City of Fort Bragg

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

Meeting Agenda

City Council

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

Monday, May 23, 2016 | **6:00 PM** | **Town Hall, 363 N. Main Street**

AMENDED

MEETING CALLED TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

AGENDA REVIEW

1. MAYOR'S RECOGNITIONS AND ANNOUNCEMENTS

1A. 16-207 Presentation from Will Thomson Regarding Fort Bragg's Sister City - Otsuchi, Japan

1B. 16-194 Proclamation Declaring June 4, 2016 as National Trails Day

Attachments: 13-2016 National Trails Day

2. STAFF COMMENTS

3. MATTERS FROM COUNCILMEMBERS

4A. PUBLIC COMMENTS ON NON-AGENDA, CONSENT CALENDAR & CLOSED SESSION ITEMS (30 Minutes)

MANNER OF ADDRESSING THE CITY COUNCIL: Any member of the public desiring to address the City Council shall submit a "Speaker Card" to the City Clerk and proceed to the podium after being recognized by the Presiding Officer. Speakers will be called up in the order the Speaker Cards are received. All remarks and questions shall be addressed to the City Council and no discussion or action shall be taken on any requests, in accordance with Brown Act Requirements. No person shall enter into any discussion without being recognized by the Mayor or acting Mayor.

IF AGENDA PERMITS: A maximum of thirty (30) minutes shall be allotted to receiving public comments at the initial public comment period and, if necessary, an additional 30 minutes shall be allotted to public comments prior to action on the Consent Calendar. 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 but not limited to, the number of persons wishing to speak on a particular topic or at a particular meeting, 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: Pursuant to the Brown Act the Council cannot discuss issues or take action on any requests during this comment period.

5. 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.

6. CONDUCT OF BUSINESS

6A. 16-201 Receive Report Regarding Coastal Trail Phase 2 Design Decisions and Active Transportation Program (ATP) Grant Application and Provide Direction to Staff

Attachments: 05232016 Coastal Trail Phase 2 staff report

Attachment 1- Alder Street Parking Lot

Attachment 2 - Coastal Trail Phase 2 Conceptual Plan 5-2016

6B. 16-189 Receive Report and Consider Adoption of City Council Resolution Approving a Forgivable Loan Agreement with Mendocino Food & Nutrition, Inc. for the Food Bank Solar Project Using Program Income Funds through Community Development Block Grant #14-CDBG-9881 and Authorizing City Manager to Execute Same (Amount Not to Exceed: $75,000; Account No. 315-5030-0630)

Attachments: 05232016 CDBG Forgivable Loan Agreement Food Bank Solar Report

Attachment 1 - RESO Forgivable Loan Food Bank Solar Project

Attachment 2 - Exhibit A to RESO Forgivable Loan Food Bank

6C. 16-203 Receive Report Regarding Capacity Fees for Overtime Brewery Project and Provide Direction to Staