does not include a subsidiary or an acquired entity.

Bodily injury

means physical injury, sickness, disease, death, humiliation, mental injury, mental anguish, emotional distress, suffering, or shock sustained by a person.

Breach of confidentiality

means breach of any duty of confidentiality or unauthorized interception or recording of images or sound in violation of any civil anti-wiretap statute.

Breach of contract

means the unintentional breach of a written contract with your client.

Claim

means any written assertion of liability or any written demand for financial compensation or non-monetary relief.

Claim expenses

means the following sums incurred in excess of the retention and with our prior consent:

- all reasonable and necessary fees, costs, and expenses (including the fees of attorneys and experts) incurred in the investigation, defense, or appeal of a claim; and
- 2. premiums on appeal bonds, attachment bonds, or similar bond, but **we** will have no obligation to apply for or furnish any such bonds.

Client

means any person or entity with whom **you** have entered into a written contract to provide services or deliverables that expressly fall within **your technology services**.

Damages

means a monetary judgment or monetary award that **you** are legally obligated to pay (including pre- or post-judgment interest and claimant's attorney fees) or a monetary settlement agreed to by **you** and **us**.

Damages will not mean:

- 1. fines, civil or criminal penalties, taxes, or sanctions;
- 2. any punitive, exemplary, or multiple damages; however, **we** will pay punitive or exemplary damages to the extent insurable in any applicable jurisdiction that most favors

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coverage;

- the return or reduction of fees, commissions, profits, or charges for goods provided or services rendered; however, we will pay such amounts if asserted as damages in connection with an otherwise covered claim;
- 4. restitution, disgorgement of profits, or unjust enrichment;
- 5. the cost of complying with injunctive relief;
- 6. amounts **you** agree to indemnify; however, **we** will pay such amounts to the extent they are explicitly covered under this Coverage Part;
- 7. any coupons, discounts, prizes, or other incentives, unless agreed in advance by **us** in **our** discretion; provided any such amounts will not include any profits to **you**;
- any liquidated damages, but only to the extent such damages exceed the amount for which you would have been liable in the absence of the liquidated damages agreement; or
- any service credits, except as provided under Section II. Coverage enhancements, D. Service credits.

Defamation

means any form of defamation, including but not limited to libel, slander, trade libel, product disparagement, or injurious falsehood.

Fraud

means any fraud or dishonesty of **your** employees, but only if the actual or alleged fraud or dishonesty was not committed or allegedly committed by any:

- 1. **executive**; or
- employee of the insured organization if any executive knew or had reason to know of such conduct by the employee.

Indemnity

means an indemnification obligation owed by you to a client under a written contract.

Insured organization

means the named insured or any subsidiary or acquired entity.

Intellectual property infringement

means intellectual property infringement (but not any patent infringement), including but not limited to misappropriation of trade secret, copyright infringement, trademark infringement, trademark dilution, trade dress infringement, publicity rights violations, cybersquatting violations, moral rights violations, any act of passing-off, or any misappropriation of formats, characters, trade names, character names, titles, plots, musical compositions, voices, slogans, graphic material, or artwork.

Invasion of privacy

means false light, intrusion upon a person's seclusion, or misappropriation of a person's picture, name, or voice for commercial gain.

Negligence

means any negligent act, error, or omission, breach of any duty to use reasonable care, or negligent misrepresentation.

Pollutants

means any solid, liquid, gaseous, biological, radiological, or thermal irritant or contaminant, including smoke, vapor, asbestos, silica, dust, nanoparticles, fibers, soot, fumes, acids, alkalis, chemicals, nuclear materials, germs, mold, and waste. Waste includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.

Potential claim

means any acts, errors, or omissions of an **insured** or other circumstances reasonably likely to lead to a **claim** covered under this policy.

Property damage

means physical loss of, physical damage to, or destruction or loss of use of any tangible property.

Retention

means the amount stated as such under the Technology Professional Liability Coverage Part section of the Declarations.

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Retroactive date

means the date stated as such in the Declarations; provided, for any acquired entity acquired or created during the policy period, the retroactive date for such acquired entity will be the date the **named insured** created, merged with, or acquired effective control of the entity.

Technology products

means information technology or telecommunications hardware, software, firmware, or related electronic equipment.

Technology services

means the following services performed for others:

- designing, developing, customizing, programming, testing, distributing, publishing, installing, implementing, integrating, hosting, supporting, repairing, and maintaining software:
- planning, designing, developing, installing, implementing, integrating, supporting, 2. repairing, and maintaining computer systems, computer or telecommunications networks, or electronic systems;
- managing and operating computer systems, computer or telecommunications networks and facilities, including colocation, data center, and cloud computing services, and managed cybersecurity services;
- data processing, management, warehousing, and hosting services, including data entry, conversion, destruction, backup, and recovery;
- 5. information technology or telecommunications consulting, training, project management, staffing, and support services;
- 6. internet, voice, video, email, text, data, and broadband services, and related call center and customer service support:
- 7. services as an Application Service Provider (ASP), Software-as-a-Service Provider (SaaS), Platform-as-a-Service Provider (PaaS), Infrastructure-as-a-Service Provider (laaS), or Internet Service Provider (ISP);
- website design and development services, web hosting services, web portal services, domain name services, or search engine services;
- 9. digital marketing services, search engine optimization services, or social media management services;
- 10. information technology or telecommunications hardware sales, installation, integration, testing, repair, maintenance, and support services; and
- 11. any services described as Covered Professional Services under the Technology Professional Liability Coverage Part section of the Declarations.

Technology services also includes the supply, provision, or delivery of **technology products**.

Unfair practices

means unfair competition, deceptive business practices, or false designation of origin, but only when asserted in conjunction with and based on the same allegations as a claim for intellectual property infringement.

You, your, or insured

means a named insured, subsidiary, employee, executive, acquired entity, or additional insured, as defined in Section III. Who is an insured.

VIII. Other provisions affecting coverage

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Coverage territory

- This Coverage Part will apply to the performance of **your technology services** anywhere in the world. However, with respect to **claims** brought outside the United States, its territories or possessions, or Canada, this Coverage Part will not apply:
 - to any **claim** brought in any country in which the United States (or any of its departments, agencies, or subdivisions) administers or enforces economic or trade sanction laws; or
 - 2. if it would otherwise be in violation of the laws of the United States.

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OX PRO[™] Media Liability Coverage Part

I. What is covered

We will pay up to the **coverage part limit** for **damages** and **claim expenses** in excess of the **retention** for covered **claims** against **you** for any actual or alleged:

- copyright infringement, trademark infringement, trademark dilution, trade dress infringement, publicity rights violations, or any misappropriation of content, formats, characters, trade names, character names, titles, voices, slogans, graphic material, or artwork;
- invasion of privacy, intrusion upon seclusion, publication of private facts, false light, or misappropriation of name or likeness;
- 3. defamation, libel, slander, trade libel, product disparagement, or injurious falsehood;
- 4. unintentional infliction of emotional distress or outrage based on harm to the character or reputation of any person; or
- negligence in connection with your media activities or your advertising of your professional services,

provided the claim:

- results from your media activities or your advertising of your professional services performed on or after the retroactive date;
- b. is first made against you during the policy period; and
- c. is reported to **us** in accordance with Section V. Your obligations.

II. Coverage enhancements

We will also make the following payments:

Supplemental payments

A. We will pay reasonable expenses, including loss of wages and a \$250 travel per diem, incurred by you if we require you to attend depositions, arbitration proceedings, or trials in connection with the defense of a covered claim, but we will not pay more than an aggregate of \$10,000 per claim for such expenses, regardless of the number of insureds.

No **retention** will apply to amounts **we** pay under this subsection A, and such amounts will be in addition to, and not part of, the **coverage part limit**.

III. Who is an insured

For purposes of this Coverage Part, you, your, or insured means a named insured, subsidiary, employee, or acquired entity, as defined below:

Named insured

means the individual, corporation, partnership, limited liability company, limited partnership, or other entity identified in Item 1 of the Declarations.

Subsidiary

means any entity of which the **named insured** has majority ownership before or as of the inception of the **policy period**.

Employee

means any past, present, or future:

- person employed by the **named insured** or **subsidiary** as a permanent, part-time, seasonal, leased, or temporary employee, or any volunteer; or
- partner, director, officer, or board member (or equivalent position) of the named insured or subsidiary,

but only while in the course of their performance of **media activities** or **advertising** of **professional services** on behalf of or at the direction of such **named insured** or **subsidiary**.

Acquired entity

means an entity in which the named insured, during the policy period:

acquires substantially all of the assets;

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- acquires the majority of its voting securities, as a result of which it becomes a subsidiary; or
- 3. merges and leaves the **named insured** as the surviving entity.

With respect to an **acquired entity** whose revenues exceed 10% of the annual revenues of the **named insured** at the time of its creation or acquisition, any coverage under this policy will expire 90 days after the effective date of its creation or acquisition unless, within such 90 day period:

- 1. the **named insured** provides **us** with written notice of such creation or acquisition;
- the named insured provides us with information related to such creation or acquisition as we may reasonably require;
- the named insured accepts any special terms, conditions, exclusions, or additional premium charge as we may reasonably require; and
- we agree by written endorsement to provide such coverage.

This policy will apply to an **acquired entity** only with respect to **your media activities** or **your advertising** of **your professional services** performed after the acquisition, merger, or creation.

IV. Defense and settlement of claims

Defense

We have the right and duty to defend any covered **claim**, even if such **claim** is groundless, false, or fraudulent.

We have the right to select and appoint counsel to defend **you** against a covered **claim**. **You** may request in writing that **we** appoint defense counsel of **your** own choice, but whether to grant or deny such a request will be at **our** sole discretion.

Settlement

We have the right to solicit and negotiate settlement of any **claim** but will not enter into a settlement without **your** consent, which **you** agree not to withhold unreasonably. If **you** withhold consent to a settlement recommended by **us** and acceptable to the party who made the **claim**, the most **we** will pay for that **claim** is the sum of:

- 1. the amount of **our** recommended settlement;
- 2. **claim expenses** incurred up to the date of **our** recommendation;
- 3. 50% of all **claim expenses** incurred after **our** recommendation; and
- 4. 50% of all **damages** in excess of the settlement amount recommended by **us**.

V. Your obligations

Notifying us of claims

You must give written notice to **us** of any **claim** as soon as possible, but in any event, no later than 60 days after the end of the **policy period**.

All such notifications must be in writing and include a copy of the **claim**, and must be submitted to **us** via the designated email address or mailing address identified in Item 6 of the Declarations.

Notifying us of potential claims

You have the option of notifying us of potential claims that may lead to a covered claim against you.

In order to do so, **you** must give written notice to **us** as soon as possible and within the **policy period**, and the notice must, to the greatest extent possible, identify the details of the **potential claim**, including identifying the potential claimant(s), the likely basis for liability, the likely

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demand for relief, and any additional information about the **potential claim we** may reasonably request.

The benefit to **you** of notifying **us** of a **potential claim** is that if an actual **claim** arises from the same circumstances as the properly notified **potential claim**, then **we** will treat that **claim** as if it had first been made against **you** on the date **you** properly notified **us** of it as a **potential claim**, even if that **claim** is first made against **you** after the **policy period** has expired.

All **potential claim** notifications must be in writing and submitted to **us** via the designated email address or mailing address identified in Item 6 of the Declarations.

Retention

Our obligation to pay **damages** and **claim expenses** under this Coverage Part is in excess of the **retention**, which **you** must pay in connection with each covered **claim**.

VI. Exclusions – What is not covered

We will have no obligation to pay any sums under this Coverage Part, including any **damages** or **claim expenses**. for any **claim**:

Antitrust/deceptive trade practices

- based upon or arising out of any actual or alleged:
 - a. false, deceptive, or unfair trade practices;
 - b. unfair competition, impairment of competition, restraint of trade, or antitrust violations:
 - violation of the Sherman Anti-Trust Act, the Clayton Act, the Robinson-Patman Act, all including as may be amended, or any similar foreign, federal, state, or local statutes, rules, or regulations; or
 - d. deceptive or misleading advertising.

Bodily injury

 based upon or arising out of any actual or alleged **bodily injury**; however, this exclusion will not apply to a **claim** for emotional distress or outrage covered under part 4 of Section I. What is covered.

Breach of contract

 based upon or arising out of any actual or alleged breach of any contract or agreement, or any liability of others that you assume under any contract or agreement; however, this exclusion will not apply to any liability you would have in the absence of the contract or agreement.

Breach of warranty/ guarantee

 based upon or arising out of any actual or alleged breach of express warranties or guarantees; however, this exclusion will not apply to any liability you would have in the absence of the warranties or guarantees.

Client content

based upon or arising out of any content provided to you by your client; however, we
will pay claim expenses for any claims against you based upon or arising out of such
content.

Collection of data without knowledge

- 6. based upon or arising out of any actual or alleged:
 - collection of personally identifiable information by you (or others on your behalf) without the knowledge or permission of the person to whom the personally identifiable information relates; or
 - b. use of personally identifiable information by **you** (or others on **your** behalf) in violation of applicable law.

Commercial Dispute

- based upon or arising out of any actual or alleged commercial dispute with **your** business partner or business associate, including but not limited to any reseller, distributor, original equipment manufacturer, third-party sales agent, systems integrator, or joint venturer, but only to the extent such a **claim** is based upon:
 - a. a commission or royalty, or any other term upon which such partner or associate is

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to be compensated in connection with doing business with **you**, or any compensation or remuneration promised or owed by **you** pursuant to those terms; or

b. **your** decision to cease doing business with such a partner or associate.

Cramming/slamming

- 8. based upon or arising out of:
 - a. the imposition of charges for services or content in relation to telephone, cell phone, wireless data, cable television, internet, voice over internet protocol (VoIP) or other similar telecommunications services, which charges have not been adequately disclosed or which services or content have not been requested by the consumer;
 or
 - b. the unauthorized switching of telecommunications carriers, including providers of telephone, cell phone, wireless data, cable television, internet, voice over internet protocol (VoIP) or other similar services.

Criminal proceedings

 brought in the form of a criminal proceeding, including but not limited to a criminal investigation, grand jury proceeding, or criminal action.

Employment related liability

- 10. based upon or arising out of any actual or alleged:
 - a. obligation under any workers' compensation, unemployment compensation, employers' liability, fair labor standards, labor relations, wage and hour, or disability benefit law, including any similar provisions of any foreign, federal, state, or local statutory or common law;
 - b. liability or breach of any duty or obligation owed by you as an employer or prospective employer; or
 - harassment, wrongful termination, retaliation, or discrimination, including but not limited to adverse or disparate impact.

Excluded costs and damages

- 11. to the extent it seeks or includes:
 - a. fines, penalties, taxes, or sanctions against you;
 - b. overhead costs, general business expenses, salaries, or wages incurred by you;
 - the return, reduction, or restitution of fees, commissions, profits, or charges for goods provided or services rendered;
 - d. liquidated or multiple damages;
 - restitution, disgorgement of profits, any advantage to which you were not legally entitled, or unjust enrichment; or
 - f. the cost of complying with injunctive relief.

Excluded statutory violations

- 12. based upon or arising out of any actual or alleged violation of the following laws:
 - a. the Securities Act of 1933;
 - b. the Securities Exchange Act of 1934;
 - c. any state blue sky or securities laws;
 - d. the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 et seq.; or
 - e. the Employee Retirement Income Security Act of 1974,

all including as may be amended, or any similar provisions of any foreign, federal, state, or local statutory or common law and any rules or regulations promulgated under such laws.

Failure to maintain insurance or bonds

13. based upon or arising out of any actual or alleged failure to procure or maintain adequate insurance or bonds.

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X PRO[™] Media Liability Coverage Part

Fa	se	or	mis	lead	ing
ad	ver	tisi	ng		

14. based upon or arising out of any actual or alleged false or misleading advertisement, including any inaccurate, inadequate, or incomplete description of your goods, products, or services; however this exclusion will not apply to any claim for trademark infringement or false designation of origin based on your alleged unauthorized use of another's trademark.

Government investigation/ enforcement

15. based upon or arising out of any actual or alleged governmental investigation or enforcement of any state or federal regulation, including but not limited to any regulation promulgated by the Federal Trade Commission, Federal Communications Commission, or the Securities and Exchange Commission, or ASCAP, BMI, SESAC, or other similar licensing organization.

Insured vs. insured

16. brought by or on behalf of one insured or affiliate against another insured or affiliate.

Intentional acts

17. based upon or arising out of any actual or alleged fraud, dishonesty, criminal conduct, or any knowingly wrongful, malicious, or intentional acts or omissions, except that we will pay claim expenses until there is a final adjudication establishing such conduct.

This exclusion will apply to the **named insured** only if the conduct was committed or allegedly committed by any:

- partner, director, officer, or member of the board (or equivalent position) of the named insured; or
- employee of the **named insured** if any partner, director, officer, member of the board (or equivalent position) of the **named insured** knew or had reason to know of such conduct by the employee.

This exclusion will apply separately to each **insured** and will not apply to any **insured** who did not commit, participate in, acquiesce to, or ratify such conduct committed by another **insured**.

License/royalties

 based upon or arising out of any actual or alleged obligation to pay any licensing fee or royalty.

Manufacture or design of goods/products

19. based upon or arising out of any goods or products designed, manufactured, sold, handled, or distributed by **you**.

Misappropriation of funds

20. based upon or arising out of the actual or alleged theft, misappropriation, commingling, or conversion of any funds, monies, assets, or property.

Network security

- 21. based upon or arising out of any actual or alleged failure of computer security, including but not limited to the:
 - transmission of malicious software such as a computer virus, worm, logic bomb, or Trojan horse;
 - b. failure to prevent a denial of service attack;
 - failure to prevent authorized access to any computer system, personally identifiable information, or confidential corporate information held or transmitted in any form; or
 - d. failure to prevent damage to any third party digital asset.

Ownership of content

22. based upon or arising out of any actual or alleged disputes with any of your present or former directors, officers, trustees, partners, joint venturers, employees, agents, or independent contractors concerning ownership of or the exercise of rights relating to content, material, or services supplied to you by any of them.

Patent/trade secret

23. based upon or arising out of any actual or alleged infringement, use, disclosure, or misappropriation of any patent or trade secret.

Pollution/environmental

24. based upon or arising out of any actual, alleged, or threatened discharge, dispersal, release, or escape of **pollutants**, including any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize **pollutants**.

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Media Liability Coverage Part

Prior acts/notice/knowledge

- 25. based upon or arising out of any:
 - claim or potential claim that was the subject of any notice given under any other policy of which this policy is a renewal or replacement;
 - b. **claim** or **potential claim** that was the subject of, or is related to, any prior or pending litigation, **claim**, written demand, arbitration, administrative or regulatory proceeding or investigation, or licensing proceeding that was filed or commenced against **you** and of which **you** had notice prior to the **policy period**; or
 - other matter you had knowledge of prior to the policy period, and you had a
 reasonable basis to believe could result in a claim.

However, if this policy is a renewal or replacement of a previous policy **we** issued that provided materially identical coverage, and is part of an unbroken chain of successive policies issued by **us**, the **policy period** referred to in paragraphs b and c, above, will be the policy period of the first such policy **we** issued.

Privacy

- 26. based upon or arising out of any actual or alleged:
 - unauthorized acquisition, access, use, or disclosure of, improper collection or retention of, or failure to protect any non-public personally identifiable information or confidential corporate information that is in your care, custody, or control; or
 - violation of any privacy law or consumer data protection law protecting against the use, collection, or disclosure of any information about a person or any confidential corporate information.

Privacy policy violations

- 27. based upon or arising out of any actual or alleged:
 - a. failure to have or appropriately display a privacy policy;
 - b. failure of **your** privacy policy to comply with any federal, state, local, or foreign statutes, ordinances, regulations, or other laws;
 - c. breach of **your** privacy policy; or
 - d. changing of the terms of **your** privacy policy.

Professional services

28. based upon or arising out of **your** actual or alleged performance of or failure to perform **professional services** or any other services customarily provided by an architect, engineer, surveyor, physician, surgeon, dentist, or other healthcare provider, accountant, insurance agent/broker, investment advisor, securities broker/dealer, or attorney.

Property damage

29. based upon or arising out of any actual or alleged property damage.

Repair/replace/recall

30. based upon or arising out of any actual or alleged repair, upgrade, correction, recall, replacement, withdrawal, removal, or disposal costs incurred by **you** or others.

Scareware

 based upon or arising out of any actual or alleged provision or transmission of Scareware, including but not limited to software that produces false or alarming warning messages.

Sexual misconduct

32. based upon or arising out of any actual, alleged, or threatened abuse, molestation, harassment, mistreatment, or maltreatment of a sexual nature, including the negligent employment, investigation, supervision, training, or retention of a person who commits such conduct, or the failure to report such conduct to the proper authorities.

Software copyright

33. based upon or arising out of any actual or alleged copyright infringement related to software or source code.

Subsidiary outside control of named insured

34.

- a. based upon or arising out of **media activities** or **advertising** of **professional services** performed by or on behalf of a past or present **subsidiary** while the **named insured** does not have majority ownership or management control of it; or
- b. made against a **subsidiary** or anyone acting on its behalf while the **named insured** does not have majority ownership or management control of it.

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Media Liability Coverage Part

Sweepstakes/gambling/ lotteries

- 35. based upon or arising out of any:
 - a. actual or alleged provision of any sweepstakes, gambling activities, or lotteries; or
 - b. price discounts, prizes, awards, money, or valuable consideration given in excess of a total contracted or expected amount, including but not limited to over redemption or under redemption of coupons, discounts, awards, or prizes.

Unsolicited telemarketing

36. based upon or arising out of any actual or alleged violation of any federal, state, local, or foreign statutes, ordinances, or regulations relating to unsolicited telemarketing, solicitations, emails, faxes, text messages, or any other communications of any type or nature, including but not limited to the Telephone Consumer Protection Act, CAN-SPAM Act, or any "anti-spam" or "do-not-call" statutes, ordinances, or regulations.

Virtual currency

 based upon or arising out of any actual or alleged virtual currency, including but not limited to virtual goods exchanged in connection with an Internet game or virtual economy.

VII. Definitions

The following definitions apply to this Coverage Part. Additional definitions are contained in Section III. Who is an insured, and in the General Terms and Conditions, Section VI. Definitions applicable to all Coverage Parts.

Advertising

means the online, digital, or electronic promotion of **your professional services** by broadcast, transmission, dissemination, telecast, cablecast, podcast, streaming, publication, republication, or by use of a website or social media.

Affiliate

means any person or entity related to any **insured** through common ownership, control, or management as follows:

- 1. any person or entity:
 - a. which wholly or partly owns, operates, controls, or manages the **named insured**;
 - b. which was operated, controlled, or managed by the named insured; or
 - c. in which any **insured** has an ownership interest of 15% or more.

at anytime during or after the performance of the **media activities** or **your advertising** of **your professional services** giving rise to the **claim**; or

2. any entity for which any **insured** is an officer or director at the time the **claim** is made.

Affiliate does not include a subsidiary.

Bodily injury

means physical injury, sickness, disease, death, humiliation, mental injury, mental anguish, emotional distress, suffering, or shock sustained by a person.

Claim

means any written assertion of liability or any written demand for financial compensation or non-monetary relief.

Claim expenses

means the following sums incurred in excess of the retention and with our prior consent:

- all reasonable and necessary fees, costs, and expenses (including the fees of attorneys and experts) incurred in the investigation, defense, or appeal of a claim; and
- premiums on appeal bonds, attachment bonds, or similar bond, but we will have no obligation to apply for or furnish any such bonds.

Damages

means the following amounts incurred in excess of the **retention**:

- 1. a monetary judgment or monetary award that **you** are legally obligated to pay (including pre- or post-judgment interest and awards of claimant's attorney fees); or
- 2. a monetary settlement negotiated by **us** with **your** consent.

Damages includes punitive damages to the full extent they are insurable under the law of any applicable jurisdiction that most favors coverage.

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OX PRO[™] Media Liability Coverage Part

Media activities means the publication, broadcast, dissemination, or release of **media content** in connection

with your professional services.

Media content means the substance of any communication, including but not limited to language, data, facts,

fiction, music, photographs, images, artistic expression, or visual or graphic materials.

Pollutants means any solid, liquid, gaseous, biological, radiological, or thermal irritant or contaminant,

including smoke, vapor, asbestos, silica, dust, nanoparticles, fibers, soot, fumes, acids, alkalis, chemicals, nuclear materials, germs, mold, and waste. Waste includes, but is not limited to,

materials to be recycled, reconditioned, or reclaimed.

Potential claim means any acts, errors, or omissions of an insured or other circumstances reasonably likely to

lead to a claim covered under this policy.

Professional services means only those services identified as Covered Professional Services under the Media

Liability Coverage Part of the Declarations.

Property damage means physical loss of, physical damage to, or destruction or loss of use of any tangible

property.

Retention means the amount stated as such under the Media Liability Coverage Part of the Declarations.

You, your, or insured means a named insured, subsidiary, employee, or acquired entity, as defined in Section III.

Who is an insured.

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I. What is covered

- . We will pay up to the coverage part limit for breach costs in excess of the retention incurred as a result of a breach occurring on or after the retroactive date or 90 days before the beginning of the policy period, whichever is earlier, provided the breach is first discovered by you during the policy period and is reported to us in accordance with Section V. Your obligations.
- B. We will also pay up to the coverage part limit for damages and claim expenses in excess of the retention if the performance of your business operations by you or anyone on your behalf (including your subcontractors, outsourcers, or independent contractors) on or after the retroactive date results in a covered claim against you for any actual or alleged:
 - 1. network security breach;
 - privacy liability;
 - 3. breach of contract;
 - 4. contractual indemnity third party;
 - contractual indemnity breach costs;
 - deceptive trade practices, but only when asserted against you in conjunction with and based on the same allegations as a covered claim under 1, 2, or 3 above; or
 - unintentional infliction of emotional distress, but only when asserted against you in conjunction with and based on the same allegations as a covered claim under 1, 2, or 3 above,

provided the **claim** is first made against **you** during the **policy period** and is reported to **us** in accordance with Section V. Your obligations.

II. Coverage enhancements

We will also make the following payments:

Regulatory action sublimit

A. We will pay up to the limit stated in the Declarations for damages, claim expenses, and civil or regulatory fines or penalties that are not compensatory in nature for any regulatory action, provided the regulatory action is first brought against you during the policy period, it is brought in connection with and based on the same allegations as a covered claim under Section I. What is covered, B. 1, 2, or 3, it results from the performance of your business operations by you or anyone on your behalf (including your subcontractors, outsourcers, or independent contractors) on or after the retroactive date, and it is reported to us in accordance with Section V. Your obligations.

Any payment **we** make under this subsection A is subject to the **retention**, and such payments will be a part of, and not in addition to, the **coverage part limit**.

Regulatory compensatory sublimit

We will pay up to the limit stated in the Declarations for damages that are intended to compensate the individuals or entities to whom the personally identifiable information or confidential corporate information relates for any regulatory action, provided the regulatory action is first brought against you during the policy period, it is brought in connection with and based on the same allegations as a covered claim under Section I. What is covered, B. 1, 2, or 3, it results from the performance of your business operations by you or anyone on your behalf (including your subcontractors, outsourcers, or independent contractors) on or after the retroactive date, and it is reported to us in accordance with Section V. Your obligations.

Any payment **we** make under this subsection B is subject to the **retention**, and such payments will be a part of, and not in addition to, the **coverage part limit**.

PCI fines/penalties sublimit

C. We will pay up to the limit stated in the Declarations for covered PCI fines/penalties assessed against you (including PCI fines/penalties resulting from a breach of contract), as a result of a breach arising out of the performance of your business

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operations by **you** or anyone on **your** behalf (including **your** subcontractors, outsourcers, or independent contractors) on or after the **retroactive date**, provided the **breach** is first discovered by **you** during the **policy period** and is reported to **us** in accordance with Section V. Your obligations.

Any payment **we** make under this subsection C is subject to the **retention**, and such payments will be a part of, and not in addition to, the **coverage part limit**.

PCI assessments sublimit

D. We will pay up to the limit stated in the Declarations for covered PCI assessments against you (including PCI assessments resulting from a breach of contract), as a result of a breach arising out of the performance of your business operations by you or anyone on your behalf (including your subcontractors, outsourcers, or independent contractors) on or after the retroactive date, provided the breach is first discovered by you during the policy period and is reported to us in accordance with Section V. Your obligations.

Any payment **we** make under this subsection D is subject to the **retention**, and such payments will be a part of, and not in addition to, the **coverage part limit**.

Supplemental payments

E. **We** will pay reasonable expenses, including loss of wages and a \$250 travel per diem, incurred by **you** if **we** require **you** to attend depositions, arbitration proceedings, or trials in connection with the defense of a covered **claim**, but **we** will not pay more than an aggregate of \$10,000 per **claim** for such expenses, regardless of the number of **insureds**.

No **retention** will apply to amounts **we** pay under this subsection E, and such amounts will be in addition to, and not part of, the **coverage part limit**.

III. Who is an insured

For purposes of this Coverage Part, you, your, or insured means a named insured, subsidiary, employee, or acquired entity, as defined below:

Named insured

means the individual, corporation, partnership, limited liability company, limited partnership, or other entity identified in Item 1 of the Declarations.

Subsidiary

means any entity of which the **named insured** has majority ownership before or as of the inception of the **policy period**.

Employee

means any past, present, or future:

- person employed by the named insured or subsidiary as a permanent, part-time, seasonal, leased, or temporary employee, or any volunteer; or
- partner, director, officer, or board member (or equivalent position) of the named insured or subsidiary,

but only while in the course of their performance of business operations on behalf of or at the direction of such **named insured** or **subsidiary**.

Acquired entity

means an entity in which the named insured, during the policy period:

- 1. acquires substantially all of the assets;
- acquires the majority of its voting securities, as a result of which it becomes a subsidiary; or
- 3. merges and leaves the **named insured** as the surviving entity.

With respect to an **acquired entity** whose revenues exceed 10% of the annual revenues of the **named insured** at the time of its creation or acquisition, any coverage under this policy will expire 90 days after the effective date of its creation or acquisition unless, within such 90 day period:

1. the **named insured** provides **us** with written notice of such creation or acquisition;

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- the named insured provides us with information related to such creation or acquisition as we may reasonably require;
- the named insured accepts any special terms, conditions, exclusions, or additional premium charge as we may reasonably require; and
- 4. **we** agree by written endorsement to provide such coverage.

This policy will apply to an **acquired entity** only with respect to **your** business operations performed after the acquisition, merger, or creation.

IV. Defense and settlement of claims

Defense

We have the right and duty to defend any covered **claim**, even if such **claim** is groundless, false, or fraudulent.

We have the right to select and appoint counsel to defend **you** against a covered **claim**. **You** may request in writing that **we** appoint defense counsel of **your** own choice, but whether to grant or deny such a request will be at **our** sole discretion.

Settlement

We have the right to solicit and negotiate settlement of any **claim** but will not enter into a settlement without **your** consent, which **you** agree not to withhold unreasonably. If **you** withhold consent to a settlement recommended by **us** and acceptable to the party who made the **claim**, the most **we** will pay for that **claim** is the sum of:

- 1. the amount of **our** recommended settlement;
- 2. **claim expenses** incurred up to the date of **our** recommendation;
- 3. 50% of all claim expenses incurred after our recommendation; and
- 4. 50% of all **damages** in excess of the settlement amount recommended by **us**.

V. Your obligations

Notifying us of breaches

You must give written notice to **us** of any **breach** as soon as possible after it is first discovered by **you**, but in any event no later than: (a) the end of the **policy period**; or (b) 30 days after the end of the **policy period** for a **breach** discovered in the last 30 days of the **policy period**.

All such notifications must be in writing and include a description of the **breach**, and must be submitted to **us** via the designated email address or mailing address identified in Item 6 of the Declarations.

In addition, **you** must also inform, or allow **us** to inform, the appropriate law enforcement authorities for any **breach** requiring such notification.

Notifying us of claims and coverage enhancements

You must give written notice to **us** of any **claim**, or any other matter covered under Section II. Coverage enhancements, as soon as possible, but in any event, no later than 60 days after the end of the **policy period**.

All such notifications must be in writing and include a copy of the **claim** or other covered matter, and must be submitted to **us** via the designated email address or mailing address identified in Item 6 of the Declarations.

Notifying us of potential claims

You have the option of notifying us of potential claims that may lead to a covered claim against you.

In order to do so, **you** must give written notice to **us** as soon as possible and within the **policy period**, and the notice must, to the greatest extent possible, identify the details of the **potential claim**, including identifying the potential claimant(s), the likely basis for liability, the likely

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demand for relief, and any additional information about the **potential claim we** may reasonably request.

The benefit to **you** of notifying **us** of a **potential claim** is that if an actual **claim** arises from the same circumstances as the properly notified **potential claim**, then **we** will treat that **claim** as if it had first been made against **you** on the date **you** properly notified **us** of it as a **potential claim**, even if that **claim** is first made against **you** after the **policy period** has expired.

All **potential claim** notifications must be in writing and submitted to **us** via the designated email address or mailing address identified in Item 6 of the Declarations.

Retention and limits

Our obligation to pay **breach costs**, **damages**, **claim expenses**, **PCI fines/penalties**, or **PCI assessments** under this Coverage Part is in excess of the **retention**, which **you** must pay in connection with each covered **breach** and/or **claim**.

All **breaches** arising from the same circumstances will be treated as a single **breach**, and **you** will have to pay only one **retention**, and only one Each Breach Limit will apply. All such **breaches** will be deemed to have occurred on the date the first **breach** occurred.

If a **claim**, or any other matter covered under Section II. Coverage enhancements, is made against **you** arising from the same circumstances as a **breach**, the **breach**, **claim**, and coverage enhancement will be treated as a single **claim**, and **you** will have to pay only one **retention**, and only one Each Claim Limit will apply.

VI. Exclusions – What is not covered

We will have no obligation to pay any sums under this Coverage Part, including any breach costs, damages, claim expenses, PCI fines/penalties, or PCI assessments, for any breach or claim:

Antitrust/deceptive trade practices

- based upon or arising out of any actual or alleged:
 - a. false, deceptive, or unfair trade practices;
 - b. unfair competition, impairment of competition, restraint of trade, or antitrust violations:
 - violation of the Sherman Anti-Trust Act, the Clayton Act, the Robinson-Patman Act, all including as may be amended, or any similar foreign, federal, state, or local statutes, rules, or regulations; or
 - deceptive or misleading advertising.

However, this exclusion will not apply to a **claim** for deceptive trade practices asserted against **you** in conjunction with and based on the same allegations as a covered **claim** for a **network security breach**, **privacy liability**, or **breach of contract**.

Assumption of liability

- 2. based upon or arising out of any actual or alleged liability of others **you** assume under any contract or agreement; however, this exclusion will not apply to:
 - a. any liability you would have in the absence of the contract or agreement; or
 - b. any claim for contractual indemnity third party or contractual indemnity breach costs.

Bodily injury

based upon or arising out of any actual or alleged bodily injury; however, this exclusion
will not apply to a claim for unintentional infliction of emotional distress asserted against
you in conjunction with and based on the same allegations as a covered claim for a
network security breach, privacy liability, or breach of contract.

Breach of warranty/ guarantee

 based upon or arising out of any actual or alleged breach of express warranties or guarantees, except any warranty or guarantee to maintain the confidentiality of personally identifiable information or confidential corporate information. This exclusion

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OX PRO[™] Data Breach and Privacy Security Liability Coverage Part

will not apply to any liability **you** would have in the absence of the warranties or quarantees.

Collection of data without knowledge

- based upon or arising out of any actual or alleged:
 - collection of personally identifiable information by you (or others on your behalf) without the knowledge or permission of the data subject; or
 - use of personally identifiable information by you (or others on your behalf) in violation of applicable law.

Criminal proceedings

6. brought in the form of a criminal proceeding, including but not limited to a criminal investigation, grand jury proceeding, or criminal action.

Employment related liability

- 7. based upon or arising out of any actual or alleged:
 - a. obligation under any workers' compensation, unemployment compensation, employers' liability, fair labor standards, labor relations, wage and hour, or disability benefit law, including any similar provisions of any foreign, federal, state, or local statutory or common law;
 - liability or breach of any duty or obligation owed by you as an employer or prospective employer; or
 - harassment, wrongful termination, retaliation, or discrimination, including but not limited to adverse or disparate impact.

Excluded costs and damages

- 8. to the extent it seeks or includes:
 - a. fines, penalties, taxes, or sanctions against you, except we will pay:
 - civil or regulatory fines or penalties arising out of a regulatory action, if insurable by law; or
 - ii. **PCI fines/penalties** assessed against **you**, if insurable by law;
 - b. overhead costs, general business expenses, salaries, or wages incurred by you;
 - c. the return, reduction, or restitution of fees, commissions, profits, or charges for goods provided or services rendered;
 - d. liquidated or multiple damages;
 - restitution, disgorgement of profits, any advantage to which you were not legally entitled, or unjust enrichment;
 - f. the cost of complying with injunctive relief;
 - g. special, indirect, or consequential damages; or
 - h. service credits.

Excluded statutory violations

- based upon or arising out of any actual or alleged violation of the following laws:
 - a. the Securities Act of 1933;
 - b. the Securities Exchange Act of 1934;
 - c. any state blue sky or securities laws;
 - d. the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 et seq.;
 - e. the Employee Retirement Income Security Act of 1974;
 - f. the Fair Debt Collection Practices Act; or
 - g. the Fair Credit Reporting Act,

all including as may be amended, or any similar provisions of any foreign, federal, state, or local statutory or common law and any rules or regulations promulgated under such laws.

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Failure to maintain insurance or bonds

 based upon or arising out of any actual or alleged failure to procure or maintain adequate insurance or bonds.

Funds transfer

- 11. for any actual or alleged loss, theft, or transfer of:
 - a. your funds, monies, or securities;
 - b. the funds, monies, or securities of others in your care, custody, or control; or
 - the funds, monies, or securities in the care, custody, or control of any third party for whom you are legally liable,

including the value of any funds, monies, or securities transferred by **you** or others on **your** behalf.

Government investigation/ enforcement

12. based upon or arising out of any actual or alleged governmental investigation or enforcement of any state or federal regulation, including but not limited to any regulation promulgated by the Federal Trade Commission, Federal Communications Commission, or the Securities and Exchange Commission, or ASCAP, BMI, SESAC, or other similar licensing organization; however, this exclusion will not apply to a covered **regulatory** action.

Industrial control systems/ SCADA 13. based upon or arising out of the use of any control systems used in industrial production, including but not limited to supervisory control and data acquisition (SCADA) systems, distributed control systems, or programmable logic controllers.

Infrastructure interruption

based upon or arising out of any actual or alleged failure or interruption of service provided by an internet service provider, telecommunications provider, utility provider, or other infrastructure provider; however, this exclusion will not apply to a breach of personally identifiable information that was stored in the cloud, on remote servers, at a co-location or data hosting service, or any other method of storing data in a location not in your direct control.

Insured vs. insured

- 15. brought by or on behalf of one insured or affiliate against another insured or affiliate; however, this exclusion will not apply to an otherwise covered claim brought by an employee:
 - based upon or arising out of such employee's personally identifiable information; or
 - solely based on your business operations performed when such employee was not working for you.

Intellectual property

16. based upon or arising out of any actual or alleged infringement, use, or disclosure of any intellectual property, including but not limited to copyright, trademark, trade dress, patent, service mark, service name, title, or slogan, or any publicity rights violations, cyber squatting violations, moral rights violations, any act of passing-off, or any misappropriation of trade secret.

Intentional acts

17. based upon or arising out of any actual or alleged fraud, dishonesty, criminal conduct, or any knowingly wrongful, malicious, or intentional acts or omissions, except that we will pay claim expenses until there is a final adjudication establishing such conduct.

This exclusion will apply to the **named insured** only if the conduct was committed or allegedly committed by any:

- partner, director, officer, or member of the board (or equivalent position) of the named insured; or
- employee of the **named insured** if any partner, director, officer, member of the board (or equivalent position) of the **named insured** knew or had reason to know of such conduct by the employee.

This exclusion will apply separately to each **insured** and will not apply to any **insured** who did not commit, participate in, acquiesce to, or ratify such conduct committed by another **insured**.

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Pollution/environmental

8. based upon or arising out of any actual, alleged, or threatened discharge, dispersal, release, or escape of **pollutants**, including any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize **pollutants**.

Prior acts/notice/knowledge

- 19. based upon or arising out of any:
 - a. **claim**, **potential claim**, or **breach** that was the subject of any notice given under any other policy of which this policy is a renewal or replacement;
 - b. claim, potential claim, or breach that was the subject of, or is related to, any prior or pending litigation, claim, written demand, arbitration, administrative or regulatory proceeding or investigation, or licensing proceeding that was filed or commenced against you and of which you had notice prior to the policy period; or
 - c. other matter **you** had knowledge of prior to the **policy period**, and **you** had a reasonable basis to believe could result in a **claim** or **breach**.

However, if this policy is a renewal or replacement of a previous policy **we** issued that provided materially identical coverage, and is part of an unbroken chain of successive policies issued by **us**, the **policy period** referred to in paragraphs b and c, above, will be the policy period of the first such policy **we** issued.

Privacy policy

- 20. based upon or arising out of any actual or alleged:
 - a. failure to have or appropriately display a privacy policy;
 - b. failure of **your** privacy policy to comply with any federal, state, local, or foreign statutes, ordinances, regulations, or other laws; or
 - c. changing of the terms of **your** privacy policy.

Professional services

21. based upon or arising out of the rendering of or failure to render professional services by **you** or anyone on **your** behalf; however, this exclusion will not apply to an otherwise covered **breach** or **claim** resulting in the course of performance of professional services.

Property damage

22. based upon or arising out of any actual or alleged **property damage**; however, this exclusion will not apply to damage to data, or destruction or loss of use of data.

Sweepstakes/gambling/ lotteries

- 23. based upon or arising out of any:
 - a. actual or alleged provision of any sweepstakes, gambling activities, or lotteries; or
 - price discounts, prizes, awards, money, or valuable consideration given in excess of a total contracted or expected amount, including but not limited to over redemption or under redemption of coupons, discounts, awards, or prizes.

Unsolicited telemarketing

24. based upon or arising out of any actual or alleged violation of any federal, state, local, or foreign statutes, ordinances, or regulations relating to unsolicited telemarketing, solicitations, emails, faxes, text messages, or any other communications of any type or nature, including but not limited to the Telephone Consumer Protection Act, CAN-SPAM Act, or any "anti-spam" or "do-not-call" statutes, ordinances, or regulations.

VII. Definitions

The following definitions apply to this Coverage Part. Additional definitions are contained in Section III. Who is an insured, and in the General Terms and Conditions, Section VI. Definitions applicable to all Coverage Parts.

Affiliate

means any person or entity related to any **insured** through common ownership, control, or management.

Bodily injury

means physical injury, sickness, disease, death, humiliation, mental injury, mental anguish, emotional distress, suffering, or shock sustained by a person.

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Breach

Breach costs

means the unauthorized acquisition, access, use, or disclosure of **personally identifiable information**, including but not limited to that resulting from the loss or theft of a device containing such **personally identifiable information**.

means any of the following reasonable and necessary costs **you** incur with **our** prior written consent in response to a **breach** that triggers **your** notification obligations pursuant to any foreign, federal, state, or local statute, rule, or regulation, or that **you** satisfy **us** poses a significant risk of financial, reputational, or other harm to the affected **data subjects**:

- Computer Forensic Costs: costs up to the limit stated in the Declarations for computer forensic analysis conducted by outside forensic experts to confirm a breach and to identify the affected data subjects, as well as outside attorney fees associated with the forensic reports and findings.
- 2. <u>Notification Costs</u>: the following costs up to the limit stated in the Declarations:
 - a. <u>Mandatory Notification Costs</u>: for legal services, call center services, and to notify a data subject, a regulator, or any others, as required to satisfy your notification obligations; and/or
 - Voluntary Notification Costs: to voluntarily notify affected data subjects, but only if you satisfy us that the breach poses a significant risk of financial, reputational, or other harm to the affected data subjects.
- Credit or Identity Protection Costs: costs up to the limit stated in the Declarations to
 provide each affected data subject with one year (or more as required by law) of
 services to monitor and/or protect such data subject's credit or identity:
 - a. if required by law; or
 - if you satisfy us it mitigates a significant risk of financial, reputational, or other harm to the data subject.
- 4. <u>Crisis Management and Public Relations Costs</u>: costs up to the limit stated in the Declarations for a public relations or crisis management consultant (and related costs) to:
 - a. reduce the likelihood of or costs of any **claim** covered by this policy; or
 - b. to assist you in re-establishing your business reputation.

We will only be responsible to pay **breach costs** for services provided by a firm on the preapproved Hiscox Preferred Breach Response Providers List.

Prior to a **breach**, **you** may request in writing **our** authorization to obtain services and incur costs from a firm that is not on the pre-approved Hiscox Preferred Breach Response Providers List, but whether to grant or deny such request will be at **our** sole discretion.

Breach costs will not mean, and **we** will have no obligation to pay, any of **your** own costs, salaries, or overhead expenses.

Breach of contract

means **your** unintentional breach of a written contract or public facing privacy policy relating to **personally identifiable information** or confidential corporate information, including a contract with a merchant bank or payment processor in which **you** have agreed to comply with a **PCI standard**, and under which **you** have actually or allegedly failed to maintain the security or confidentiality of payment card data.

Claim

means any written assertion of liability or any written demand for financial compensation or non-monetary relief.

Claim expenses

means the following sums incurred in excess of the **retention** and with **our** prior consent:

- 1. all reasonable and necessary fees, costs, and expenses (including the fees of attorneys and experts) incurred in the investigation, defense, or appeal of a **claim**; and
- premiums on appeal bonds, attachment bonds, or similar bond, but we will have no obligation to apply for or furnish any such bonds.

Client

means any person or entity for whom **you** perform the services **you** normally provide as part of **your** business operations.

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Contractual indemnity - breach costs

means **your** contractual agreement to indemnify **your client**, a merchant bank, or a payment processor for **breach costs** that would be covered by this Coverage Part if **you** had incurred them, but only to the same extent as though **you** had incurred them.

Contractual indemnity - third party

means **your** contractual agreement to indemnify **your client**, a merchant bank, or a payment processor for **damages** or **claim expenses** that would be covered by this Coverage Part if they arose from a **claim** against **you**, resulting from **your** actual or alleged:

- violation of any privacy law or consumer data protection law protecting against disclosure of personally identifiable information or confidential corporate information;
- breach of common law duty relating to personally identifiable information or confidential corporate information; or
- 3. unintentional breach of a written contract or public facing privacy policy relating to **personally identifiable information** or confidential corporate information,

but only to the same extent as though they arose from a **claim** against **you**.

Damages

means the following amounts incurred in excess of the retention:

- a monetary judgment or monetary award that **you** are legally obligated to pay (including pre- or post-judgment interest and awards of claimant's attorney fees); or
- 2. a monetary settlement negotiated by **us** with **your** consent.

Damages includes punitive damages to the full extent they are insurable under the law of any applicable jurisdiction that most favors coverage.

Data subject

means the person to whom personally identifiable information relates.

Network security breach

means negligence by **you** or others acting on **your** behalf (including **your** subcontractors, outsourcers, or independent contractors) in securing **your** computer system which results in:

- transmission of malicious software such as a computer virus, worm, logic bomb, or Trojan horse;
- 2. a denial of service attack against a third party;
- the unauthorized acquisition, access, use, or disclosure of personally identifiable information or confidential corporate information that is held or transmitted in any form;
- prevention of authorized electronic access to any computer system, personally identifiable information, or confidential corporate information; or
- 5. damage to any third party digital asset.

Payment card company rules

means any payment card company programs, rules, by-laws, policies, procedures, regulations, or requirements, including but not limited to VISA's CISP, MasterCard's SDP, Discover Card's DISC, and AMEX's DSOP, all as may be amended.

PCI assessments

means any amounts assessed against **you** by a payment card company to recover actual costs incurred by the payment card company, issuing bank, or acquiring bank to:

- 1. replace credit or debit cards whose card numbers were compromised in a breach; or
- 2. refund fraudulent charges which resulted from a **breach**, whether such charges are incurred by a **data subject**, issuing bank, or acquiring bank.

PCI assessments does not include any PCI fines/penalties.

PCI fines/penalties

means any fine or penalty expressly defined and quantified under the **payment card company rules** for a violation of a **PCI standard**; however, **PCI fines/penalties** does not include:

- any amounts not expressly defined under the payment card company rules for a violation of a PCI standard;
- 2. civil penalties;

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- 3. any amounts voluntarily agreed to by you; or
- 4. PCI assessments.

PCI standard

means the Payment Card Industry Data Security Standard, as may be amended.

Personally identifiable information

means the following, in any form, that is in **your** care, custody, or control, or in the care, custody, or control of any third party for whom **you** are legally liable:

- non-public individually identifiable information as defined in any foreign, federal, state, or local statute, rule, or regulation, including but not limited to unsecured protected health information as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and any rule or regulation promulgated under HIPAA; or
- 2. any:
 - a. social security number or individual taxpayer identification number;
 - b. driver's license number or state identification number:
 - c. passport number;
 - d. credit card number; or
 - e. financial account number or debit card number in combination with any required security code.

Pollutants

means any solid, liquid, gaseous, biological, radiological, or thermal irritant or contaminant, including smoke, vapor, asbestos, silica, dust, nanoparticles, fibers, soot, fumes, acids, alkalis, chemicals, nuclear materials, germs, and waste. Waste includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.

Potential claim

means any acts, errors, or omissions of an **insured** or other circumstances reasonably likely to lead to a **claim** covered under this policy.

Privacy liability

means:

- violation of any privacy law or consumer data protection law protecting against disclosure of personally identifiable information or confidential corporate information; or
- breach of a common law duty relating to personally identifiable information or confidential corporate information.

Property damage

means physical loss of, physical damage to, or destruction or loss of use of any tangible property.

Regulatory action

means any civil regulatory action brought against \mathbf{you} by a regulator.

Retention

means the amount stated as such under the Data Breach and Privacy Security Liability Coverage Part section of the Declarations.

You, your, or insured

means a **named insured**, **subsidiary**, **employee**, or **acquired entity**, as defined in Section III. Who is an insured.

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OX PRO[™] Cyber Enhancements Coverage Part

I. What is covered

If a limit appears on the Declarations indicating **you** have purchased the coverage, **we** agree as follows:

A. Cyber business interruption

We will pay up to the Cyber Business Interruption limit stated in the Declarations for business interruption costs incurred as a result of a business interruption event lasting in excess of the retention, which first occurs and you discover during the policy period and is reported to us in accordance with Section V. Your obligations.

Our obligation to pay business interruption costs:

- is not triggered unless you take reasonable steps to minimize or avoid the business interruption event; and
- 2. ends at the hour after either:
 - a. the interruption to or degradation in the availability of **your** website, intranet, network, computer system, programs, or data ceases; or
 - b. the income interruption ceases.

whichever is earlier.

B. Cyber extortion

We will pay up to the Cyber Extortion limit stated in the Declarations for cyber extortion costs in excess of the retention incurred as a result of a cyber extortion event that is first made against you during the policy period and is reported to us in accordance with Section V. Your obligations.

C. Hacker damage

We will pay up to the Hacker Damage limit stated in the Declarations for **hacker damage costs** in excess of the **retention** incurred as a result of a **hacker damage event** that **you** first discover during the **policy period** and is reported to **us** in accordance with Section V. Your obligations.

II. Coverage enhancements

We will also make the following payments:

Cyber business interruption consulting costs

A. We will pay up to the limit stated in the Declarations for **consulting costs you** incur with **our** prior written consent in connection with a covered **business interruption event**.

Any payments **we** make under this subsection A will be a part of, and not in addition to, the Cyber Business Interruption limit.

Hacker damage consulting costs

B. We will pay up to the limit stated in the Declarations for **consulting costs you** incur with **our** prior written consent in connection with a covered **hacker damage event**.

You must pay the **retention** stated in the Declarations in connection with any payment **we** make under this subsection B, and any payments **we** make will be a part of, and not in addition to, the Hacker Damage limit.

III. Who is an insured

For purposes of this Coverage Part, you, your, or insured means a named insured, subsidiary, employee, executive, or acquired entity, as defined below:

Named insured

means the individual, corporation, partnership, limited liability company, limited partnership, or other entity identified in Item 1 of the Declarations.

Subsidiary

means any entity of which the **named insured** has majority ownership before or as of the inception of the **policy period**.

Employee

means any past, present, or future person employed by the **named insured** or **subsidiary** as a permanent, part-time, seasonal, leased, or temporary employee, or any volunteer, but only

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OX PRO[™] Cyber Enhancements Coverage Part

while in the course of their performance of business operations on behalf of or at the direction of such **named insured** or **subsidiary**.

Executive

means any past, present, or future partner, director, officer, or board member (or equivalent position) of the **named insured** or **subsidiary**, but only while in the course of their performance of business operations on behalf of such **named insured** or **subsidiary**.

Acquired entity

means an entity in which the named insured, during the policy period:

- 1. acquires substantially all of the assets;
- acquires the majority of its voting securities, as a result of which it becomes a subsidiary; or
- merges and leaves the named insured as the surviving entity.

With respect to an **acquired entity** whose revenues exceed 10% of the annual revenues of the **named insured** at the time of its creation or acquisition, any coverage under this policy will expire 90 days after the effective date of its creation or acquisition unless, within such 90 day period:

- 1. the **named insured** provides **us** with written notice of such creation or acquisition;
- the named insured provides us with information related to such creation or acquisition as we may reasonably require;
- the named insured accepts any special terms, conditions, exclusions, or additional premium charge as we may reasonably require; and
- 4. **we** agree by written endorsement to provide such coverage.

This policy will apply to an **acquired entity** only with respect to an **event** which first occurs and is discovered after the acquisition, merger, or creation.

IV.

[This section intentionally left blank]

V. Your obligations

Notifying us of events

You must give written notice to **us** of any **event** as soon as possible, but in any event, no later than ten days after the end of the **policy period**.

All such notifications must be in writing and include a description of the **event**, and must be submitted to **us** via the designated email address or mailing address identified in Item 6 of the Declarations.

In addition, **you** must also inform, or allow **us** to inform, the appropriate law enforcement authorities for any **event** requiring such notification.

Retention

Our obligation to make any payments under this Coverage Part is in excess of the **retention**, and **we** will not make any payment in connection with a covered **event** until the total amount of covered costs incurred or, in the case of a **business interruption event**, the length of the **event**, exceeds the **retention**.

Solely with respect to a **business interruption event**, the **retention** will not begin to run until **you** have notified the **event** to **us**.

VI. Exclusions – What is not covered

We will have no obligation to pay any sums under this Coverage Part for any event:

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Misappropriation of funds

Prior acts/notice/knowledge

11.

OX PRO[™] Cyber Enhancements Coverage Part

Bodily injury 1. based upon or arising out of any actual or alleged bodily injury. 2. based upon or arising out of any actual or alleged chargeback, liability, or fee incurred by Chargeback you or your client as a result of a merchant service provider, including any credit card company or bank, wholly or partially reversing or preventing a payment transaction. Collection of data without 3. based upon or arising out of any actual or alleged: knowledge collection of personally identifiable information by vou (or others on vour behalf) without the knowledge or permission of the person to whom the personally identifiable information relates: or b. use of personally identifiable information by you (or others on your behalf) in violation of applicable law. Cramming/slamming based upon or arising out of: 4. the imposition of charges for services or content in relation to telephone, cell phone, wireless data, cable television, internet, voice over internet protocol (VoIP), or other similar telecommunications services, which charges have not been adequately disclosed or which services or content have not been requested by the consumer; the unauthorized switching of telecommunications carriers, including providers of telephone, cell phone, wireless data, cable television, internet, voice over internet protocol (VoIP), or other similar services. involving an intentional, fraudulent, or criminal act committed by or in collusion with an Fraudulent/criminal act 5. executive, employee, or any person to whom a ransom is entrusted. Funds transfer 6. involving any actual or alleged loss, theft, or transfer of: a. your funds, monies, or securities; the funds, monies, or securities of others in your care, custody, or control; or b. the funds, monies, or securities in the care, custody, or control of any third party for C. whom you are legally liable, including the value of any funds, monies, or securities transferred by you or others on your behalf. Government investigation/ 7. based upon or arising out of any actual or alleged governmental investigation or enforcement of any state or federal regulation, including but not limited to any regulation enforcement promulgated by the Federal Trade Commission, Federal Communications Commission, or the Securities and Exchange Commission, or ASCAP, BMI, SESAC, or other similar licensing organization. Infrastructure interruption based upon or arising out of any actual or alleged failure or interruption of service provided by an internet service provider, telecommunications provider, utility provider, or other infrastructure provider. 9. based upon or arising out of any actual or alleged infringement, use, or disclosure of any Intellectual property intellectual property, including but not limited to copyright, trademark, trade dress, patent, service mark, service name, title, or slogan, or any publicity rights violations, cyber squatting violations, moral rights violations, any act of passing-off, or any misappropriation of trade secret.

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which this policy is a renewal or replacement;

conversion of any funds, monies, assets, or property.

based upon or arising out of any:

based upon or arising out of the actual or alleged theft, misappropriation, commingling, or

claim or event that was the subject of any notice given under any other policy of



- claim or event that was the subject of, or is related to, any prior or pending litigation, claim, written demand, arbitration, administrative or regulatory proceeding or investigation, or licensing proceeding that was filed or commenced against you and of which you had notice prior to the policy period; or
- c. other matter you had knowledge of prior to the policy period, and you had a reasonable basis to believe could result in a claim or event.

However, if this policy is a renewal or replacement of a previous policy **we** issued that provided materially identical coverage, and is part of an unbroken chain of successive policies issued by **us**, the **policy period** referred to in paragraphs b and c, above, will be the policy period of the first such policy **we** issued.

Privacy

- 12. based upon or arising out of any actual or alleged:
 - unauthorized acquisition, access, use, or disclosure of, improper collection or retention of, or failure to protect any non-public personally identifiable information or confidential corporate information that is in your care, custody, or control; or
 - violation of any privacy law or consumer data protection law protecting against the use, collection, or disclosure of any information about a person or any confidential corporate information.

Privacy policy violations

- 13. based upon or arising out of any actual or alleged:
 - failure to have or appropriately display a privacy policy;
 - b. failure of **your** privacy policy to comply with any federal, state, local, or foreign statutes, ordinances, regulations, or other laws;
 - c. breach of your privacy policy; or
 - d. changing of the terms of **your** privacy policy.

Property damage

14. based upon or arising out of any actual or alleged **property damage**; however, this exclusion will not apply to damage to data, or destruction or loss of use of data.

Scareware

15. based upon or arising out of any actual or alleged provision or transmission of Scareware, including but not limited to software that produces false or alarming warning messages.

Subsidiary outside control of named insured

 experienced by a past or present subsidiary while the named insured does not have majority ownership or management control of it.

Surrender of ransom

17. involving the surrender of a ransom at the location where the illegal threat and ransom demand was first made, unless brought to such location after receipt of the ransom demand for the sole purpose of paying such ransom demand.

Sweepstakes/gambling/ lotteries

- 18. based upon or arising out of any:
 - a. actual or alleged provision of any sweepstakes, gambling activities, or lotteries; or
 - price discounts, prizes, awards, money, or valuable consideration given in excess of a total contracted or expected amount, including but not limited to over redemption or under redemption of coupons, discounts, awards, or prizes.

Theft of ransom

19. involving the theft of a ransom by way of an immediate threat of force or violence, unless the ransom has been previously negotiated.

Unsolicited telemarketing

20. based upon or arising out of any actual or alleged violation of any federal, state, local, or foreign statutes, ordinances, or regulations relating to unsolicited telemarketing, solicitations, emails, faxes, text messages, or any other communications of any type or nature, including but not limited to the Telephone Consumer Protection Act, CAN-SPAM Act, or any "anti-spam" or "do-not-call" statutes, ordinances, or regulations.

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Virtual currency

 based upon or arising out of any actual or alleged virtual currency, including but not limited to virtual goods exchanged in connection with an Internet game or virtual economy.

VII. Definitions

The following definitions apply to this Coverage Part. Additional definitions are contained in Section III. Who is an insured, and in the General Terms and Conditions, Section VI. Definitions applicable to all Coverage Parts.

Bodily injury

means physical injury, sickness, disease, death, humiliation, mental injury, mental anguish, emotional distress, suffering, or shock sustained by a person.

Business interruption costs

means:

- Business Interruption Hourly Loss Amount: the amount stated as such in the Declarations:
- Additional Loss Amount: the average hourly gross profit you have generated in the
 previous six months, minus the "Business Interruption Hourly Loss Amount," provided
 you are able to:
 - a. produce evidence of such amounts; and
 - prove to us that you reasonably expected to earn more than the "Business Interruption Hourly Loss Amount" during the period of the covered business interruption event; and
- 3. <u>Extra Expense</u>: the reasonable and necessary expenses **you** incur to mitigate the **business interruption event** if **you** satisfy **us** such expenses are:
 - a. less than the business interruption costs that would have been incurred otherwise; and
 - in excess of the expenses you would have incurred if the business interruption event had not occurred.

We will pay covered business interruption costs as follows:

- Regardless of the amount of your actual loss, we will pay the <u>Business Interruption</u>
 <u>Hourly Loss Amount</u> for each hour of the **business interruption event** which exceeds the **retention**.
- 2. If your actual loss resulting from the business interruption event is greater than the <u>Business Interruption Hourly Loss Amount</u>, then we will also pay the <u>Additional Loss Amount</u> for each hour of the business interruption event which exceeds the retention.
- 3. **We** will also pay Extra Expense if **you** meet the conditions in subpart 3 above.

Business interruption event

means the interruption to or degradation in the availability of **your** website, intranet, network, computer system, programs, or data resulting in an **income interruption** as a direct result of:

- 1. the activities of a third party that maliciously blocks electronic access to **your** website, intranet, network, computer system, programs, or data **you** hold electronically; or
- a hacker.

Claim

means any written assertion of liability or any written demand for financial compensation or non-monetary relief.

Consulting costs

means costs for:

- 1. a public relations or crisis management consultant (and related costs) to:
 - reduce the likelihood of or costs of any claim that would be covered by this policy;
 or
 - b. to assist you in reestablishing your business reputation;

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- a computer forensic analysis conducted by outside forensic experts to confirm the identity of the hacker involved in the event; or
- an information security assessment conducted by outside security experts to identify security improvements to prevent a similar event.

Cyber extortion costs

means:

- the ransom paid or, if the demand is for goods or services, the fair market value at the time of surrender; and
- 2. the reasonable and necessary fees and expenses incurred by a representative appointed by **us** to provide **you** with assistance,

provided you can demonstrate to us:

- 1. the ransom has been surrendered under duress; and
- 2. before agreeing to its payment **you** have made all reasonable efforts to:
 - a. determine the threat is genuine and not a hoax; and
 - b. ensure at least one **executive** has agreed to the payment of the ransom.

Cyber extortion event

means **your** receipt, directly or indirectly, of an illegal threat from a person or entity who is not an **insured** threatening to:

- damage, destroy, or corrupt your website, intranet, network, computer system, any programs you use, or data you hold electronically, including by introducing a computer virus, worm, logic bomb, or Trojan horse; or
- disseminate, divulge, or use any confidential information for which you are legally responsible,

who then demands a ransom for their own benefit as a condition of not carrying out this threat.

Event

means a business interruption event, cyber extortion event, or hacker damage event.

Hacker

means anyone, including an **employee**, who gains unauthorized access to **your** website, intranet, network, computer system, or data **you** hold electronically via the internet or other external electronic link, solely by circumventing electronically the security systems in place to protect against such unauthorized access. **Hacker** does not include any **executive**, or any person who, while on **your** premises (other than an **employee** or a third party **you** have expressly permitted to enter the premises), directly gains unauthorized access to any computer system.

Hacker damage event

means a hacker either:

- 1. damaging, destroying, altering, corrupting, or misusing **your** website, intranet, network, computer system, programs, or data **you** hold electronically; or
- 2. copying or stealing any program or data **you** hold electronically.

Hacker damage costs

means:

- the reasonable and necessary expenses you incur with our prior written consent to repair or replace your website, intranet, network, computer system, programs, or data you hold electronically to the same standard and with the same contents as before it was damaged, destroyed, altered, corrupted, copied, stolen, or misused; or
- in the event that your website, intranet, network, computer system, programs, or data you hold electronically cannot be restored to the same standard and with the same contents as before it was damaged, destroyed, altered, corrupted, copied, stolen, or misused, hacker damage costs will mean the reasonable and necessary expenses you incur to make that determination.

Hacker damage costs includes the reasonable and necessary expenses **you** incur to mitigate the **hacker damage event** if **you** satisfy **us** such expenses are:

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- 1. less than the hacker damage costs that would have been incurred otherwise; and
- in excess of the expenses you would have incurred if the hacker damage event had not occurred.

Hacker damage costs will not mean, and **we** will not be obligated to pay, any amounts to research and/or develop the website, intranet, network, computer system, programs, or data.

Income interruption

means **your** gross profit generated on an hourly basis has been reduced to less than 75% of the average hourly gross profit for the 90-day period immediately prior to the **business interruption event**.

Property damage

means physical loss of, physical damage to, or destruction or loss of use of any tangible property.

Retention

means:

- for a business interruption event, the length of time stated as such under the Cyber Business Interruption section of the Declarations;
- for a cyber extortion event, the amount stated as such under the Cyber Extortion section of the Declarations; or
- for a hacker damage event, the amount stated as such under the Hacker Damage section of the Declarations.

You, your, or insured

means a **named insured**, **subsidiary**, **employee**, **executive**, or **acquired entity**, as defined in Section III. Who is an insured.

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NAMED INSURED: Mendocino Unified School District dba Mendocino Community Network

E9182.1 California Amendatory Endorsement

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed the Technology Professional Liability Coverage Part is amended as follows:

The definition of Damages in Section VII. Definitions is modified to the extent necessary to provide the following:

Punitive and exemplary damages shall not be insurable in cases where California law governs the claim.

Endorsement effective:

08/08/2024

Certificate No.:

MPL1790263.24

Endorsement No:

1

Processed Date:

07/08/2024

Hiscox Inc.

Authorized Representative



NAMED INSURED: Mendocino Unified School District dba Mendocino Community Network

E9122. California Amendatory Endorsement

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed the Media Liability Coverage Part is amended as follows:

The definition of Damages in Section VII. Definitions is modified to the extent necessary to provide the following:

Punitive and exemplary damages shall not be insurable in cases where California law governs the claim.

Endorsement effective:

08/08/2024

Certificate No.:

MPL1790263.24

Endorsement No:

2

Processed Date:

07/08/2024

Hiscox Inc.

Authorized Representative



NAMED INSURED: Mendocino Unified School District dba Mendocino Community Network

E9102.1 California Amendatory Endorsement

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed the Data Breach and Privacy Security Liability Coverage Part is amended as follows:

The definition of Damages in Section VII. Definitions is modified to the extent necessary to provide the following:

Punitive and exemplary damages shall not be insurable in cases where California law governs the claim.

Endorsement effective:

08/08/2024

Certificate No.:

MPL1790263.24

Endorsement No:

3

Processed Date:

07/08/2024

Hiscox Inc.

Authorized Representative



NAMED INSURED: Mendocino Unified School District dba Mendocino Community Network

E8643.2 Cyber Enhancements Notification Endorsement

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed:

For any **business interruption event**, **hacker damage event**, or **cyber extortion event you** must also notify the breach coach at 1-855-447-2627.

Endorsement effective:

08/08/2024

Certificate No.:

MPL1790263.24

Endorsement No:

4

Processed Date:

07/08/2024

Hiscox Inc.

Authorized Representative



NAMED INSURED: Mendocino Unified School District dba Mendocino Community Network

E8649.1 Amend Definition of Business Interruption Costs (Remove Hourly Loss Amount)

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed the Cyber Enhancements Coverage Part is amended as follows:

- I. In Section I. What is covered, A. Cyber business interruption, paragraph 2 is deleted in its entirety and replaced with the following:
 - 2. ends on the earlier of the date and time that the interruption to or degradation in the availability of **your** website, intranet, network, computer system, programs, or data:
 - a. ends; or
 - b. could have ended had **you** acted with due diligence and dispatch.

In no event will **we** be obligated to pay **business interruption costs** for more than 60 days from the date the **business interruption event** first occurs.

II. In Section VII. Definitions, the definition of "Business interruption costs" is deleted in its entirety and replaced with the following:

Business interruption costs

means income loss and extra expense actually sustained by you due to a business interruption event.

III. In Section VII. Definitions, the definition of "Business interruption event" is deleted in its entirety and replaced with the following:

Business interruption event

means the total or partial interruption to or degradation in the availability of **your** website, intranet, network, computer system, programs, or data resulting in **business interruption costs** as a direct result of:

- the activities of a third party that maliciously blocks electronic access to your website, intranet, network, computer system, programs, or data you hold electronically; or
- a hacker.
- IV. The following definitions are added to the end of Section VII. Definitions:

Income loss

means the sum of the following:

- Net Income (Net Profit or Loss before income taxes) that would have been earned if the business interruption event had not occurred; and
- 2. continuing normal operating expenses incurred, including payroll.

Extra expense

means reasonable and necessary expenses **you** incur to mitigate the **business interruption event** if **you** satisfy to **us** that such expenses are:

- less than the business interruption costs that would have been incurred otherwise; and
- in excess of the expenses you would have incurred if the business interruption event had not occurred.
- V. In Section VII. Definitions, the definition of "Income interruption" is deleted in its entirety.
- VI. The "Business Interruption Hourly Loss Amount" stated in the Cyber Enhancements Coverage Part section of the Declarations is deleted in its entirety.

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Endorsement effective:

08/08/2024

Certificate No.:

MPL1790263.24

Endorsement No:

Hiscox Inc.

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Processed Date:

07/08/2024

Authorized Representative Kevin Kerridge



NAMED INSURED: Mendocino Unified School District dba Mendocino Community Network

E6017.3 Nuclear Incident Exclusion Clause-Liability-Direct (Broad) Endorsement

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed:

We will have no obligation to pay any sums under this policy, including any damages, claim expenses, or other covered amounts, for any claim, event, or occurrence:

- A. Under any liability coverage, for injury, sickness, disease, death, or destruction:
 - 1. for which **you** are also insured under a nuclear energy liability policy issued by the Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, or Nuclear Insurance Association of Canada, or would be insured under any such policy but for exhaustion of its limit of liability; or
 - 2. resulting from the hazardous properties of nuclear material and with respect to which:
 - any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, as amended; or
 - b. you are, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- B. Under any Medical Payments coverage, or under any Supplementary Payments provision relating to immediate medical or surgical relief, for expenses incurred with respect to bodily injury, sickness, disease, or death resulting from the **hazardous properties** of **nuclear material** and arising out of the operation of a **nuclear facility** by any person or organization.
- C. Under any liability coverage, for injury, sickness, disease, death, or destruction resulting from the **hazardous properties** of **nuclear material**, if:
 - 1. the **nuclear material** is at any **nuclear facility** owned or operated by **you** or on **your** behalf, or has been discharged or dispersed from such a facility;
 - 2. the **nuclear material** is contained in **spent fuel** or **waste** which is or was at any time possessed, handled, used, processed, stored, transported, or disposed of by **you** or on **your** behalf; or
 - 3. the injury, sickness, disease, death, or destruction arises out of the furnishing by **you** of services, materials, parts, or equipment in connection with the planning, construction, maintenance, operation, or use of any **nuclear facility**, but if such facility is located within the United States of America, its territories or possessions, or Canada, this exclusion (3) applies only to injury to or destruction of property at such **nuclear facility**.

As used in this endorsement:

Hazardous properties includes radioactive, toxic, or explosive properties;

Nuclear material means source material, special nuclear material, or byproduct material;

Nuclear reactor means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

Source material, **special nuclear material**, and **byproduct material** have the meanings given them in the Atomic Energy Act of 1954, as amended;

Spent fuel means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a **nuclear reactor**;

Waste means any waste material:

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- 1. containing byproduct material; and
- 2. resulting from the operation by any person or organization of any **nuclear facility** included in paragraph 1 or 2 of the definition of **nuclear facility**;

Nuclear facility means:

- 1. any any nuclear reactor;
- 2. any any equipment or device designed or used for:
 - a. separating the isotopes of uranium or plutonium;
 - b. processing or utilizing spent fuel; or
 - c. handling, processing, or packaging waste;
- any equipment or device used for the processing, fabricating, or alloying of special nuclear material, if at any time the total
 amount of such material in your custody at the premises where such equipment or device is located consists of or contains
 more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235; or
- 4. any structure, basin, excavation, premises, or place prepared or used for the storage or disposal of waste.

Nuclear facility includes the site on which any of the foregoing is located, all operations conducted on such site, and all premises used for such operations;

With respect to injury to or destruction of property, "injury" or "destruction" includes all forms of radioactive contamination of property.

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E6020.4 War, Civil War, Cyberwarfare, and NCBR Exclusion Endorsement

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed the General Terms and Conditions are amended as follows:

- I. This policy does not apply to and **we** will have no obligation to pay any sums under this policy, including any **damages**, **claim expenses**, or other **covered amounts**, for any **claim**, **event**, or **occurrence** based upon or arising out of, directly or indirectly occasioned by, happening through, or in consequence of:
 - 1. war, invasion, acts of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military, or usurped power;
 - 2. confiscation, nationalization, requisition, destruction of, or damage to property by or under the order of any government, public, or local authority;
 - 3. **cyberwarfare**, to the extent not otherwise excluded by paragraph 1; or
 - any NCBR malicious act.

However, this exclusion will not apply to coverage under the General Liability Coverage Part (if purchased) for damage by fire to premises while rented to **you** or temporarily occupied by **you** with the owner's permission. Any payments **we** make for **property damage** to such premises will be subject to the Damage to Premises Limit.

II. For purposes of this Endorsement, the following definitions apply:

Cyberwarfare

means any:

- unauthorized access to, or use, alteration, corruption, damage, manipulation, misappropriation, theft, deletion, or destruction of, any computer hardware or electronic data:
- creation, transmission, or introduction into a computer system, computer network, or electronic data of a computer virus or harmful code; or
- 3. restriction or inhibition of access to a computer system, computer network, or electronic data, including through a denial-of-service (DoS) attack,

committed by, or on behalf of, a state.

In determining by whom any action listed in parts 1. through 3. above is committed **we** will consider to whom any governing body (including the governing body's intelligence, law enforcement, or military services) attributes such action, regardless of whether:

- A. the computer system, computer network, or electronic data is physically located within the jurisdiction of that governing body; or
- B. there are inconsistent statements within different branches or agencies of that governing body (including intelligence, law enforcement, or military services) as to whom the action is attributable to.

However, if:

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- a governing body has not attributed any such action to a state, or any person, group, association, or entity acting on the state's behalf; and
- ii. there is at least one **media report** or a cybersecurity forensic firm report indicating that such action is attributed to a **state** or any person, group, association, or entity acting on the **state's** behalf.

then we will not pay any damages, claim expenses, or other covered amounts resulting from any action listed in parts 1. through 3. above until any governing body attributes such action to a state or any person, group, association, or entity acting on the state's behalf.

If a governing body does not attribute such action to a **state** or any person, group, association, or entity acting on the **state's** behalf, or declares it is unable to do so, then a **media report** or cybersecurity forensic firm report will be conclusive evidence that the act was committed by, or on behalf of, a **state**.

For purposes of this definition, "**media report**" means an article published by the Associated Press, Reuters, Wall Street Journal, or the British Broadcasting Corporation.

For purposes of this definition, "**state**" means a sovereign state, state-like entity, quasi-state, proto-state, or a state-sponsored actor or group.

NCBR malicious act

means an act or series of acts that harms another person or damages property through the physical release or dispersal of **nuclear**, **chemical**, **biological**, **or radiological agents or materials**, which is carried out by any person or group of persons, whether acting alone, on behalf of, or in connection with any organization.

Nuclear, chemical, biological, or radiological agents or materials

means:

- nuclear reaction, nuclear radiation or radioactive particles, whether released or dispersed by nuclear or conventional devices;
- 2. any chemical compound; or
- 3. any pathogen,

in sufficient concentration to cause harm to people or damage to property.

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E9003.2 California Amendatory Endorsement

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed the General Terms and Conditions are amended as follows:

- I. In Section V. Other provisions affecting coverage, C. Cancellation, part 2 is deleted in its entirety and replaced with the following:
 - 2. Policies in Effective for 60 Days or Less

If this policy has been in effect for 60 days or less, and is not a renewal of a policy **we** have previously issued, **we** may cancel this policy by mailing (or emailing) to the **named insured** at the mailing address (or email address) shown in the Declarations and to the producer of record, if any, advance written notice of cancellation stating the reason for cancellation at least:

- a. Ten days before the effective date of cancellation if **we** cancel for:
 - i. Non-payment of premium; or
 - ii. Discovery of fraud by:
 - (a) The insured or the insured's representative in obtaining this insurance; or
 - (b) The **insured** or the **insured's** representative in pursuing a **claim** under the policy.
- b. 30 days before the effective date of cancellation if **we** cancel for any other reason.

Policies In Effect For More Than 60 Days

If this policy has been in effect for more than 60 days, **we** may also cancel this policy by mailing (or emailing) to the **named Insured** at the address (or email address) shown in the Declarations, and the producer of record, if any, written notice, including the reason for cancellation, stating when not less than 30 days thereafter (or ten days thereafter when cancellation is due to non-payment of premium or discovery of fraud), the cancellation will be effective.

We may only cancel this policy for one or more of the following reasons:

- a. Non-payment of premium, including payment due on a prior policy issued by **us** and due during the current policy term covering the same risks;
- b. Discovery of fraud or material misrepresentation by:

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- i. The **insured** or the **insured's** representative in obtaining this insurance; or
- ii. The **insured** or the **insured's** representative in pursuing a **claim** under the policy.
- A judgment by a court or an administrative tribunal that the **insured** has violated a California or Federal law, having as one of its necessary elements an act which materially increases any of the risks insured against;
- d. Discovery of willful or grossly negligent acts or omissions, or of any violations of state laws or regulations establishing safety standards, by the **insured** or the **insured's** representative, which materially increase any of the risks insured against;
- e. Failure by the **insured** or the **insured**'s representative to implement reasonable loss control requirements, agreed to by the **insured** as a condition of policy issuance, or which were conditions precedent to **our** use of a particular rate or rating plan, if that failure materially increases any of the risks insured against;
- f. A determination by the Commissioner of Insurance that the:
 - i. Loss of, or changes in, our reinsurance covering all or part of the risk would threaten **our** financial integrity or solvency; or
 - ii. Continuation of the policy coverage would:
 - a. Place **us** in violation of California law or the laws of the state where **we** are domiciled; or
 - b. Threaten **our** solvency.
- g. A change by the **insured** or the **insured**'s representative in the activities or property of the commercial or industrial enterprise, which results in a materially added, increased or changed risk, is included in the policy.
- II. The following is added to Section V. Other provisions affecting coverage::

NR- A Non-renewal

- If we elect not to renew this policy, we will mail (or email where allowed by applicable law) to the named insured written notice of nonrenewal, stating the reason for nonrenewal, not less than 60 days, but not more than 120 days before the end of the policy period.
- 2. **We** are not required to send notice of nonrenewal in the following situations:

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- a. If the transfer or renewal of a policy, without any changes in terms, conditions or rates, is between **us** and a member of **our** insurance group.
- b. If the policy has been extended for 90 days or less, provided that notice has been given in accordance with paragraph 1 above.
- c. If the **named insured** has obtained replacement coverage, or if the **named insured** has agreed, in writing, within 60 days of the termination of the policy, to obtain that coverage.
- d. if the policy is for a period of no more than 60 days and the **named insured** is notified at the time of issuance that it will not be renewed.
- e. If the **named insured** requests a change in the terms or conditions or risks covered by the policy within 60 days of the end of the **policy period**.
- f. If **we** made a written offer to the **named insured**, in accordance with the timeframes shown in paragraph 1 above, to renew the policy under changed terms or conditions or at an increased premium rate, when the increase exceeds 25%.

Endorsement effective:

08/08/2024

Certificate No.:

MPL1790263.24

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Processed Date:

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E6085.1 Full Prior Acts Endorsement

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed the General Terms and Conditions are amended as follows:

In Section VI. Definitions applicable to all Coverage Parts, the definition of "Retroactive date" is deleted in its entirety and replaced with the following:

Retroactive date

means the date any named insured, subsidiary, joint venture, or predecessor in business

first began performing professional services.

For purposes of this definition, predecessor in business means any individual or entity of which the named insured has assumed the majority of assets and liabilities, provided that the named insured has continued to perform the professional services that the individual or entity was performing prior to such transfer of assets and liabilities.

Endorsement effective:

08/08/2024

Certificate No.:

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Processed Date:

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E8511.3 Cyber Crime & Cyber Deception Endorsement (DBPSL)

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed the Data Breach and Privacy Security Liability Coverage Part is amended as follows:

The following is added to the end of Section II. Coverage enhancements:

Cyber crime and deception sublimit

CC-A.

We will pay up to the Cyber Crime and Deception Limit of Liability identified below for

- 1. resulting directly from a **fraudulent instruction** directing a financial institution to transfer, pay, or deliver money and/or securities from your transfer account; or
- 2. of money, securities, and/or other property transferred, paid, or delivered as a result of a cyber deception,

provided the loss is first discovered by you during the policy period and is reported to **us** is accordance with Section V. Your obligations.

Any payment we make under this subsection CC-A will be in excess of the Cyber Crime and Deception Retention identified below, and such payments will be a part of, and not in addition to, the coverage part limit.

II. Solely with respect to the coverage provided by this endorsement, the following is added to the end of Section V. Your obligations:

Notifying us of losses

If you discover a loss, or circumstances reasonably likely to lead to a loss of money, securities, and/or other property that in your best estimate will exceed 50% of the Cyber Crime and Deception Retention identified below, you must give written notice to us as soon as possible, but in any event no later than: (i) the end of the policy period; or (ii) 30 days after the end of the policy period for a loss first discovered by you in the last 30 days of the policy period. If you have reason to believe that any loss involves a violation of law, you must also inform, or allow us to inform, the appropriate law enforcement authorities.

Proof of loss

Within 120 days of notification to **us** of a loss, **you** must give **us** a detailed, sworn proof of loss.

records

Examination of your books and We have the right to examine and audit your books and records as they relate to the coverage provided by this endorsement at any time during the policy period and up to three years afterward.

Solely with respect to the coverage provided by this endorsement, the following exclusions are added to the end of Section VI. Exclusions – What is not covered:

We will have no obligation to pay any sums under this Coverage Part for any:

- CC-A. loss resulting from the use or purported use of credit, debit, charge, access, convenience, identification, storedvalue, or other cards or the information contained on such cards.
- CC-B. loss that is an indirect result of an occurrence or event covered by this Coverage Part, including but not limited to loss resulting from:
 - 1. your inability to realize income that you would have realized had there been no loss covered by this endorsement:

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- payment of damages of any type for which you are legally liable, but we will pay compensatory damages arising directly from a loss covered by this endorsement; or
- payment of costs, fees, or other expenses you incur in establishing the existence or the amount of loss covered by this endorsement.
- CC-C. **claim expenses** incurred by **you** which are related to any legal action resulting from a loss covered by this endorsement.
- CC-D. loss resulting from seizure or destruction of property by order of governmental authority.
- CC-E. loss resulting from any dishonest act committed by you, if the named insured is an individual, or any employee.
- CC-F. loss resulting from any actual or alleged unauthorized acquisition, access, use, or disclosure of **personally identifiable information** or confidential corporate information that is held or transmitted in any form; however, this exclusion will not apply to a **fraudulent instruction** or a **cyber deception** directly resulting from the use of such **personally identifiable information** or confidential corporate information.
- IV. Solely with respect to the coverage provided by this endorsement, in Section VI. Exclusions What is not covered, the "Funds transfer" exclusion is deleted in its entirety and replaced with the following:

for any actual or alleged loss, theft, or transfer of:

- a. **your** funds, monies, or securities;
- b. the funds, monies, or securities of others in **your** care, custody, or control; or
- c. the funds, monies, or securities in the care, custody, or control of any third party for whom **you** are legally liable, including the value of any funds, monies, or securities transferred by **you** or others on **your** behalf.

However, this exclusion will not apply to the loss, theft, or transfer of any **money** or **securities** in **your transfer account**, or to the loss, theft, or transfer of any **money**, **securities** and/or **other property** resulting from a **cyber deception**.

V. Solely with respect to the coverage provided by this endorsement, the following definitions are added to the end of Section VII. Definitions:

Cyber deception

means the intentional misleading or deception of an **employee** through social engineering, pretexting, phishing, spear phishing, or any other confidence trick communicated by email, text, instant message, telephone, or other electronic means, by a person falsely purporting to be **your** vendor or **client**, or an **employee**, which results in **your** transfer, payment, or delivery of **money**, **securities**, and/or **other property**.

Fraudulent instruction

means:

- 1. an electronic, telegraphic, cable, teletype, telefacsimile, or telephone instruction which purports to have been transmitted by **you**, but which was in fact fraudulently transmitted by someone else without **your** knowledge or consent;
- a written instruction issued by you, which was forged or altered by someone other than you without your knowledge or consent, or which purports to have been issued by you, but was in fact fraudulently issued without your knowledge or consent; or
- 3. an electronic, telegraphic, cable, teletype, telefacsimile, telephone, or written instruction initially received by **you** which purports to have been transmitted by an **employee** but which was in fact fraudulently transmitted by someone else without **your** or the **employee's** knowledge or consent.

Money

means:

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- currency, including Bitcoin or any other digital currency, cryptocurrency, or electronic currency, coins, and bank notes in current use anywhere in the world and having a face value; or
- 2. traveler's checks, register checks, and money orders held for sale to the public.

Other property

means any tangible property other than **money** that has intrinsic value. **Other property** does not include software, electronic data, or any other intangible property.

Securities

means negotiable or nonnegotiable instruments or contracts representing either **money** or property and includes:

- 1. tokens, tickets, revenue, and other stamps (whether represented by actual stamps or unused value in a meter) in current use;
- 2. casino chips issued by you; or
- 3. evidences of debt issued in connection with credit or charge cards, which cards are not issued by **you**,

but does not include money.

Transfer account

means any account maintained by **you** at a financial institution from which **you** can initiate the transfer, payment, or delivery of **money** or **securities**:

- by means of electronic, telegraphic, cable, teletype, telefacsimile, or telephone instructions communicated directly through an electronic funds transfer system; or
- by means of written instructions establishing the conditions under which such transfers are to be initiated by such financial institution through an electronic funds transfer system.

Cyber Crime and Deception Limit of Liability: \$100,000

Cyber Crime and Deception Retention: \$2,500

Endorsement effective:

08/08/2024

Certificate No.:

MPL1790263.24

Endorsement No:

Hiscox Inc.

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Processed Date:

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E8627.1 Intellectual Property Enhancement Endorsement

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed the Technology Professional Liability Coverage Part is amended as follows:

I. Section I. What is covered is deleted in its entirety and replaced with the following:

We will pay up to the coverage part limit for damages and claim expenses in excess of the retention for covered claims against you resulting from the performance of your technology services by you or anyone on your behalf (including your subcontractors, outsourcers, or independent contractors) on or after the retroactive date, for any actual or alleged:

- 1. negligent act, error, or omission;
- 2. negligent misstatement or negligent misrepresentation;
- 3. unintentional breach of a written contract with your client;
- 4. breach of any duty of confidentiality, unauthorized interception or recording of images or sound in violation of any civil anti-wiretap statute, or invasion of privacy, including false light, intrusion upon a person's seclusion, or misappropriation of a person's picture, name, or voice for commercial gain;
- 5. intellectual property infringement (but not any patent infringement or misappropriation of trade secret), including but not limited to copyright infringement (including software copyright infringement), trademark infringement, trademark dilution, trade dress infringement, publicity rights violations, cyber squatting violations, moral rights violations, any act of passing-off, or any misappropriation of formats, characters, trade names, character names, titles, plots, musical compositions, voices, slogans, graphic material, or artwork;
- 6. unfair competition, deceptive trade practices, or false designation of origin, but only if alleged in connection with a covered **claim** under 5 above:
- 7. defamation, including but not limited to libel, slander, trade libel, product disparagement, or injurious falsehood; or
- 8. unintentional infliction of emotional distress, but only if alleged in connection with a covered **claim** for negligent publication, invasion of privacy, or defamation under 1, 4, or 7 above,

provided the **claim** is first made against **you** during the **policy period** and is reported to **us** in accordance with Section V. Your obligations.

- II. In Section II. Coverage enhancements, subsection A. Software copyright sublimit is deleted in its entirety.
- III. The following is added to the end of Section II. Coverage enhancements:

Declaratory relief IP-A. **We** will pay reasonable attorney fees incurred by **you** to prosecute **your** own declaratory relief action if:

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- a claimant has advised you in writing that you are committing copyright or trademark infringement;
- after that claimant has made such a written assertion, and after you have filed a declaratory relief action directly in response, the claimant files a counterclaim against you alleging copyright or trademark infringement; and
- 3. the counterclaim is covered under this policy and pending against **you** while **you** are prosecuting **your** declaratory relief action.

You must pay the **retention** stated in the Declarations in connection with any payment **we** make under this subsection IP-A, and any payments **we** make will be a part of, and not in addition to, the **coverage part limit**.

IV. In Section VI. Exclusions – What is not covered, the "Antitrust/deceptive trade practices" exclusion is deleted in its entirety and replaced with the following:

based upon or arising out of any actual or alleged:

- a. false, deceptive, or unfair trade practices;
- b. unfair competition, impairment of competition, restraint of trade, or antitrust violations;
- c. violation of the Sherman Anti-Trust Act, the Clayton Act, the Robinson-Patman Act, all including as may be amended, or any similar foreign, federal, state, or local statutes, rules, or regulations; or
- d. deceptive or misleading advertising;

however, this exclusion will not apply to the extent any claim is covered under part 6 of Section I. What is covered.

V. In Section VI. Exclusions – What is not covered, the "Bodily injury" exclusion is deleted in its entirety and replaced with the following:

based upon or arising out of any actual or alleged **bodily injury**; however, this exclusion will not apply to the extent any **claim** is covered under part 8 of Section I. What is covered.

VI. In Section VI. Exclusions – What is not covered, the "Intellectual property" exclusion is deleted in its entirety and replaced with the following:

Patent/trade secret IP-1. based upon or arising out of any actual or alleged infringement, use, disclosure, or misappropriation of any patent or trade secret.

VII. The following exclusion is added to the end of Section VI. Exclusions – What is not covered:

Client content IP-2. based upon or arising out of any content provided to **you** by **your client**; however, **we** will pay **claim expenses** for any **claims** against **you** based upon or arising out of such content.

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Endorsement effective:

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Hiscox Inc.

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Processed Date:

07/08/2024

Authorized Representative Kevin Kerridge



NAMED INSURED: Mendocino Unified School District dba Mendocino Community Network

E8621.2 Breach of Contract Enhancement Endorsement (Tech)

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed the Technology Professional Liability Coverage Part is amended as follows:

I. Section I. What is covered is deleted in its entirety and replaced with the following:

We will pay up to the coverage part limit for damages and claim expenses in excess of the retention for covered claims against you resulting from the performance of your technology services by you or anyone on your behalf (including your subcontractors, outsourcers, or independent contractors) on or after the retroactive date, for any actual or alleged:

- 1. negligent act, error, or omission;
- 2. negligent misstatement or negligent misrepresentation; or
- unintentional breach of a written contract with your client, including a written service level agreement forming part of such contract.

provided the **claim** is first made against **you** during the **policy period** and is reported to **us** in accordance with Section V. Your obligations.

II. The following is added to the end of Section II. Coverage enhancements:

Contractual indemnities - BR-A. client breach costs

If you have purchased the Data Breach and Privacy Security Liability Coverage Part, we will pay breach costs for which you have contractually agreed to indemnify your client, provided the breach costs are incurred as a result of a breach occurring on or after the retroactive date, which is first discovered by you during the policy period, and is reported to us in accordance with Section V. Your obligations. We will pay such breach costs only to the same extent such costs would have been paid by us under the Data Breach and Privacy Security Liability Coverage Part had you incurred them.

You must pay the **retention** stated in the Declarations in connection with any payment **we** make under this subsection BR-A, and any payments **we** make will be a part of, and not in addition to, the **coverage part limit**.

- III. In Section VI. Exclusions What is not covered, the "Breach of warranty/guarantee" exclusion is deleted in its entirety.
- IV. In Section VI. Exclusions What is not covered, the "Return of fees" exclusion is deleted in its entirety.
- V. In Section VI. Exclusions What is not covered, the "Assumption of liability" exclusion is deleted in its entirety and replaced with the following:

based upon or arising out of any actual or alleged liability of others **you** assume under any contract or agreement; however, this exclusion will not apply to the extent any **claim** is covered under Section II. Coverage enhancements, BR-A. Contractual indemnities - client breach costs.

VI. In Section VI. Exclusions – What is not covered, the "Excluded costs and damages" exclusion is deleted in its entirety and replaced with the following:

to the extent it seeks or includes:

a. fines, penalties, taxes, or sanctions against you;

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- b. overhead costs, general business expenses, salaries, or wages incurred by you;
- c. liquidated or multiple damages;
- d. restitution, disgorgement of profits, any advantage to which you were not legally entitled, or unjust enrichment;
- e. the cost of complying with injunctive relief; or
- f. service credits.
- VII. The following definitions are added to the end of Section VII. Definitions:

Breach

means the unauthorized acquisition, access, use, or disclosure of non-public personally identifiable information or confidential corporate information, including but not limited to that resulting from the loss or theft of a device containing such information.

Breach costs

means any of the following reasonable and necessary costs **your client** incurs in response to a **breach** that triggers **your client's** notification obligations pursuant to any foreign, federal, state, or local statute, rule, or regulation, or that **you** satisfy **us** poses a significant risk of financial, reputational, or other harm to the affected **data subjects**:

- Computer Forensic Costs: costs up to the limit stated in the Declarations for computer forensic analysis conducted by outside forensic experts to confirm a **breach** and to identify the affected **data subjects**, as well as outside attorney fees associated with the forensic reports and findings.
- 2. <u>Notification Costs</u>: the following costs up to the limit stated in the Declarations:
 - a. <u>Mandatory Notification Costs</u>: for legal services, call center services, and to notify a **data subject**, a regulator, or any others, as required to satisfy **your client's** notification obligations; and/or
 - b. <u>Voluntary Notification Costs</u>: to voluntarily notify affected **data subjects**, but only if you satisfy us that the **breach** poses a significant risk of financial, reputational, or other harm to the affected **data subjects**.
- Credit or Identity Protection Costs: costs up to the limit stated in the Declarations to
 provide each affected data subject with one year (or more as required by law) of
 services to monitor and/or protect such data subject's credit or identity:
 - a. if required by law; or
 - b. if **you** satisfy **us** it mitigates a significant risk of financial, reputational, or other harm to the **data subject**.
- <u>Crisis Management and Public Relations Costs</u>: costs up to the limit stated in the Declarations for a public relations or crisis management consultant (and related costs) to:
 - a. reduce the likelihood of or costs of any **claim** covered by this policy; or
 - b. to assist **your client** in re-establishing their business reputation.

Breach costs will not mean, and **we** will have no obligation to pay, any of **your** or **your client's** own costs, salaries, or overhead expenses.

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Endorsement effective:

08/08/2024

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Certificate No.: Processed Date: MPL1790263.24

07/08/2024

Endorsement No:

Hiscox Inc.

Authorized Representative



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E8530.1 Telephone Toll Fraud Sublimit Endorsement

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed the Data Breach and Privacy Security Liability Coverage Part is amended as follows:

I. The following is added to the end of Section II. Coverage enhancement(s):

Telephone toll fraud sublimit

TT-A.

We will pay up to the Telephone Toll Fraud Limit of Liability identified below for long distance telephone charges incurred by you as a result of a telephone toll fraud, provided the telephone toll fraud first occurs and is discovered by you during the policy period and is reported to us is accordance with Section V. Your obligations.

If **you** incur charges for a period exceeding 30 days from the date on which the **telephone toll fraud** first occurs, **we** will only be obligated to pay such charges that are incurred during the first 30 days.

Any payment **we** make under this subsection TT-A will be subject to the Telephone Toll Fraud Retention identified below, and such payments will be a part of, and not in addition to, the **coverage part limit**.

II. Solely with respect to the coverage provided by this Endorsement, the following is added to the end of Section V. Your obligations:

Notifying us of telephone toll fraud

You must give written notice to us of any telephone toll fraud, or circumstances reasonably likely to lead to a telephone toll fraud, that in your best estimate will exceed 50% of the Telephone Toll Fraud Retention identified below, as soon as possible after it is first discovered by you, but in any event no later than 90 days after you discover such telephone toll fraud or circumstances.

IV. Solely with respect to the coverage provided by this Endorsement, the following Section is added to the policy:

TT-I. Conditions applicable to telephone toll fraud losses

The following are conditions precedent to the payment by **us** of any long distance telephone charges incurred by **you** as a result of a **telephone toll fraud**:

- TT-1. **you** must inform, or allow **us** to inform, the appropriate law enforcement authorities if **you** have reason to believe that any **telephone toll fraud** involves a violation of law;
- TT-2. **you** must give **us** a detailed, sworn proof of **loss** within 120 days of notification to **us** of a **telephone toll fraud**: and
- TT-3. **we** have the right to examine and audit **your** books and records as they relate to the coverage provided by this Endorsement at any time during the **policy period** and up to three years afterward.
- V. The following exclusions are added to the end of Section VI. Exclusions What is not covered:

We will have no obligation to pay any sums under this Coverage Part for:

- TT-1. any **telephone toll fraud** resulting from the use of telephone lines directly controlled by more than one **voice computer system**;
- TT-2. any **telephone toll fraud** resulting from the failure to install and maintain in operating condition a call disconnect feature to terminate a caller's access after three unsuccessful attempts to enter an **account code**;
- TT-3. any **telephone toll fraud** resulting from the failure to incorporate a **system password** or change a **system password** every 60 days;

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- TT-4. claim expenses incurred by you which are related to any legal action resulting from a telephone toll fraud;
- TT-5. any **telephone toll fraud** resulting from any dishonest act committed by **you**, if the **named insured** is an individual, or by any **employee**, or board member, trustee, director, or officer (or equivalent position) of the **named insured** or **subsidiary**; or
- TT-6. any **telephone toll fraud** resulting from any actual or alleged unauthorized acquisition, access, use, or disclosure of **personally identifiable information** or confidential corporate information that is held or transmitted in any form; however, this exclusion will not apply to a **telephone toll fraud** directly resulting from the use of such **personally identifiable information** or confidential corporate information.
- VII. The following definitions are added to the end of Section VII. Definitions:

Account code

means a confidential and protected string of characters that identifies or authenticates a person and permits that person to gain access to **your voice computer system** for the purpose of making long distance toll calls or utilizing voice mail box messaging capabilities or similar functional features of the system.

System administration

means the performance of any security function, including but not limited to:

- 1. defining authorized persons to access the system;
- 2. adding, deleting, or changing **account codes** or passwords;
- 3. installing or deleting any system option which directs telephone call routing or adds, drops, or moves telephone lines; or
- 4. any other activity allowed by a hardware or software-based system option that has been incorporated by a manufacturer or a vendor into a **voice computer system**, provided the system is not intended for the sole use of the manufacturer or vendor.

System maintenance

means performing hardware and software installation, diagnostic and correction, and similar activities that are performed in the usual custom and practice by a manufacturer or vendor to establish or maintain the basic operational functionality of a **voice computer system**.

System Password

means a confidential and protected string of characters that identifies or authenticates a person and permits that person to gain access to **your voice computer system** to perform **system administration** or **system maintenance** or a component of either.

Telephone toll fraud

means the fraudulent use or fraudulent manipulation of an **account code** or **system password** required to gain access into **your voice computer system** which results in long distance telephone charges incurred by **you**.

Voice computer system

means a computer system installed in one location which functions as a private branch exchange (PBX), voice mail processor, or automated call attendant, or provides a similar capability used for the direction or routing of telephone calls in a voice communications network.

Telephone Toll Fraud Limit of Liability: \$100,000 in the aggregate

Telephone Toll Fraud Retention: \$2,500

Endorsement effective: 08/08/2024 Certificate No.: MPL1790263.24

Endorsement No: 13 Processed Date: 07/08/2024

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Authorized Representative



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E8531.1 Amend Personally Identifiable Information and Regulatory Action Endorsement (EU General Data Protection Regulation)

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed the Data Breach and Privacy Security Liability Coverage Part is amended as follows:

I. In Section VII. Definitions, the definition of "Personally identifiable information" is deleted in its entirety and replaced with the following:

Personally identifiable information

means the following, in any form, that is in **your** care, custody, or control, or in the care, custody, or control of any third party for whom **you** are legally liable:

- non-public individually identifiable information as defined in any foreign, federal, state, or local statute, rule, or regulation, including but not limited to:
 - a. unsecured protected health information as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), or
 - b. personal data, as defined by the EU General Data Protection Regulation (2016/679),

both as amended, and any rule or regulation promulgated thereunder; or

- 2. any:
 - i. social security number or individual taxpayer identification number;
 - ii. driver's license number or state identification number;
 - iii. passport number;
 - iv. credit card number; or
 - v. financial account number or debit card number in combination with any required security code.
- II. In Section VII. Definitions, the definition of "Regulatory action" is deleted in its entirety and replaced with the following:

Regulatory action

means any civil regulatory action brought against **you** by a regulator, including any action arising under the EU General Data Protection Regulation (2016/679), as amended, and any rule or regulation promulgated thereunder.

Endorsement effective: 08/08/2024 Certificate No.: MPL1790263.24

Endorsement No: 14 Processed Date: 07/08/2024

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Authorized Representative Kevin Kerridge



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E6314.2 Coverage Enhancement Amendatory Endorsement

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed:

The General Terms and Conditions is amended as follows:

Amend Cancellation (Pro-Rata)

- 1. In Section V. Other provisions affecting coverage, C. Cancellation, is deleted in its entirety and replaced with the following:
 - C. Cancellation
- This policy may be canceled by the named insured by giving written notice, which
 must include the date the cancellation will be effective, to us at the address stated
 in the Declarations.
- This policy may be canceled by us by mailing to the named insured by registered, certified, or other first class-mail, at the named insured's address stated in Item
 of the Declarations, written notice stating when the cancellation will be effective, such date not to be less than 60 days after the date of the notice of cancellation, or ten days if the cancellation is due to non-payment of premium.
- 3. The mailing of such notice will be sufficient proof of notice, and this policy will terminate at the date and hour specified in such notice.
- If this Policy is canceled by us or the named insured, we will return a pro rata portion of the premium.
- Payment or tender of any unearned premium by us will not be a condition precedent to the effectiveness of the cancellation, but such payment will be made as soon as possible.

Amend Other Insurance Provision (Reputational Harm)

2. In Section V. Other provisions affecting coverage, the following is added to the end of part H. Other insurance:

In the event **you** sustain **reputational harm** under the Reputational harm sublimit which is covered under both the Data Breach and Privacy Security Liability Coverage Part and the Cyber Enhancements Coverage Part, whether due to the publication of related or continuing acts, errors, incidents, **breaches**, or **events**, **we** will pay only under one Coverage Part, which will be the Coverage Part that provides the most favorable coverage.

The Cyber Enhancements Coverage Part is amended as follows:

Amend Definition of Business Interruption Costs (Remove Hourly Loss Amount)

- 3. A. In Section I. What is covered, A. Cyber business interruption, paragraph 2 is deleted in its entirety and replaced with the following:
 - 2. ends on the earlier of the date and time that the interruption to or degradation in the availability of **your** website, intranet, network, computer system, programs, or data:
 - a. ends; or
 - b. could have ended had **you** acted with due diligence and dispatch.

In no event will **we** be obligated to pay **business interruption costs** for more than 60 days from the date the **business interruption event** first occurs.

B. In Section VII. Definitions, the definition of "Business interruption costs" is deleted in its entirety and replaced with the following:

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Business interruption costs

means income loss and extra expense actually sustained by you.

C. In Section VII. Definitions, the definition of "Business interruption event" is deleted in its entirety and replaced with the following:

Business interruption event

means the total or partial interruption to or degradation in the availability of **your** website, intranet, network, computer system, programs, or data resulting in **business interruption costs** as a direct result of:

- the activities of a third party that maliciously blocks electronic access to your website, intranet, network, computer system, programs, or data you hold electronically; or
- a hacker.
- D. The following definitions are added to the end of Section VII. Definitions:

Income loss

means the sum of the following:

- Net Income (Net Profit or Loss before income taxes) that would have been earned;
- 2. continuing normal operating expenses incurred, including payroll.

Extra expense

means reasonable and necessary expenses **you** incur to mitigate the **business interruption event** if **you** satisfy to **us** that such expenses are:

- less than the business interruption costs that would have been incurred otherwise; and
- in excess of the expenses you would have incurred if the business interruption event had not occurred.
- E. In Section VII. Definitions, the definition of "Income interruption" is deleted in its entirety.
- F. The "Business Interruption Hourly Loss Amount" stated in the Cyber Enhancements Coverage Part section of the Declarations is deleted in its entirety.

Bricking Costs Sublimit (\$100k)

4. A. The following is added to the end of Section II. Coverage enhancements:

Bricking costs sublimit

BC-A.

We will pay up to \$100,000, in the aggregate, for **bricking costs** resulting from a **bricking event** that first occurs on or after the **retroactive date** and is discovered by **you** during the **policy period**.

You must pay the **retention** before **we** will be obligated to make any payment under this subsection BC-A, and any payments **we** make will be a part of, and not in addition to, the Hacker Damage limit stated in the Declarations.

B. Solely with respect to the coverage provided by this endorsement, the following definitions are added to the end of Section VII. Definitions:

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Bricking costs

means the reasonable and necessary expenses incurred by **you** with **our** prior consent to rebuild, repair, or replace any hardware on which any **data asset** is stored due to a **bricking event**, provided:

- 1. such hardware, or any component thereof, can no longer be used for any or all of its purposes, and either:
 - a. the hardware or component cannot be restored to functionality after reasonable efforts have been made; or
 - b. it is reasonably estimated:
 - i. to cost less to replace the hardware or component than it would to restore the hardware or component's functionality; or
 - that the cost to replace the hardware or component will be less than the additional loss that will be incurred if the hardware or component is not replaced; and
- replacement of such hardware or component is reasonable and necessary to reduce or mitigate loss.

Bricking costs will not mean costs to rebuild, repair, or replace the hardware to a level beyond which existed prior to the **bricking event**, unless:

- the hardware can only be reasonably replaced with an upgraded or enhanced hardware or component; and
- the updated or enhanced hardware or component is necessary to repair, rebuild, or replace the hardware.

Bricking event

means the total or partial loss of hardware caused by the unauthorized reprogramming of software (including firmware).

C. Solely with respect to the coverage provided by this endorsement, in Section VI. Exclusions – What is not covered, the "Property damage" exclusion is deleted in its entirety and replaced with the following:

Property damage

- 14. for any actual or alleged **property damage**; however, this exclusion will not apply to:
 - a. damage to data, or destruction or loss of use of data; or
 - a bricking event covered under Section II. Coverage enhancements, BC-A.
 Bricking costs sublimit.

Dependent Business Interruption and System Failure Extension

5. A. The following are added to the end of Section II. Coverage enhancements:

Dependent business interruption and dependent system failure sublimit

DB-A. We will pay up to:

- 1. \$1,000,000, in the aggregate, for **business interruption costs you** incur in excess of the **retention** resulting from:
 - a. a cyber extortion event;
 - b. a hacker damage event; and/or
 - the acquisition, access, or disclosure of personally identifiable information or confidential corporate information by a person or

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DB-B.

entity, or in a manner, that is unauthorized by the **dependent business**.

experienced by or made against any **dependent business** that first occurs on or after the **retroactive date** and is discovered by **you** during the **policy period**.

2. \$1,000,000, in the aggregate, or the Cyber Business Interruption limit stated in the Declarations, whichever is lower for **business interruption costs you** incur in excess of the **retention** resulting from any **dependent system failure**,

experienced by or made against any **dependent business** that first occurs on or after the **retroactive date** and is discovered by **you** during the **policy period**.

Any payments **we** make for **business interruption costs you** incur under this subsection DB-A will be a part of, and not in addition to, the Cyber Business Interruption limit stated in the Declarations.

System failure sublimit

We will pay up to \$1,000,000, in the aggregate, limit stated in the Declarations for business interruption costs you incur in excess of the retention resulting from a system failure that first occurs on or after the retroactive date and is discovered by you during the policy period.

Any payments **we** make for **business interruption costs you** incur under this subsection DB-B will be a part of, and not in addition to, the Cyber Business Interruption limit stated in the Declarations.

B. Solely with respect to the coverage provided by Section II. Coverage enhancements, DB-A. Dependent business interruption and dependent system failure sublimit, the definitions of "Cyber extortion event", "Event", Hacker", and "Hacker damage event" are deleted in their entirety and replaced with the following:

Cyber extortion event

means a **dependent business's** receipt, directly or indirectly, of an illegal threat from a person or entity who is not an **insured** threatening to:

- damage, destroy, or corrupt the dependent business's website, intranet, network, computer system, any programs the dependent business uses, or data the dependent business holds electronically, including by introducing a computer virus, worm, logic bomb, or Trojan horse; or
- disseminate, divulge, or use any confidential information for which the dependent business is legally responsible,

who then demands a ransom for their own benefit as a condition of not carrying out this threat.

Event

means a business interruption event, cyber extortion event, hacker damage event, system failure, or dependent system failure.

Hacker

means anyone, including an employee of the **dependent business**, who gains unauthorized access to the **dependent business's** website, intranet, network, computer system, or data the **dependent business** holds electronically via the internet or other external electronic link, solely by circumventing electronically the security systems in place to protect against such unauthorized access. **Hacker** does not include any

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executive, or any person who, while on the **dependent business's** premises (other than an employee or a third party the **dependent business** has expressly permitted to enter the premises), directly gains unauthorized access to any computer system.

Hacker damage event

means a hacker either:

- damaging, destroying, altering, corrupting, or misusing the dependent business's website, intranet, network, computer system, programs, or data it holds electronically; or
- copying or stealing any program or data the dependent business holds electronically.
- C. The following definitions are added to the end of Section VII. Definitions:

Dependent business

means an individual or entity that:

- is not owned, operated, or controlled by the named insured or any subsidiary or acquired entity; and
- provides outsourced business processes or information technology services for the named insured or any subsidiary or acquired entity pursuant to a written contract.

Dependent system failure

means any unintentional and unplanned total or partial outage of a **dependent business's** computer system that is not caused by the:

- unauthorized acquisition, access, use, or disclosure of personally identifiable information, including but not limited to that resulting from the loss or theft of a device containing such personally identifiable information; or
- failure by the dependent business or by others on the dependent business's behalf (including its subcontractors, outsourcers, or independent contractors) in securing the dependent business's computer system.

Information technology services

means computer and electronic technology services, including cloud computing and other hosted computer resources.

Outsourced business processes

System failure

means services supporting the operation of the **named insured** or any **subsidiary** or **acquired entity's** business, including human resources, call center, and fulfillment.

means any unintentional and unplanned total or partial outage of the **named insured** or any **subsidiary** or **acquired entity's** computer system that is not caused by the:

- unauthorized acquisition, access, use, or disclosure of personally identifiable information, including but not limited to that resulting from the loss or theft of a device containing such personally identifiable information; or
- failure by you or by others on your behalf (including your subcontractors, outsourcers, or independent contractors) in securing the named insured or any subsidiary or acquired entity's computer system.
- D. In Section VI. Exclusions What is not covered, the "Infrastructure interruption" exclusion is deleted in its entirety and replaced with the following:

Infrastructure interruption

8. based upon or arising out of any actual or alleged failure or interruption of service provided by an internet service provider, telecommunications provider, utility provider, or other infrastructure provider; however, this exclusion will not apply

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to **business interruption costs** otherwise covered under Section II. Coverage enhancements, DB-A. Dependent business interruption and dependent system failure sublimit.

- E. Solely with respect to the coverage provided by Section II. Coverage enhancements, DB-A. Dependent business interruption sublimit, the following exclusion is added to the end of Section VI. Exclusions What is not covered:
 - Supply chain providers
- DB-1. with respect to **business interruption costs** only, based upon or arising out of any total or partial interruption of the **insured's** business due to any failure or act committed by, event or breach impacting, or outage of, a supply chain provider of the **named insured** or any **subsidiary** or **acquired entity**.
- F. Solely with respect to the coverage provided by Section II. Coverage enhancements, DB-B. System failure sublimit, the following exclusion is added to the end of Section VI. Exclusions What is not covered:
 - Excluded system failure losses DB-2.
- with respect to **business interruption costs** resulting from a **system failure** only, based upon or arising out of any:
- total or partial interruption of computer system owned or leased by any person or entity that is not an **insured**;
- unauthorized acquisition, access, use, or disclosure of personally identifiable information, including but not limited to that resulting from the loss or theft of a device containing such personally identifiable information, that is not under the **insured organization's** direct control; or
- any security failure or extortion threat against an entity that is not an insured.

Reputational Harm Coverage(\$250k)

6. A. The following is added to the end of Section II. Coverage enhancements:

Reputational harm sublimit

RH-A.

We will pay up to \$250,000, per incident, for **reputational harm** resulting directly from the **publication** of an otherwise covered **event**, provided:

- 1. the **event** first occurs during the **policy period** and is reported to **us** in accordance with Section VII. Notice; and
- the publication of such event occurs no later than the end of the policy period or 90 days after the end of the policy period for events first discovered by you in the last 90 days of the policy period.

You must pay the **retention** before **we** will be obligated to make any payment under this subsection RH-A, and any payments **we** make will be a part of, and not in addition to, the limit stated in the Declarations as applicable.

B. The following definitions are added to the end of Section VII. Definitions:

Publication means any report or communication that has been publicized to the general public

through any media channel, including but not limited to television, print media, radio or

electronic networks, the internet, or electronic mail.

Reputation means trust that **your** customers or clients have in doing business with **you** or in

purchasing your products or services.

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Reputational harm

means **income loss you** sustain for a period greater than ten hours but no greater than six months due to **your** loss of clients, customers, or sales resulting from damage to **your reputation** or brand.

Reputational harm does not include any costs:

- 1. to rehabilitate **your reputation** or brand, including legal costs or expenses; or
- 2. directly caused by a **publication** of any occurrence other than a covered **event**.
- C. Solely with respect to reputation harm, the following provision is added to the end of the Coverage Part:
 - VIII. Conditions applicable The following are conditions precedent to the payment by us of any reputational harm: to reputational harm
 - You must complete and sign a written, detailed, and affirmed proof of loss within 90 days after your discovery of the publication of an event (unless such period has been extended by us in writing) which will include, at a minimum, the following information:
 - a. a full description of the circumstances surrounding the **reputational harm**, including, without limitation, the time, place, and cause of the loss;
 - b. a detailed calculation of any reputational harm; and
 - c. all underlying documents and materials that reasonably relate to or form part of the basis of the proof of such **reputational harm**.
 - Any costs incurred by you in connection with establishing or proving reputational harm, including but not limited to preparing a proof of loss, will be your obligation, and are not covered under this policy.
 - In determining the amount of income loss covered under Section II. Coverage enhancements, RH-A. Reputational harm, due consideration will be given to the prior experience of your business, and to the probable business you could have performed had no publication of an event occurred.
 - Provided, such **income loss** will not include income that would likely have been earned as a result of an increase in volume of business due to favorable business conditions caused by the interruption of any other entity's business. **Income loss** will be calculated on a daily basis.
 - 4. If we and the named insured do not agree on the amount of reputational harm, either party may make a written demand for an appraisal of the reputational harm. If such demand is made, each party will select a competent and impartial appraiser. The appraisers will then jointly select an umpire. If the appraisers cannot agree on an umpire, they may request that such selection be made by a judge of a court having jurisdiction. Each appraiser will separately state the amount of reputational harm. If the appraisers do not agree on the amount of the reputational harm, they will submit their differences to the umpire. Agreement by the umpire and at least one of the appraisers regarding the amount of the reputational harm will be binding on you and us. Each party will pay their respective chosen appraiser and will equally share the costs of the umpire.

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The Data Breach and Privacy Security Liability Coverage Part is amended as follows:

Amend Personally Identifiable Information and Regulatory Action Endorsement (EU General Data Protection Regulation)

7. A. In Section VII. Definitions, the definition of "**Personally identifiable information**" is deleted in its entirety and replaced with the following:

Personally identifiable information

means the following, in any form, that is in **your** care, custody, or control, or in the care, custody, or control of any third party for whom **you** are legally liable:

- 1. non-public individually identifiable information as defined in any foreign, federal, state, or local statute, rule, or regulation, including but not limited to:
 - unsecured protected health information as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), or
 - b. personal data, as defined by the EU General Data Protection Regulation (2016/679),

both as may be amended, and any rule or regulation promulgated under such law act or regulation; or

- 2. any:
 - i. social security number or individual taxpayer identification number;
 - ii. driver's license number or state identification number;
 - iii. passport number;
 - iv. credit card number; or
 - v. financial account number or debit card number in combination with any required security code.
- B. In Section VII. Definitions, the definition of "Regulatory action" is deleted in its entirety and replaced with the following:

Regulatory action

means any civil regulatory action brought against **you** by a regulator, including any action arising under the EU General Data Protection Regulation (2016/679), as amended, and any rule or regulation promulgated thereunder.

Reputational Harm Coverage

8. A. The following is added to the end of Section II. Coverage enhancements:

Reputational harm sublimit

RH-A. **We** will pay up to \$250,000, per incident, for **reputational harm** resulting directly from the **publication** of an otherwise covered **breach**, provided:

- the breach first occurs during the policy period and is reported to us in accordance with Section VII. Notice; and
- the publication of such breach occurs no later than the end of the policy period or 90 days after the end of the policy period for breaches first discovered by you in the last 90 days of the policy period.

You must pay the **retention** before **we** will be obligated to make any payment under this subsection RH-A, and any payments **we** make will be a part of, and not in addition to, the **coverage part limit**.

B. The following definitions are added to the end of Section VII. Definitions:

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NAMED INSURED: Mendocino Unified School District dba Mendocino Community Network

Income loss means the sum of the following:

- Net Income (Net Profit or Loss before income taxes) that would have been earned;
 and
- 2. continuing normal operating expenses incurred, including payroll.

Publication

means any:

- report or communication that has been publicized to the general public through any media channel, including but not limited to television, print media, radio or electronic networks, the internet, or electronic mail; or
- 2. notice to data subjects affected by a breach.

Reputation

means trust that **your** customers or clients have in doing business with **you** or in purchasing **your** products or services.

Reputational harm

means **income loss you** sustain for a period greater than ten hours but no greater than six months due to **your** loss of clients, customers, or sales resulting from damage to **your reputation** or brand.

Reputational harm does not include any:

- 1. costs to rehabilitate **your reputation** or brand, including legal costs or expenses;
- 2. breach costs; or
- costs directly caused by a publication of any occurrence other than a covered breach.
- C. Solely with respect to the coverage provided in this Endorsement, the following provision is added to the end of the Coverage Part:
 - VIII. Conditions applicable The following are conditions precedent to the payment by us of any reputational harm: to reputational harm
 - You must complete and sign a written, detailed, and affirmed proof of loss within 90 days after your discovery of the publication of a breach (unless such period has been extended by us in writing) which will include, at a minimum, the following information:
 - a. a full description of the circumstances surrounding the **reputational harm**, including, without limitation, the time, place, and cause of the loss;
 - b. a detailed calculation of any reputational harm; and
 - all underlying documents and materials that reasonably relate to or form part
 of the basis of the proof of such reputational harm.
 - Any costs incurred by you in connection with establishing or proving reputational harm, including but not limited to preparing a proof of loss, will be your obligation, and are not covered under this policy.
 - In determining the amount of income loss covered under Section II. Coverage enhancements, RH-A. Reputational harm, due consideration will be given to the

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NAMED INSURED: Mendocino Unified School District dba Mendocino Community Network

prior experience of **your** business, and to the probable business **you** could have performed had no **publication** of a **breach** occurred.

Provided, such **income loss** will not include income that would likely have been earned as a result of an increase in volume of business due to favorable business conditions caused by the interruption of any other entity's business. **Income loss** will be calculated on a daily basis.

4. If we and the named insured do not agree on the amount of reputational harm, either party may make a written demand for an appraisal of the reputational harm. If such demand is made, each party will select a competent and impartial appraiser. The appraisers will then jointly select an umpire. If the appraisers cannot agree on an umpire, they may request that such selection be made by a judge of a court having jurisdiction. Each appraiser will separately state the amount of reputational harm. If the appraisers do not agree on the amount of the reputational harm, they will submit their differences to the umpire. Agreement by the umpire and at least one of the appraisers regarding the amount of the reputational harm will be binding on you and us. Each party will pay their respective chosen appraiser and will equally share the costs of the umpire.

Telephone Toll Fraud Sublimit

9. A. The following is added to the end of Section II. Coverage enhancements:

Telephone toll fraud sublimit TT-A.

We will pay up to \$100,000, in the aggregate, for long distance telephone charges incurred by **you** as a result of a **telephone toll fraud**, provided the **telephone toll fraud** first occurs and is discovered by **you** during the **policy period** and is reported to **us** is accordance with Section V. Your obligations.

If **you** incur charges for a period exceeding 30 days from the date on which the **telephone toll fraud** first occurs, **we** will only be obligated to pay such charges that are incurred during the first 30 days.

Any payment **we** make under this subsection TT-A will be subject to the **retention** and not the amount stated as such in the Declarations, and such payments will be a part of, and not in addition to, the **coverage part limit**.

B. Solely with respect to the coverage provided by this Endorsement, the following is added to the end of Section V. Your obligations:

Notifying us of telephone toll fraud

You must give written notice to us of any telephone toll fraud, or circumstances reasonably likely to lead to a telephone toll fraud, that in your best estimate will exceed 50% of the retention identified above, as soon as possible after it is first discovered by you, but in any event no later than 90 days after you discover such telephone toll fraud or circumstances.

C. Solely with respect to the coverage provided by this Endorsement, the following Section is added to the Coverage Part:

TT-I. Conditions The fol applicable to telephone toll fraud TT-1.

The following are conditions precedent to the payment by **us** of any long distance telephone charges incurred by **you** as a result of a **telephone toll fraud**:

you must inform, or allow us to inform, the appropriate law enforcement authorities if you have reason to believe that any telephone toll fraud involves a violation of law;

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NAMED INSURED: Mendocino Unified School District dba Mendocino Community Network

- TT-2. **you** must give **us** a detailed, sworn proof of **loss** within 120 days of notification to **us** of a **telephone toll fraud**; and
- TT-3. **we** have the right to examine and audit **your** books and records as they relate to the coverage provided by this Endorsement at any time during the **policy period** and up to three years afterward.
- D. The following exclusions are added to the end of Section VI. Exclusions What is not covered:

We will have no obligation to pay any sums under this Coverage Part for:

- TT-1. any **telephone toll fraud** resulting from the use of telephone lines directly controlled by more than one **voice computer system**;
- TT-2. any **telephone toll fraud** resulting from the failure to install and maintain in operating condition a call disconnect feature to terminate a caller's access after three unsuccessful attempts to enter an **account code**;
- TT-3. any **telephone toll fraud** resulting from the failure to incorporate a **system password** or change a **system password** every 60 days;
- TT-4. **claim expenses** incurred by **you** which are related to any legal action resulting from a **telephone toll fraud**;
- TT-5. any **telephone toll fraud** resulting from any dishonest act committed by **you**, if the **named insured** is an individual, or by any **employee**, or board member, trustee, director, or officer (or equivalent position) of the **named insured** or **subsidiary**; or
- TT-6. any **telephone toll fraud** resulting from any actual or alleged unauthorized acquisition, access, use, or disclosure of **personally identifiable information** or confidential corporate information that is held or transmitted in any form; however, this exclusion will not apply to a **telephone toll fraud** directly resulting from the use of such **personally identifiable information** or confidential corporate information.
- E. The following definitions are added to the end of Section VII. Definitions:

Account code

means a confidential and protected string of characters that identifies or authenticates a person and permits that person to gain access to **your voice computer system** for the purpose of making long distance toll calls or utilizing voice mail box messaging capabilities or similar functional features of the system.

System administration

means the performance of any security function, including but not limited to:

- 1. defining authorized persons to access the system;
- 2. adding, deleting, or changing account codes or passwords;
- 3. installing or deleting any system option which directs telephone call routing or adds, drops, or moves telephone lines; or
- 4. any other activity allowed by a hardware or software-based system option that has been incorporated by a manufacturer or a vendor into a voice computer system, provided the system is not intended for the sole use of the manufacturer or vendor.

System maintenance

means performing hardware and software installation, diagnostic and correction, and similar activities that are performed in the usual custom and practice by a manufacturer or vendor to establish or maintain the basic operational functionality of a **voice computer system**.

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NAMED INSURED: Mendocino Unified School District dba Mendocino Community Network

System password means a confidential and protected string of characters that identifies or authenticates

a person and permits that person to gain access to **your voice computer system** to perform **system administration** or **system maintenance** or a component of either.

Telephone toll fraud means the fraudulent use or fraudulent manipulation of an account code or system

 $\textbf{password} \ \text{required to gain access into } \textbf{your voice computer system} \ \text{which results in}$

long distance telephone charges incurred by you.

Voice computer system means a computer system installed in one location which functions as a private branch

exchange (PBX), voice mail processor, or automated call attendant, or provides a similar capability used for the direction or routing of telephone calls in a voice communications

network.

The Cyber Enhancements Coverage Part, Data Breach and Security Liability Coverage Part, Technology Professional Liability Coverage Part, and Media Liability Coverage Part (if purchased) are amended as follows:

In Section III. Who is an insured of the Media Liability Coverage Part, the definition of "Acquired entity" is deleted in its entirety and replaced with the following:

Acquired entity

means an entity in which the **named insured**, during the **policy period**:

- 1. acquires substantially all of the assets;
- 2. acquires the majority of its voting securities, as a result of which it becomes a **subsidiary**; or
- 3. merges and leaves the **named insured** as the surviving entity.

With respect to an **acquired entity** whose revenues exceed 20% of the annual revenues of the **named insured** at the time of its creation or acquisition, any coverage under this policy will expire 90 days after the effective date of its creation or acquisition unless, within such 90 day period:

- the named insured provides us with written notice of such creation or acquisition;
- the named insured provides us with information related to such creation or acquisition as we may reasonably require;
- the named insured accepts any special terms, conditions, exclusions, or additional premium charge as we may reasonably require; and
- we agree by written endorsement to provide such coverage.

This policy will apply to an **acquired entity** only with respect to **your media activities** or **your advertising** of **your professional services** performed after the acquisition, merger, or creation.

II. In Section III. Who is an insured of the Technology Professional Liability Coverage Part, the definition of "**Acquired entity**" is deleted in its entirety and replaced with the following:

Acquired entity

means an entity in which the **named insured**, during the **policy period**:

- 1. acquires substantially all of the assets;
- 2. acquires the majority of its voting securities, as a result of which it becomes a **subsidiary**; or
- merges and leaves the named insured as the surviving entity.

With respect to an **acquired entity** whose revenues exceed 20% of the annual revenues of the **named insured** at the time of its creation or acquisition, any coverage under this policy will expire 90 days after the effective date of its creation or acquisition unless, within such 90 day period:

1. the **named insured** provides **us** with written notice of such creation or acquisition;

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NAMED INSURED: Mendocino Unified School District dba Mendocino Community Network

- the named insured provides us with information related to such creation or acquisition as we may reasonably require;
- the named insured accepts any special terms, conditions, exclusions, or additional premium charge as we may reasonably require; and
- 4. **we** agree by written endorsement to provide such coverage.

This policy will apply to an **acquired entity** only with respect to **your technology services** performed after the acquisition, merger, or creation. If a **claim** results from **technology services** performed both before and after the acquisition, merger, or creation of an **acquired entity**, this policy will apply only to that portion of the **claim** attributable to the **technology services** performed after the acquisition, merger, or creation.

III. In Section III. Who is an insured of the Cyber Enhancements Coverage Part, the definition of "Acquired entity" is deleted in its entirety and replaced with the following:

Acquired entity

means an entity in which the **named insured**, during the **policy period**:

- 1. acquires substantially all of the assets;
- 2. acquires the majority of its voting securities, as a result of which it becomes a **subsidiary**; or
- 3. merges and leaves the **named insured** as the surviving entity.

With respect to an **acquired entity** whose revenues exceed 20% of the annual revenues of the **named insured** at the time of its creation or acquisition, any coverage under this policy will expire 90 days after the effective date of its creation or acquisition unless, within such 90 day period:

- 1. the **named insured** provides **us** with written notice of such creation or acquisition;
- the named insured provides us with information related to such creation or acquisition as we may reasonably require;
- the named insured accepts any special terms, conditions, exclusions, or additional premium charge as we may reasonably require; and
- 4. **we** agree by written endorsement to provide such coverage.

This policy will apply to an **acquired entity** only with respect to an **event** which first occurs and is discovered after the acquisition, merger, or creation.

IV. In Section III. Who is an insured of the Data Breach and Privacy Security Liability Coverage Part, the definition of "**Acquired entity**" is deleted in its entirety and replaced with the following:

Acquired entity

means an entity in which the **named insured**, during the **policy period**:

- 1. acquires substantially all of the assets;
- 2. acquires the majority of its voting securities, as a result of which it becomes a subsidiary; or
- 3. merges and leaves the **named insured** as the surviving entity.

With respect to an **acquired entity** whose revenues exceed 20% of the annual revenues of the **named insured** at the time of its creation or acquisition, any coverage under this policy will expire 90 days after the effective date of its creation or acquisition unless, within such 90 day period:

- 1. the **named insured** provides **us** with written notice of such creation or acquisition;
- 2. the **named insured** provides **us** with information related to such creation or acquisition as **we** may reasonably require;

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NAMED INSURED: Mendocino Unified School District dba Mendocino Community Network

- 3. the **named insured** accepts any special terms, conditions, exclusions, or additional premium charge as **we** may reasonably require; and
- 4. **we** agree by written endorsement to provide such coverage.

This policy will apply to an **acquired entity** only with respect to **your** business operations performed after the acquisition, merger, or creation.

Endorsement effective:

08/08/2024

Certificate No.:

MPL1790263.24

Endorsement No:

Hiscox Inc.

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Processed Date:

07/08/2024

Authorized Representative Kevin Kerridge



NAMED INSURED: Mendocino Unified School District dba Mendocino Community Network

E9998.2 TRIA Not Purchased Endorsement

Terrorism Risk Insurance Act, as amended Not Purchased Endorsement

This Endorsement is issued in accordance with the terms and conditions of the federal Terrorism Risk Insurance Act.

It is hereby noted that the Company has made available coverage for insured losses directly or indirectly resulting from an "act of terrorism" and the Insured has declined or not confirmed to purchase this coverage.

This Insurance therefore affords no coverage for losses directly or indirectly resulting from an "act of terrorism" except to the extent, if any, otherwise provided by this Policy.

The term "act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for an "act of terrorism" include the following:

- 1 The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
- The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

All other terms, conditions, insured coverage and exclusions of this Insurance including applicable limits and deductibles remain unchanged and apply in full force and effect to the coverage provided by this Insurance.

All other terms and conditions remain unchanged.

Endorsement effective:

08/08/2024

Certificate No.:

MPL1790263.24

Endorsement No:

Hiscox Inc.

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Processed Date:

07/08/2024

Authorized Representative

Kevin Kerridge



NAMED INSURED: Mendocino Unified School District dba Mendocino Community Network

E8673.2 Privacy, Biometrics, and Cyber Incidents Endorsement (Tech)

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed:

- I. The Technology Professional Liability Coverage Part (if purchased) is amended as follows:
 - A. Section I. What is covered is deleted in its entirety and replaced with the following:
 - I. What is covered

We will pay up to the coverage part limit for damages and claim expenses in excess of the retention for covered claims against you resulting from the performance of your technology services by you or anyone on your behalf (including your subcontractors, outsourcers, or independent contractors) on or after the retroactive date, for any actual or alleged:

- 1. negligent act, error, or omission, or negligent misstatement or negligent misrepresentation, including any of the foregoing that results:
 - a. from a cyber incident **you** sustain which prevents or impedes **your** performance of **technology services**; or
 - b. in a cyber incident impacting **your client**; however, this subsection b will not include an actual or suspected data breach sustained by **your client**; or
- unintentional breach of a written contract with your client, including an unintentional breach resulting from a cyber incident you sustain that prevents or impedes your performance of technology services,

provided the **claim** is first made against **you** during the **policy period** and is reported to **us** in accordance with Section V. Your obligations.

B. In Section VI. Exclusions – What is not covered, the "Collection of data without knowledge/ consumer privacy" exclusion is deleted in its entirety and replaced with the following:

based upon or arising out of any actual or alleged:

- unauthorized or improper acquisition, access, use, disclosure, collection, possession, handling, storage, dissemination, destruction, capture, sale, purchase, or retention of, or failure to protect or safeguard any nonpublic personally identifiable information, biometric identifiers, biometric data, biometric information, confidential and sensitive information, genetic information, or confidential corporate information;
- violation of any federal, state, local, or foreign privacy law, biometric information law, consumer data protection law, or any common law governing, relating to, or protecting against the use, collection, or disclosure of any information about a person or any conduct, data, or information described in subpart a above;
- C. In Section VII. Definitions, the following is added to the end of the definition of "Damages":

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NAMED INSURED: Mendocino Unified School District dba Mendocino Community Network

Damages does not include any amounts owed by **you** under a written contract, including a client services agreement, regarding an actual or suspected data breach of personally identifiable information or confidential corporate information that is held or transmitted in any form.

II. The General Liability Coverage Part (if purchased) is amended as follows:

In Section VI. Exclusions – What is not covered, D. Exclusions applicable to the entire general liability coverage part, the "Privacy" exclusion is deleted in its entirety and replaced with the following:

We will have no obligation to pay any sums under this Coverage Part for medical expenses, or for any claim, including any damages or claim expenses, for bodily injury, property damage, or personal and advertising injury:

Privacy, biometrics, and cyber PR-1. based upon or arising out of any actual or alleged: incidents

- a. unauthorized or improper acquisition, access, use, disclosure, collection, possession, handling, storage, dissemination, destruction, capture, sale, purchase, or retention of, or failure to protect or safeguard any non-public personally identifiable information, biometric identifiers, biometric data, biometric information, confidential and sensitive information, genetic information, or confidential corporate information;
- violation of any federal, state, local, or foreign privacy law, biometric information law, consumer data protection law, or any common law governing, relating to, or protecting against the use, collection, or disclosure of any information about a person or any conduct, data, or information described in subpart a above;
- denial of service or delay, disruption, impairment, failure, or outage of any part of a computer system or network;
- d. unauthorized or unlawful access to any electronic data or any part of a computer system or network, including through the transmission of any malicious code, such as a computer virus, worm, logic bomb, malware, spyware, Trojan horse, or other fraudulent or unauthorized computer code; or
- e. threat, hoax, trick, or demand relating to subparts a through d above.

This exclusion will apply even if the **claim** against **you** alleges negligence or other wrongdoing in the:

- failure to prevent any cyber incident listed in subparts a through d above or any resulting property damage, bodily injury, or personal and advertising injury; or
- ii. failure to report any incident to the authorities.

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NAMED INSURED: Mendocino Unified School District dba Mendocino Community Network

Endorsement effective:

08/08/2024

Certificate No.:

MPL1790263.24

Endorsement No:

Hiscox Inc.

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Processed Date:

07/08/2024

Authorized Representative Kevin Kerridge



NAMED INSURED: Mendocino Unified School District dba Mendocino Community Network

E6065.3 Change of Mailing Address Endorsement

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed:

Solely for the purposes of mailing, the following address is added to Item 1 of the Declarations:

PO Box 2445 Mendocino, CA 95460

Endorsement effective:

08/08/2024

Certificate No.:

MPL1790263.24

Endorsement No:

18

Processed Date:

07/08/2024

Hiscox Inc.

Authorized Representative

Kevin Kerridge



Hiscox Inc. 5 Concourse Parkway Suite #2150 Atlanta, GA 30328

CYBER NOTICE

In light of the continually evolving cyber risk environment, starting January 1, 2021, Hiscox Inc. policies incepting on or after January 1, 2021 will include specific language affirmatively stating whether we are covering or excluding losses caused by cyber events.

Your **Hiscox Pro™** policy will include the following endorsement(s), depending on the type of coverage(s) you have purchased:

Miscellaneous Professional Liability (Including all tailor-made products)	Cyber Exclusion Endorsement explaining the intent to exclude losses arising from described cyber events or incidents. This endorsement potentially reduces the scope of coverage offered under the policy.
Technology Professional Liability	Cyber Clarification Endorsement affirmatively stating our intent to cover specified covered losses arising from described cyber events or incidents. This endorsement clarifies and does not alter the intended scope of coverage offered under your policy.
General Liability	Cyber Exclusion Endorsement explaining the intent to exclude losses arising from described cyber events or incidents. This endorsement potentially reduces the scope of coverage offered under the policy.

Any limitations contained in the above referenced endorsement(s) will not apply to otherwise covered losses explicitly described in the endorsement(s), or to loss covered in a Network Security and Privacy or other similar endorsement you have purchased, if applicable.

If you have additional questions or concerns about the endorsement or this Notice, please contact your authorized insurance agent or broker. Thank you for your business and we look forward to continue providing you with quality service.



Hiscox Inc. 5 Concourse Parkway Suite #2150 Atlanta, GA 30328



Congratulations on your purchase of a Hiscox Privacy and Data Breach Protection Policy!

This Policyholder Guide provides details of the **risk management tools** made available to you, as a Hiscox Technology and Privacy policyholder, and how you access them.

Guide Contents

- I) How to notify Hiscox when you have a claim
 - Provides details on Hiscox claims service and contact information for claim notification.
- II) How to access the complimentary risk management tools

Provides details on how to access the value added services available to help you to reduce your risk, for which you have qualified for complimentary access as a Hiscox Technology Protection policyholder.

III) Breach preparedness and response

Suffered a data breach? This Policyholder Guide provides details on how to access available resources, including a toll-free hotline to a Breach Coach[®] to get your started.

I) How to notify Hiscox when you have a claim

Claims Service

We understand how important the claims handling process is to our policyholders, and **our dedicated inhouse technology claims attorneys believe in a "fast and fair" claims approach**, which includes:

- A dedicated claims inbox for receiving claim notifications, monitored multiple times per day
- New claim acknowledgement within 1 business day
- Assigned claims representative contact with policyholder/broker within 2 business days
- An open dialogue throughout the claims process

Claim Notification

The specific provisions regarding proper notification of a claim against your policy are contained in your policy wording and endorsements. However, if you ever have any questions about when or how to notify us of a claim, please contact your agent or broker. Alternatively, you can contact the Hiscox Tech and Privacy/Data Breach Claims Department: tmtclaims@hiscox.com



II) How to access the complimentary risk management tools

Complimentary Risk Management Tools

As a Hiscox Technology or Privacy Protection policyholder, you qualify for complimentary access to value added services meant to help you reduce your risk. Due to the coverage you have purchased, you have qualified for complimentary access to the following services (detailed on the following pages):

- a) Risk Management Assistance
- b) BreachProtection™ Breach Prevention Resources
- c) Hiscox eRisk Hub® Breach Response Resource and Information Web Portal
- d) Control Risks Cyber Extortion Response (contingent on purchase of Hiscox Cyber Extortion policy)

a) Risk Management Assistance

As a complimentary service to this policy, we are pleased to provide a free, confidential risk management and loss prevention service, consisting of an initial consultation and up to 1-hour of legal services to assist you in better understanding and minimizing risks that commonly lead to the types of claims covered under this policy.

If you have a question about minimizing these types of liability risks in your business, please email your question to: riskmanagement@hiscox.com

Please include your Hiscox Policy Number which can be found on the Declaration Page of your policy.

A Hiscox representative will get back to you within 1 (one) business day with a referral to a nationally recognized law firm with a practice specifically focused on your industry¹.

- Please note that any inquiries made to this service will not constitute a notice of claim or potential claim under your policy. For all claim or potential claim matters, please follow the notification provisions in your policy.
- Please also note that this service is not intended to respond to questions regarding your insurance policy or coverage. For all such inquiries, please contact your agent or broker.



b) BreachProtection™ Breach Prevention Resources²

Don't let a breach catch you unprepared.

As a qualified Hiscox Technology Protection policyholder, you now have free access to BreachProtection™. BreachProtection provides comprehensive risk management tools through BreachProtection.com and subject-matter specialists to help answer your questions.

Getting Started Using breachprotection.com

BreachProtection.com provides unlimited access to:

Online compliance materials: Federal and state compliance materials regarding data security, data breaches, and data privacy, including:

- · summaries of federal and state laws with links to statutes and regulations
- · sample policies and procedures
- continuing updates and electronic notification of changes to the online materials.

Email updates: Periodic newsletters provide information on changes in federal and state laws regarding data security, data breach, and data privacy issues. Additional emails provide notice of matters requiring immediate attention.

Online support: Receive support from privacy/security specialists regarding:

- · healthcare, HIPAA and HITECH compliance issues
- · data breach prevention and computer forensic issues
- · data security best practices

Procedures and sample forms

- · Risk assessment procedures
- Guidance to improve safeguards (administrative/physical/technical)
- Procedures for responding to a data breach and customizing an Incident Response Plan
- · Pre-publication checklists

Workforce training

- Online training programs
- Employee training bulletins
- · Periodic webinars

Data Breach Response

- · Breach notification law summaries
- HIPAA/HITECH security breach guidance
- Links to your data breach response provider

Getting started

To ensure you get timely access to these services, email <u>signup@breachprotection.com</u> or call the BreachProtection Account Specialists at **559-577-1248**. Please provide: (1) the name of your business as it appears on your Hiscox insurance policy; (2) your Hiscox insurance policy or certificate number; and (3) your Hiscox insurance policy expiration date.



c) Hiscox eRisk Hub[®] Breach Response Resource and Information Web Portal³ Register now! Don't wait until you have suffered a breach. Be prepared.

As a qualified Hiscox Technology Protection policyholder, you now have free access to the Hiscox eRisk Hub® portal, powered by NetDiligence®.

Hiscox eRisk Hub is a private, web-based portal containing information and technical resources provided to assist you in the timely reporting, response and recovery from a data breach event.

Key features of the Hiscox eRisk Hub® portal

- Breach Response Services:
 - Incident Roadmap includes suggested steps to take following a breach event.
 - Breach Coach® a resource to support you in managing your response, including a free initial consultation.
 - Breach Response Team a list of data breach service providers at predetermined rates.
- eRisk resources a directory to quickly find external resources with expertise in pre- and postbreach disciplines.

Please note the following:

- 1. The Hiscox eRisk Hub portal is a private site for Hiscox Technology Protection policyholders only. Do not share portal access instructions with anyone outside your organization. You are responsible for maintaining the confidentiality of the Hiscox access code provided to you.
- 2. Up to three individuals from your organization may register and use the portal. Ideal candidates include your company's Risk Manager, Compliance Manager, Privacy Officer, IT Manager or Legal Counsel.
- 3. This portal contains a directory of experienced providers of cyber risk management and breach recovery services. Hiscox does not endorse these companies or their respective services. Before you engage any of these companies, we urge you to conduct your own due diligence to ensure the companies and their services meet your needs. Unless otherwise indicated or approved, payment for services provided by these companies is your responsibility.
- 4. Should you experience a data breach event, you may choose to call the Breach Coach[®] listed in the portal for immediate triage assistance. Your initial consultation of up to one hour is free of charge. Please be aware that the Breach Coach[®] service is provided by a third-party law firm. Therefore, calling the Breach Coach[®] does not satisfy the claim notification requirements of your policy.

We are pleased to provide our qualified Hiscox Technology Protection Insurance policyholders with free access to this portal. To register:

- 1. go to www.eriskhub.com/hiscox.php
- 2. complete the registration form. Your **Hiscox access code** is **08663**
- 3. once registered, you can access the portal immediately.

For more information or questions, email hiscox@eriskhub.com.



d) Control Risks Cyber Extortion Response

Since 1975, Control Risks has advised clients on the resolution of more than 2,600 cases of extortive crime in 129 countries. Their dedicated team of Response consultants responds to an average of 155 cases of extortive crime per year, including threat extortions.

Alongside their Response division, Control Risks has a specialist Cyber team (with expertise in providing cyber threat intelligence, incident prevention and cyber breach response services).

For Cyber response services including cyber extortions, Control Risks' approach is to assist the affected business to manage the incident, identify its objectives and follow the resulting plan of action.

As part of their crisis management assistance, Control Risks will involve internal and external experts, including their IT Forensics partner, MWR InfoSecurity, whose technical experts will assist in IT forensic investigations, and legal and public relations experts to help clients respond to and contain the fallout from a cyber-attack⁴.

To contact Control Risks in the event of a cyber extortion incident or advise regarding cyber extortion management:

Control Risks Control Risks Response Team 888 245 8654



III) Breach Preparedness and Response

Knowing what to do in the event of a data breach can make the situation much less daunting, helping to minimize the impact to your business. We have produced this quick guide to assist you in responding to a breach event.

Our philosophy: it is not our place to mandate exactly how you respond to such a critical event for your business, but rather we should provide you with the necessary resources and guidance to help minimize the impact the event has on your business. The following provides you with details on quickly accessing the resources available to guide you and assist you in responding to the event.

PRIOR TO A BREACH

Register at BreachProtection™ (see registration details in this document) for risk management policies, procedures, training, and other tools to help your company prevent and better respond to a breach of confidential information.

Register at Hiscox eRisk Hub[®] (see registration details in this document) to assist you in getting a response plan in place with access to the third party resources available to help you more efficiently and cost-effectively respond to and recover from a breach.

IF A BREACH OCCURS

Step 1: Engage the expert resources available to you

A) Contact the Breach Coach® at the toll free Hiscox Breach Response Hotline

Registered members of the Hiscox **eRisk Hub**[®] are entitled to one hour of free consultation with a Breach Coach[®].

You may request the assistance of a Breach Coach[®] by phone or email. As part of your request, be sure to provide your company name, along with the names of all other companies and/or individuals that may be involved in the breach event.

1-855-HISCO-BR(447-2627)

HiscoxUSBreachCoach@eRiskHub.com

An attorney from Baker Hostetler is on call 24 hours a day/7 days a week.

B) Notify Hiscox

At such as critical time, it is important that the claims handling process be fast and fair. Engaging our dedicated in-house claim attorneys early in the process provides you with additional experienced professionals to assist you in your breach response. This also provides for an open dialogue throughout the process so you can worry about properly responding to the breach and not worry about your insurance.

Please work with your broker or agent to properly notify Hiscox of the breach event...the specific provisions for formal notification of a claim or breach event against your policy are contained in your policy wording and endorsements.

If you or your agent or broker have any questions or need to contact us regarding claim notification, you can contact the Hiscox Tech and Privacy/Data Breach Claims Department: tmtclaims@hiscox.com



Step 2: Work with the expert resources to determine next and appropriate steps

Hiscox Claims specialists and/or the Breach Coach[®] are available to assist you in determining what steps to take and how to engage the breach response providers from the pre-approved Hiscox Preferred Breach Response Providers List. This list is comprised of specialists available to provide the legal, forensics, notification, call center and credit or identity protection services in response to your breach.

The Hiscox Claims specialists and/or Breach Coach® can help you determine:

- if a forensics investigation is needed,
- if breach notifications are required,
- the potential for regulatory investigations,
- the potential for legal action,
- your next steps.

Be prepared

Today a breach of confidential information is almost inevitable. By registering for and using the breach prevention and breach response services as well as promptly engaging your Breach Coach[®] and the Hiscox Claims specialists in the event you have a breach, you are taking appropriate steps to lessen the impact the breach event has on your business.⁴



Technology Protection Policyholder Guide

About Hiscox in the US

Hiscox, the international specialist insurer, is headquartered in Bermuda and listed on the London Stock Exchange (LSE:HSX). There are three main underwriting parts of the Group - Hiscox London Market, Hiscox UK and Europe and Hiscox International. Hiscox International includes operations in Bermuda, Guernsey and the USA. Hiscox ASM Ltd, Hiscox Underwriting Ltd and Hiscox Syndicates Ltd are authorized and regulated by the UK Financial Services Authority. The ability of syndicates at Lloyd's to do business in the USA, and its territories, is restricted as they are not US-based insurers.

Hiscox Inc., a Delaware corporation headquartered in New York, d/b/a Hiscox Insurance Agency in CA, is a licensed insurance intermediary for admitted and surplus lines business. Hiscox Inc. underwrites on behalf of, and places business with, Hiscox Insurance Company Inc., other domestic insurers, and syndicates at Lloyd's (www.lloyds.com). Hiscox Insurance Company Inc. (NAIC Number 10200) is a Chicago, IL domiciled insurer, which is admitted or licensed to do business in all 50 states and the District of Columbia.

Inquiries as to insurance or other products or services should be directed to an insurance agent or broker licensed to conduct business in the relevant US state. For further information about an insurer's ability to do business in the USA and US territories please contact a licensed agent or broker for advice.

This communication provides general information on Hiscox's products and services only and is not intended to be, and does not constitute, a solicitation of business by syndicates at Lloyd's from or in respect of the USA or US territories. Coverages are subject to underwriting and may not be available in all states. The information contained herein is not a part of an insurance policy, and may not be used to modify any insurance policy that might be issued. In the event the actual policy forms are inconsistent with any information provided herein, the language of the policy forms shall govern.

¹ The law firm, or other resource utilized for this risk management assistance, is solely responsible for all content and advice provided.

²BreachProtection™ is solely responsible for all content and advice provided on breachprotection.com. The information provided through breachprotection.com does not constitute legal or other professional advice. Please consult your attorney or other professional advisor to discuss your specific situation and obtain the appropriate legal or other expert advice.

³ Coverage for the costs of engaging the services of a law firm or breach response service provider are subject to the terms and conditions of your policy, which in some instances may require the prior approval by Hiscox. Please familiarize yourself with the terms and conditions of your policy. Information provided through the Hiscox eRisk Hub® portal does not constitute legal advice. Please consult your, attorney or other professional advisor to discuss your specific situation and obtain the appropriate legal or other expert advice.

⁴Coverage for the costs of engaging the services of Control Risks are subject to the terms and conditions of your policy, which in some instances may require the prior approval by your insurance carrier. Please familiarize yourself with the terms and conditions of your policy.

hiscoxusa.com/broker 710



City of Fort Bragg

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

Text File

File Number: 25-153

Agenda Date: 5/12/2025 Version: 1 Status: Business

In Control: City Council File Type: Staff Report

Agenda Number: 8E.

Receive Report and Consider Adoption of City Council Resolution Authorizing City Manager to Execute a Contract with the County of Mendocino for a Two-Year Contract for Reimbursement of Social Services Liaisons Salary and Benefits (Reimbursed Amount Not to Exceed \$500,000)



CITY COUNCIL STAFF REPORT

TO: City Council DATE: May 12, 2025

DEPARTMENT: Police Department

PREPARED BY: Neil Cervenka, Police Chief

PRESENTER: Neil Cervenka, Police Chief

AGENDA TITLE: Receive Report and Consider Adoption of City Council Resolution

Authorizing City Manager to Execute a Contract with the County of Mendocino for a Two-Year Contract for Reimbursement of Social Services Liaisons Salary and Benefits (Reimbursed Amount Not to

Exceed \$500,000)

RECOMMENDATION

Adopt the Resolution approving contract for two Social Services Liaison's for the next two years.

BACKGROUND

The Fort Bragg Police Department implemented the Care Response Unit with a state grant. That grant will expire and was not offered again. This leaves a funding shortfall for two Social Services Liaisons. After a presentation to the Measure B Committee, an offer to reimburse the City for the two positions was approved. The County Board of Supervisors approved this recommendation as well. The maximum allowable reimbursement to the City will be \$500,000 until June 30, 2027.

DISCUSSION AND ANALYSIS

In 2022, Fort Bragg Police Department was awarded a grant from the Behavioral Health Justice Intervention Services Project through the California Department of Healthcare Services. This grant has funded two Social Services Liaisons as well as a grant from the Youth Opioid Response program. Both of these grants have or will soon end. A third Social Services Liaison is funded for several years by a grant from Prop 47.

In an effort to minimize impact on the General Fund for these important positions, a request was made to the Measure B Mental Health Treatment Act Citizens Oversight Committee to fund the two Social Services Liaison positions for two years until other funding becomes available. The committee approved the request on November 20, 2024 and forwarded it to the Mendocino County Board of Supervisors, who approved the request on January 7, 2025.

Using Measure B funds, Mendocino County has agreed to reimburse the City of Fort Bragg the cost of salary and benefits for two Social Services Liaisons up to \$250,000 per year for

AGENDA ITEM NO. 8E

the next two years, not to exceed \$500,000 total, unless other funding is secured by staff during that time.

FISCAL IMPACT/FUNDING SOURCE

The CRU program is fully funded through grant sources. Secured grant funding—including the Measure B Grant—will cover all personnel costs from June 2025 through June 30, 2027. No budget amendment is required, as the total grant reimbursement for the CRU program is \$361,181 for FY 24/25.

ENVIRONMENTAL ANALYSIS:

Not applicable.

STRATEGIC PLAN CONSISTENCY

Goal 5B: Identify strategic partnerships to share investments and costs.

COMMUNITY OUTREACH

Not applicable.

COUNCIL REVIEW AND RECOMMENDATIONS

Receive report.

RESOLUTION NO. ___-2025

RESOLUTION OF THE FORT BRAGG CITY COUNCIL AUTHORIZING BUDGET AMENDMENT XXXX, AND EXECUTION OF A CONTRACT WITH THE COUNTY OF MENDOCINO FOR A TWO-YEAR CONTRACT FOR REIMBURSEMENT OF SOCIAL SERVICES LIAISONS SALARY AND BENEFITS (REIMBURSED AMOUNT NOT TO EXCEED \$500,000)

WHEREAS, in 2022, the Fort Bragg Police Department was awarded a grant to start the Care Response Unit; and

WHEREAS, that grant funding has ended; and

WHEREAS, the Care Response Unit has proven a successful model in reducing police contacts with the homeless, the mentally ill, and those suffering from substance use disorder; and

WHEREAS, the Care Response Unit has been successful in diverting many community members from the criminal justice system; and

WHEREAS, the Care Response Unit has developed into a critical part of public safety in the City; and

WHEREAS, the General Fund cannot support the Care Response Unit at this time; and

WHEREAS, Mendocino County has authorized funding in the amount of \$250,000 per year for two years to fund the salary and benefits of two unfunded Social Services Liaisons in the Care Response Unit; and

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

1. The foregoing recitals are true and correct and are made a part of this Resolution.

NOW, THEREFORE, BE IT RESOLVED that the City Council of Fort Bragg does hereby approve a contract agreement with the County of Mendocino for a Two-Year Contract for Reimbursement of Social Services Liaisons Salary and Benefits (Reimbursed Amount Not to Exceed \$500,000)

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 Fo	ort Bragg held on the day of,
2025, by the following vote:	
AYES:	
NOES:	
ABSENT:	
ABSTAIN:	
RECUSED:	

	JASON GODEKE Mayor	
ATTEST:		
ATTEST.		
Diana Paoli	_	
City Clerk		

11			
#			

COUNTY OF MENDOCINO STANDARD SERVICES AGREEMENT

This Agreement is by and between the COUNTY OF MENDOCINO, hereinafter referred to as the "COUNTY", and **CITY OF FORT BRAGG**, hereinafter referred to as the "CONTRACTOR".

WITNESSETH

WHEREAS, pursuant to Government Code Section 31000, COUNTY may retain independent contractors to perform special services to or for COUNTY or any department thereof; and,

WHEREAS, COUNTY desires to obtain CONTRACTOR to augment the existing Care Response Unit to reduce encounters between individuals with mental illness and/or substance misuse, and law enforcement and the criminal justice system; and,

WHEREAS, CONTRACTOR is willing to provide such services on the terms and conditions set forth in this Agreement and is willing to provide same to COUNTY.

NOW, THEREFORE it is agreed that COUNTY does hereby retain CONTRACTOR to provide the services described in Exhibit A, and CONTRACTOR accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

Exhibit A	Definition of Services
Exhibit B	Payment Terms
Exhibit C	Insurance Requirements
Exhibit D	Assurance of Compliance with Nondiscrimination in State and
	Federally Assisted Programs
Appendix A	Certification Regarding Debarment, Suspension, and Other
	Responsibility Matters Lower Tier Covered Transactions

The term of this Agreement shall be from the date this Agreement becomes fully executed by all parties (the "Effective Date"), and shall continue through June 30, 2027.

The compensation payable to CONTRACTOR hereunder shall not exceed Five Hundred Thousand Dollars (\$500,000) for the term of this Agreement.

DEPARTMENT FISCAL REVIEW: CONTRACTOR/COMPANY NAME By: By: Jenine Miller, Psy.D. Isaac Whippy, City Manager Director of Health Services Date: _____ Date: NAME AND ADDRESS OF CONTRACTOR: Budgeted: No Budget Unit: 4052 CITY OF FORT BRAGG Line Item: 86-2189 Fort Bragg Police Department Org/Object Code: ME 250 Cypress Street Grant: No Fort Bragg, CA 95437 Grant No.: N/A (707) 961-2804 **COUNTY OF MENDOCINO** By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her By: JOHN HASCHAK, Chair signature on this Agreement, he/she or the entity **BOARD OF SUPERVISORS** upon behalf of which he/she acted, executed this Agreement Date: ATTEST: COUNTY COUNSEL REVIEW: DARCIE ANTLE, Clerk of said Board APPROVED AS TO FORM: I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made. 04/25/2025 DARCIE ANTLE, Clerk of said Board Deputy INSURANCE REVIEW: **EXECUTIVE OFFICE/FISCAL REVIEW:** Risk Management 04/25/2025 Date:

Signatory Authority: \$0-25,000 Department; \$25,001-50,000 Purchasing Agent; \$50,001+ Board of Supervisors

Exception to Bid Process Required/Completed

EB# 25-129

Mendocino County Business License: Valid

EB# 23-1

Exempt Pursuant to MCC Section: Government Entity

IN WITNESS WHEREOF

GENERAL TERMS AND CONDITIONS

 INDEPENDENT CONTRACTOR: No relationship of employer and employee is created by this Agreement; it being understood and agreed that CONTRACTOR is an Independent Contractor. CONTRACTOR is not the agent or employee of the COUNTY in any capacity whatsoever, and COUNTY shall not be liable for any acts or omissions by CONTRACTOR nor for any obligations or liabilities incurred by CONTRACTOR.

CONTRACTOR shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

CONTRACTOR shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold COUNTY harmless from any and all liability which COUNTY may incur because of CONTRACTOR's failure to pay such amounts.

In carrying out the work contemplated herein, CONTRACTOR shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as Independent Contractors and shall not be treated or considered in any way as officers, agents and/or employees of COUNTY.

CONTRACTOR does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with all applicable federal, state and COUNTY laws, including but not limited to prevailing wage laws, ordinances, regulations, titles, departmental procedures and currently approved methods and practices in his/her field and that the sole interest of COUNTY is to ensure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the COUNTY agency concerned.

Notwithstanding the foregoing, if the COUNTY determines that pursuant to state and federal law CONTRACTOR is an employee for purposes of income tax withholding, COUNTY may upon two (2) week's written notice to CONTRACTOR, withhold from payments to CONTRACTOR hereunder federal and state income taxes and pay said sums to the federal and state governments.

2. INDEMNIFICATION: To the furthest extent permitted by law (including without limitation California Civil Code sections 2782 and 2782.8, if applicable),

CONTRACTOR shall assume the defense of, indemnify, and hold harmless the COUNTY, its officers, agents, and employees, from and against any and all claims, demands, damages, costs, liabilities, and losses whatsoever alleged to be occurring or resulting in connection with the CONTRACTOR's performance or its obligations under this Agreement, unless arising out of the sole negligence or willful misconduct of COUNTY. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

- INSURANCE AND BOND: CONTRACTOR shall at all times during the term of the Agreement with the COUNTY maintain in force those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein.
- 4. WORKERS' COMPENSATION: CONTRACTOR shall provide Workers' Compensation insurance, as applicable, at CONTRACTOR's own cost and expense and further, neither the CONTRACTOR nor its carrier shall be entitled to recover from COUNTY any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

CONTRACTOR affirms that s/he is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for the Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code and CONTRACTOR further assures that s/he will comply with such provisions before commencing the performance of work under this Agreement. CONTRACTOR shall furnish to COUNTY certificate(s) of insurance evidencing Worker's Compensation Insurance coverage to cover its employees, and CONTRACTOR shall require all subcontractors similarly to provide Workers' Compensation Insurance as required by the Labor Code of the State of California for all of subcontractors' employees.

CONFORMITY WITH LAW AND SAFETY:

- a. In performing services under this Agreement, CONTRACTOR shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. CONTRACTOR shall indemnify and hold COUNTY harmless from any and all liability, fines, penalties and consequences from any of CONTRACTOR's failures to comply with such laws, ordinances, codes and regulations.
- b. Accidents: If a death, serious personal injury or substantial property damage occurs in connection with CONTRACTOR's performance of this Agreement, CONTRACTOR shall immediately notify Mendocino County Risk Manager's Office by telephone. CONTRACTOR shall promptly submit to COUNTY a written report, in such form as may be required by

COUNTY of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of CONTRACTOR's sub-contractor, if any; (3) name and address of CONTRACTOR's liability insurance carrier; and (4) a detailed description of the accident and whether any of COUNTY's equipment, tools, material, or staff were involved.

- c. CONTRACTOR further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the COUNTY the opportunity to review and inspect such evidence, including the scene of the accident.
- 6. PAYMENT: For services performed in accordance with this Agreement, payment shall be made to CONTRACTOR as provided in Exhibit B hereto as funding permits.

If COUNTY over pays CONTRACTOR for any reason, CONTRACTOR agrees to return the amount of such overpayment to COUNTY, or at COUNTY's option, permit COUNTY to offset the amount of such overpayment against future payments owed to CONTRACTOR under this Agreement or any other Agreement.

In the event CONTRACTOR claims or receives payment from COUNTY for a service, reimbursement for which is later disallowed by COUNTY, State of California or the United States Government, the CONTRACTOR shall promptly refund the disallowance amount to COUNTY upon request, or at its option COUNTY may offset the amount disallowed from any payment due or that becomes due to CONTRACTOR under this Agreement or any other Agreement.

All invoices, receipts, or other requests for payment under this contract must be submitted by CONTRACTOR to COUNTY in a timely manner and consistent with the terms specified in Exhibit B. In no event shall COUNTY be obligated to pay any request for payment for which a written request for payment and all required documentation was first received more than six (6) months after this Agreement has terminated, or beyond such other time limit as may be set forth in Exhibit B.

- 7. TAXES: Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the CONTRACTOR.
- 8. OWNERSHIP OF DOCUMENTS: CONTRACTOR hereby assigns the COUNTY and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the COUNTY, the CONTRACTOR, the CONTRACTOR's subcontractors or third parties at the request of the CONTRACTOR (collectively, "Documents and

Materials"). This explicitly includes the electronic copies of all above stated documentation.

CONTRACTOR shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. CONTRACTOR agrees to take such further steps as may be reasonably requested by COUNTY to implement the aforesaid assignment. If for any reason said assignment is not effective, CONTRACTOR hereby grants the COUNTY and any assignee of the COUNTY an express royalty – free license to retain and use said Documents and Materials. The COUNTY's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not CONTRACTOR's services as set forth in Exhibit A of this Agreement have been fully performed or paid for.

The COUNTY's rights under this Paragraph 8 shall not extend to any computer software used to create such Documents and Materials.

- CONFLICT OF INTEREST: The CONTRACTOR covenants that it presently has
 no interest, and shall not have any interest, direct or indirect, which would conflict
 in any manner with the performance of services required under this Agreement.
- 10. NOTICES: All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

Facsimile transmission: When sent by facsimile to the facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that, (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To COUNTY: COUNTY OF MENDOCINO

Department of Behavioral Health & Recovery Services

1120 South Dora Street

Ukiah, CA 95482 Attn: Jenine Miller

To CONTRACTOR: CITY OF FORT BRAGG

Fort Bragg Police Department

250 Cypress Street Fort Bragg, CA 95437 Attn: Neil Cervenka

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

- 11. USE OF COUNTY PROPERTY: CONTRACTOR shall not use COUNTY property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
- 12. EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS: CONTRACTOR certifies that it will comply with all Federal, State, and local laws, rules and regulations pertaining to nondiscrimination in employment.
 - a. CONTRACTOR shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, pregnancy, disability, sex, sexual orientation, gender identity, ancestry, national origin, age, religion, Veteran's status, political affiliation, or any other factor prohibited by law.
 - CONTRACTOR shall, if requested to so do by the COUNTY, certify that it has not, in the performance of this Agreement, engaged in any unlawful discrimination.
 - c. If requested to do so by the COUNTY, CONTRACTOR shall provide the COUNTY with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under State or Federal law.

- d. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act which is prohibited by law.
- e. The CONTRACTOR shall include the provisions set forth in this paragraph in each of its subcontracts.
- 13. DRUG-FREE WORKPLACE: CONTRACTOR and CONTRACTOR's employees shall comply with the COUNTY's policy of maintaining a drug-free workplace. Neither CONTRACTOR nor CONTRACTOR's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any COUNTY facility or work site. If CONTRACTOR or any employee of CONTRACTOR is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a COUNTY facility or work site, the CONTRACTOR, within five days thereafter, shall notify the head of the COUNTY department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.
- ENERGY CONSERVATION: CONTRACTOR agrees to comply with the mandatory standards and policies relating to energy efficiency in the State of California Energy Conservation Plan, (Title 24, California Administrative Code).
- 15. COMPLIANCE WITH LICENSING REQUIREMENTS: CONTRACTOR shall comply with all necessary licensing requirements and shall obtain appropriate licenses. To the extent required by law, CONTRACTOR shall display licenses in a location that is reasonably conspicuous. Upon COUNTY's request, CONTRACTOR shall file copies of same with the County Executive Office.
 - CONTRACTOR represents and warrants to COUNTY that CONTRACTOR and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions.
- SANCTIONED EMPLOYEE: CONTRACTOR agrees that it shall not employ in any capacity, or retain as a subcontractor in any capacity, any individual or entity whose service is directly or indirectly, in whole or in part, payable by a Federal Healthcare Program (including Medicare and Medicaid) that is on any published Federal or State lists regarding the sanctioning, suspension, or exclusion of individuals or entities. At a minimum, the Office of Inspector General List of Excluded Individuals/Entities (LEIE), DHCS Medi-Cal List of Suspended or Ineligible Providers (LSIP), and System for Award Management (SAM) must be checked prior to employment and monthly thereafter, and the Social Security Death Master File must be checked prior to employment. In the event CONTRACTOR does employ such individual or entity, COUNTY must be notified immediately. CONTRACTOR agrees to assume full liability for any associated penalties, sanctions, loss, or damage that may be imposed on COUNTY by Federal Health Care Programs.

17. AUDITS; ACCESS TO RECORDS: The CONTRACTOR shall make available to the COUNTY, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the COUNTY, and shall furnish to the COUNTY, within sixty (60) days after examination, its authorized agents, officers or employees such other evidence or information as the COUNTY may require with regard to any such expenditure or disbursement charged by the CONTRACTOR.

The CONTRACTOR shall maintain full and adequate records in accordance with COUNTY requirements to show the actual costs incurred by the CONTRACTOR in the performance of this Agreement. If such books and records are not kept and maintained by CONTRACTOR within the County of Mendocino, California, CONTRACTOR shall, upon request of the COUNTY, make such books and records available to the COUNTY for inspection at a location within County or CONTRACTOR shall pay to the COUNTY the reasonable, and necessary costs incurred by the COUNTY in inspecting CONTRACTOR's books and records, including, but not limited to, travel, lodging and subsistence costs. CONTRACTOR shall provide such assistance as may be reasonably required in the course of such inspection. The COUNTY further reserves the right to examine and reexamine said books, records and data during the ten (10) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the COUNTY, and the CONTRACTOR shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for ten (10) years after the COUNTY makes the final or last payment or within ten (10) years after any pending issues between the COUNTY and CONTRACTOR with respect to this Agreement are closed, whichever is later.

- 18. DOCUMENTS AND MATERIALS: CONTRACTOR shall maintain and make available to COUNTY for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 8 of this Agreement. CONTRACTOR's obligations under the preceding sentence shall continue for ten (10) years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by COUNTY), and CONTRACTOR shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for ten (10) years following the COUNTY's last payment to CONTRACTOR under this Agreement.
- 19. TIME OF ESSENCE: Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
- 20. TERMINATION: The COUNTY has and reserves the right to suspend, terminate or abandon the execution of any work by the CONTRACTOR without cause at any time upon giving to the CONTRACTOR notice. Such notice shall be in writing and may be issued by any COUNTY officer authorized to execute or amend the contract, the County Chief Executive Officer, or any other person

designated by the County Board of Supervisors. In the event that the COUNTY should abandon, terminate or suspend the CONTRACTOR's work, the CONTRACTOR shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to CONTRACTOR for its services as outlined in Exhibit A shall not exceed \$500,000 payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment or lack of funding.

- 21. NON APPROPRIATION: If COUNTY should not appropriate or otherwise make available funds sufficient to purchase, lease, operate or maintain the products set forth in this Agreement, or other means of performing the same functions of such products, COUNTY may unilaterally terminate this Agreement only upon thirty (30) days written notice to CONTRACTOR. Upon termination, COUNTY shall remit payment for all products and services delivered to COUNTY and all expenses incurred by CONTRACTOR prior to CONTRACTOR's receipt of the termination notice.
- 22. CHOICE OF LAW: This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.
- 23. VENUE: All lawsuits relating to this contract must be filed in Mendocino County Superior Court, Mendocino County, California.
- 24. WAIVER: No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
- 25. ADVERTISING OR PUBLICITY: CONTRACTOR shall not use the name of COUNTY, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of COUNTY in each instance.
- 26. ENTIRE AGREEMENT: This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire Agreement between COUNTY and CONTRACTOR relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other Agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. This Agreement may not be modified except by a written document

- signed by both parties. In the event of a conflict between the body of this Agreement and any of the Exhibits, the provisions in the body of this Agreement shall control.
- 27. HEADINGS: Herein are for convenience of reference only and shall in no way affect interpretation of this Agreement.
- 28. MODIFICATION OF AGREEMENT: This Agreement may be supplemented, amended or modified only by the mutual Agreement of the parties. No supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
- 29. ASSURANCE OF PERFORMANCE: If at any time the COUNTY has good objective cause to believe CONTRACTOR may not be adequately performing its obligations under this Agreement or that CONTRACTOR may fail to complete the Services as required by this Agreement, COUNTY may request from CONTRACTOR prompt written assurances of performance and a written plan acceptable to COUNTY, to correct the observed deficiencies in CONTRACTOR's performance. CONTRACTOR shall provide such written assurances and written plan within thirty (30) calendar days of its receipt of COUNTY's request and shall thereafter diligently commence and fully perform such written plan. CONTRACTOR acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.
- 30. SUBCONTRACTING/ASSIGNMENT: CONTRACTOR shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the COUNTY's prior written approval.
 - a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any Agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. Only the department head or his or her designee shall have the authority to approve subcontractor(s).
 - c. CONTRACTOR shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any Agreement between CONTRACTOR and its subcontractors.
- 31. SURVIVAL: The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 8), and Conflict of Interest (Paragraph 9), shall survive termination or expiration for two (2) years. The obligations regarding payment for services per Exhibit B shall survive termination or expiration for ten (10) years, or in the event that CONTRACTOR has been notified that an audit or

investigation of this contract has been commenced, until such time as the matter under audit or investigation has been resolved.

- 32. SEVERABILITY: If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
- 33. INTELLECTUAL PROPERTY WARRANTY: CONTRACTOR warrants and represents that it has secured all rights and licenses necessary for any and all materials, services, processes, software, or hardware ("CONTRACTOR PRODUCTS") to be provided by CONTRACTOR in the performance of this Agreement, including but not limited to any copyright, trademark, patent, trade secret, or right of publicity rights. CONTRACTOR hereby grants to COUNTY, or represents that it has secured from third parties, an irrevocable license (or sublicense) to reproduce, distribute, perform, display, prepare derivative works, make, use, sell, import, use in commerce, or otherwise utilize CONTRACTOR PRODUCTS to the extent reasonably necessary to use the CONTRACTOR PRODUCTS in the manner contemplated by this Agreement.

CONTRACTOR further warrants and represents that it knows of no allegations, claims, or threatened claims that the CONTRACTOR PRODUCTS provided to COUNTY under this Agreement infringe any patent, copyright, trademark or other proprietary right. In the event that any third party asserts a claim of infringement against the COUNTY relating to a CONTRACTOR PRODUCT, CONTRACTOR shall indemnify and defend the COUNTY pursuant to Paragraph 2 of this Agreement.

In the case of any such claim of infringement, CONTRACTOR shall either, at its option, (1) procure for COUNTY the right to continue using the CONTRACTOR Products; or (2) replace or modify the CONTRACTOR Products so that that they become non-infringing, but equivalent in functionality and performance.

- 34. ELECTRONIC COPIES: The parties agree that an electronic copy, including facsimile copy, email, or scanned copy of the executed Agreement, shall be deemed, and shall have the same legal force and effect as, an original document.
- 35. COOPERATION WITH COUNTY: CONTRACTOR shall cooperate with COUNTY and COUNTY staff in the performance of all work hereunder.
- 36. PERFORMANCE STANDARD: CONTRACTOR shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in CONTRACTOR's profession. COUNTY has relied upon the professional ability and training of CONTRACTOR as a material inducement to enter into this Agreement. CONTRACTOR hereby agrees to provide all services under this Agreement in accordance with generally

accepted professional practices and standards of care, as well as the requirements of applicable Federal, State, and local laws, it being understood that acceptance of CONTRACTOR's work by COUNTY shall not operate as a waiver or release. If COUNTY determines that any of CONTRACTOR's work is not in accordance with such level of competency and standard of care, COUNTY, in its sole discretion, shall have the right to do any or all of the following: (a) require CONTRACTOR to meet with COUNTY to review the quality of the work and resolve matters of concern; (b) require CONTRACTOR to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of paragraph 19 (Termination) or (d) pursue any and all other remedies at law or in equity.

- 37. ATTORNEYS' FEES: In any action to enforce or interpret the terms of this Agreement, including but not limited to any action for declaratory relief, each party shall be solely responsible for and bear its own attorneys' fees, regardless of which party prevails.
- 38. CONTRACTOR NOTIFICATION OF BREACH OR IMPROPER DISCLOSURES: The State Contract requires COUNTY to notify the state of any breach or improper disclosure of privacy and/or security of personal identifiable information (PII) and/or protected health information (PHI). CONTRACTOR shall, immediately upon discovery of a breach or improper disclosure of privacy and/or security of PII and/or PHI by CONTRACTOR, notify COUNTY's Privacy Officer of such breach or improper disclosure by telephone and either email or facsimile. In accordance with 45 CFR, upon COUNTY's knowledge of a material breach or violation by CONTRACTOR of the agreement between COUNTY and the CONTRACTOR, COUNTY shall:
 - a. Provide an opportunity for the CONTRACTOR to cure the breach or end the violation and terminate the agreement if the CONTRACTOR does not cure the breach or end the violation within the time specified by the Department; or
 - b. Immediately terminate the agreement if the CONTRACTOR has breached a material term of the agreement and cure is not possible.
 - c. In the event that the State Contract requires COUNTY to pay any costs associated with a breach of privacy and/or security of PII and/or PHI, including but not limited to the costs of notification, CONTRACTOR shall pay on COUNTY's behalf any and all such costs arising out of a breach of privacy and/or security of PII and/or PHI by CONTRACTOR.

[END OF GENERAL TERMS AND CONDITIONS]

EXHIBIT A

DEFINITION OF SERVICES

- CONTRACTOR agrees to perform contracted activities and reporting responsibilities in compliance with COUNTY's Mental Health Plan (MHP) and the Mental Health Treatment Act Citizens Oversight Committee (MHTACOC).
- II. MHTACOC funds shall be used to augment the existing Care Response Unit to reduce encounters between individuals with mental illness and/or substance misuse, and law enforcement and the criminal justice system.
 - A. CONTRACTOR's Care Response Unit shall utilize Social Services Liaison to: conduct outreach, provide assistance and prevention services, assist with navigating court systems, provide rehabilitation services, issue social service benefits, and secure housing.
 - B. CONTRACTOR shall provide outreach to individuals in the Fort Bragg community who are experiencing increased contact with law enforcement and the criminal justice system, to support and engage those individuals and link them to appropriate resources and services.
- III. CONTRACTOR shall track outcome measures, and report to COUNTY according to the following:
 - Outcomes shall be agreed upon by COUNTY and CONTRACTOR as reflecting improvement in clients served.
 - B. Outcomes shall measure the impact of reducing negative feelings, improving attitudes/beliefs/perception, and reducing stereotypes and/or discrimination related to being diagnosed with mental illness, having a mental illness, or for seeking mental health services.
 - C. CONTRACTOR shall share planning and outcomes with COUNTY. Results shall be shared with committee members and stakeholders at MHTACOC Measure B meetings.
- IV. CONTRACTOR shall complete a quarterly report summarizing the event which shall include:
 - A. Program/Event Name.
 - B. Number of participants/individuals served.
 - C. Participant demographics to the degree known.
 - D. Number of referrals made.

- E. Number of agencies clients were referred to.
- F. Summary of evaluations and any outcomes during each quarter.
- G. Summary of expended funds related to this Agreement.
- V. CONTRACTOR shall use bilingual and bi-culturally trained staff (when appropriate) to serve individuals in culturally and linguistically responsive ways.
- VI. CONTRACTOR agrees to require all its employees and subcontractors' employees to comply with provisions of Section 10850 of the Welfare and Institutions Code and Division 19000 of State of California, Department of Social Services, Manual of Policies and Procedures, to ensure that:
 - A. All applications and records concerning an individual, made or kept by any public officer or agency in connection with the administration of any provision of the Welfare and Institutions Code, relating to any form of public social services for which grants-in-aid are received by this State from Federal Government, shall be confidential and shall not be open to examination for any purposes not directly connected with the administration of such public social services.
 - B. No person shall publish or disclose, or use or permit, or cause to be published, disclosed or used, any confidential information pertaining to an applicant or recipient.
 - C. All CONTRACTOR employees, agents, subcontractors, and partners are informed of the above provisions, and that any person who knowingly or intentionally violates the provisions of said State law is guilty of a misdemeanor.
- VII. CONTRACTOR and subcontractors agree to provide a complaint system that complies with COUNTY's Issue Resolution policy and procedure through which recipients of service shall have an opportunity to express and have considered their views, issues and concerns regarding the delivery of services.
- VIII.CONTRACTOR and all subcontractors shall ensure that all known or suspected instances of child or elder abuse or neglect are reported to the child protective or adult services accordingly per Penal Code Section 11165(k) and Welfare and Institutions 15610. All employees, consultants, or agents performing services under this Agreement who are required by Penal Code Section 11166 or Welfare and Institutions Code Section 15630 and 15632, to report abuse or neglect, shall sign a statement that he or she knows of the reporting requirements and shall comply.
- IX. CONTRACTOR and all subcontractors in performing services under this Agreement shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, and all local

- governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. CONTRACTOR shall indemnify and hold harmless COUNTY from any and all liability, fines, penalties and consequences from any of CONTRACTOR's failures to comply with such laws, ordinances, codes and regulations.
- X. CONTRACTOR shall cooperate timely and fully with any utilization review processes established by COUNTY for the purpose of monitoring the accomplishments and effectiveness of CONTRACTOR and specific services provided to individuals.
- XI. CONTRACTOR shall not be allowed or paid travel expenses unless set forth in this Agreement.
- XII. CONTRACTOR shall notify COUNTY of all communications with Media, including, but not limited to, press releases, interviews, articles, etc. CONTRACTOR shall not speak on behalf of COUNTY in any circumstances with Media but is encouraged to describe the services it provides and respond to questions about those services. CONTRACTOR is also encouraged, where appropriate, to provide timely and factual responses to public concerns.
- XIII.In carrying out the Definition of Services contained in this Exhibit A, CONTRACTOR shall comply with all requirements to the satisfaction of COUNTY, in the sole discretion of COUNTY. For any finding of CONTRACTOR's non-compliance with the requirements contained in the Exhibit A, COUNTY shall within ten (10) working days of discovery of non-compliance notify CONTRACTOR of the requirement in writing. CONTRACTOR shall provide a written response to COUNTY within five (5) working days of receipt of this written notification. If the non-compliance issue has not been resolved through response from CONTRACTOR, COUNTY shall notify CONTRACTOR in writing that this non-compliance issue has not been resolved. COUNTY may withhold monthly payment until such time as COUNTY determines the non-compliance issue has been resolved. Should COUNTY determine that CONTRACTOR's non-compliance has not been addressed to the satisfaction of COUNTY for a period of thirty (30) days from the date of first Notice, and due to the fact that it is impracticable to determine the actual damages sustained by CONTRACTOR's failure to properly and timely address non-compliance, COUNTY may additionally require a payment from CONTRACTOR in the amount of fifteen percent (15%) of the monthly amount payable to CONTRACTOR for each month following the thirty (30) day time period that CONTRACTOR's non-compliance continues. The parties agree this fifteen percent (15%) payment shall constitute liquidated damages and is not a penalty. CONTRACTOR's failure to meet compliance requirements, as determined by COUNTY, may lead to termination of this Agreement by COUNTY with a forty-five (45) day written notice.
- XIV. CONTRACTOR shall maintain compliance with California Code of Regulations Title 9, Mendocino County Mental Health Plan (MHP) contract, California Code of Regulations Title 42, The Health Insurance Portability and Accountability Act of 1996 (HIPAA) regulations, State and Federal laws, and other Mendocino County

MHP contract requirements for client confidentiality and record security.

XV. Prior to terminating this Agreement, CONTRACTOR shall give at least forty-five (45) days written notice of termination to COUNTY.

[END OF DEFINITION OF SERVICES]

EXHIBIT B

PAYMENT TERMS

- I. COUNTY shall pay CONTRACTOR as per the following instructions:
 - A. COUNTY shall reimburse CONTRACTOR for up to Two Hundred Fifty Thousand Dollars (\$250,000) per year for two (2) years upon receipt of approved invoices for services as defined in the Definition of Services.
 - Invoice for services shall clearly designate costs being reimbursed and shall be separate from costs associated with the event(s) not being reimbursed by COUNTY.
 - B. CONTRACTOR's failure to submit reports to COUNTY within stated timeframes in this Agreement may prevent or delay payment to CONTRACTOR.
 - C. CONTRACTOR shall invoice COUNTY on an approved invoice monthly. Invoice of services shall be received by the tenth (10th) of the month for services rendered the previous month. Billing for services received after the tenth (10th) of the month will not be honored.
 - D. COUNTY has up to thirty (30) days to reimburse CONTRACTOR for correctly submitted invoices for services provided by CONTRACTOR.
 - E. Data reports or invoices submitted incorrectly, incompletely, or inaccurately will be rejected by COUNTY within thirty (30) days. CONTRACTOR shall have thirty (30) days from the rejected report/invoice to complete corrections or the invoice will not be paid without COUNTY Director of Health Services approval.
 - F. Invoices submitted later than thirty (30) days following the period covered by the report shall be submitted with a justification and shall be approved by COUNTY or the invoice will not be paid.
 - G. Invoices and reports shall be sent to:

COUNTY OF MENDOCINO
Behavioral Health and Recovery Services
1120 South Dora Street
Ukiah, CA 95482
Attn: Jenine Miller

II. Payments under this Agreement shall not exceed Five Hundred Thousand Dollars (\$500,000) for the term of this Agreement.

[END OF PAYMENT TERMS]

EXHIBIT C

INSURANCE REQUIREMENTS

Insurance coverage in a minimum amount set forth herein shall not be construed to relieve CONTRACTOR for liability in excess of such coverage, nor shall it preclude COUNTY from taking such other action as is available to it under any other provisions of this Agreement or otherwise in law. Insurance requirements shall be in addition to, and not in lieu of, CONTRACTOR's indemnity obligations under Paragraph 2 of this Agreement.

CONTRACTOR shall obtain and maintain insurance coverage as follows:

- a. Combined single limit bodily injury liability and property damage liability \$1,000,000 each occurrence.
- b. Vehicle / Bodily Injury combined single limit vehicle bodily injury and property damage liability \$500,000 each occurrence.

CONTRACTOR shall furnish to COUNTY certificates of insurance evidencing the minimum levels described above.

[END OF INSURANCE REQUIREMENTS]

EXHIBIT D

CONTRACTOR ASSURANCE OF COMPLIANCE WITH

MENDOCINO COUNTY

Department of Behavioral Health and Recovery Services

NONDISCRIMINATION IN STATE AND FEDERALLY ASSISTED PROGRAMS

NAME OF CONTRACTOR: CITY OF FORT BRAGG

HEREBY AGREES THAT it will comply with Federal Law Requirements:

- 1. Title VI of the Civil Rights Act of 1964, Section 2000d, as amended, prohibiting discrimination based on race, color, or national origin in federally funded programs.
- 2. Title VIII of the Civil Rights Act of 1968 (42 USC 3601 et seq.) prohibiting discrimination on the basis of race, color, religion, sex, handicap, familial status or national origin in the sale or rental of housing.
- 3. Age Discrimination Act of 1975 (45 CFR Part 90), as amended (42 USC Sections 6101 6107), which prohibits discrimination on the basis of age.
- 4. Age Discrimination in Employment Act (29 CFR Part 1625).
- 5. Title I of the Americans with Disabilities Act (29 CFR Part 1630) prohibiting discrimination against the disabled in employment.
- 6. Title II of the Americans with Disabilities Act (28 CFR Part 35) prohibiting discrimination against the disabled by public entities.
- 7. Title III of the Americans with Disabilities Act (28 CFR Part 36) regarding access.
- 8. Section 504 of the Rehabilitation Act of 1973, as amended (29 USC Section 794), prohibiting discrimination on the basis of individuals with disabilities.
- Executive Order 11246, 42 USC 2000e et seq., and 41 CFR Part 60 regarding nondiscrimination in employment under federal contracts and construction contracts greater than \$10,000 funded by federal financial assistance.
- Executive Order 13166 (67 FR 41455) to improve access to federal services for those with limited English proficiency.
- 11. The Drug Abuse Office and Treatment Act of 1972, as amended, relating to nondiscrimination on the basis of drug abuse.
- 12. Confidentiality of Alcohol and Drug Abuse Patient Records (42 CFR Part 2, Subparts A E).
- 13. Title 42, United States Code (USC), Section 300 x-24, Requirements regarding tuberculosis and human immunodeficiency virus
- 14. Title 45, United States Code (USC), Section 96.128 Requirements regarding human immunodeficiency virus
- 15. 45 Code of Federal Regulations (CFR) Parts 80, 84, and 91 Nondiscrimination Under Programs Receiving Federal Assistance, including handicap or age
- 16. Title 28, United States Code (USC), part 42, Nondiscrimination and Equal Employment
- 17. Title 7, United States Code (USC), part 15, Nondiscrimination Under Programs Receiving Assistance from the Department of Agriculture
- 18. Food Stamp Act of 1977, as amended and in particular section 272.6
- 19. Section 1808 of the Removal of Barriers to Interethnic Adoption Act of 1996
- 20. 22 U.S.C. 7104 section 106 Trafficking Victims Protection Act of 2000
- Title 45, United States Code (USC), Section 96.131 Admission Priority and Interim Services for Pregnant Women
- 22. CLAS (Culturally and Linguistically Appropriate Services National Standards); Civil Rights, Division 21 and ADA as amended

As well as comply with State Law Requirements:

- 1. Fair Employment and Housing Act (Government Code Section 12900 et seq.) and the applicable regulations promulgated thereunder (2 CCR 7285.0 et seq.).
- Title 2, Division 3, Article 9.5 of the Government Code, commencing with Section 11135-1119.5 as amended.
- 3. Title 9, Division 4, Chapter 8 of the CCR, commencing with Section 13000.
- 4. No state, federal, or County Realignment funds shall be used by the Contractor or its subcontractors for sectarian worship, instruction, or proselytization. No state funds shall be used by the Contractor or its subcontractors to provide direct, immediate, or substantial support to any religious activity.
- Noncompliance with the requirements of nondiscrimination in services shall constitute grounds for DHCS to withhold payments under this Contract or terminate all, or any type, of funding provided hereunder.
- Title 1, Division 5 Chapter 7, of the Government Code, Section 4450 Access to Public Buildings by Physically Handicapped Persons
- 7. Title 22, Division 8 of the California Code of Regulations, Sections 98000-98413
- 8. California Civil Code Section 51 et seq., which is the Unruh Civil Rights Act
- 9. California Government Code section 12940 California Fair Employment
- 10. California Government Code section 4450 -Access to Public Buildings
- 11. California Government Code Section 7290-7299.8 the Dymally-Alatorre Bilingual Services Act

AND HEREBY GIVE ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all federal and state assistance; and THE CONTRACTOR HEREBY GIVES ASSURANCE THAT administrative methods/procedures which have the effect of subjecting individuals to discrimination or defeating the objectives of the California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) Chapter 21, will be prohibited.

BY ACCEPTING THIS ASSURANCE, CONTRACTOR agrees to compile data, maintain records and submit reports as required, to permit effective enforcement of the aforementioned laws, rules and regulations and permit authorized CDSS and/or federal government personnel, during normal working hours, to review such records, books and accounts as needed to ascertain compliance. If there are any violations of this assurance, CDSS shall have the right to invoke fiscal sanctions or other legal remedies in accordance with Welfare and Institutions Code section 10605, or Government Code section 11135-11139.5, or any other laws, or the issue may be referred to the appropriate federal agency for further compliance action and enforcement of this assurance.

THIS ASSURANCE is binding on CONTRACTOR directly or through contract, license, or other provider services, as long as it receives federal or state assistance.

Date	CONTRACTOR Signature	100
250 Cypress Street, Fort Bragg, CA 95437	1000	

Address of CONTRACTOR

Appendix A

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, and OTHER RESPONSIBILITY MATTERS LOWER TIER COVERED TRANSACTIONS

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 **Federal Register** (pages 19160-19211).

- (1) The primary principal certifies to the best of its knowledge and belief, that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency:
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment tendered against them for commission of fraud or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsifications or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification, and
 - (d) Have not, within a three-year period preceding this application/proposal, had one or more public transactions (Federal, State, or local) terminated for cause or default.
- (2) Where the primary principal is unable to certify to any of the statements in this certification, such principal shall attach an explanation.

	CITY OF FORT BRAGG
(Type Name)	(Organization Name)
	Fort Bragg Police Department 250 Cypress Street Fort Bragg, CA 95437
(Title)	(Organization Address)
(Signature)	(Date)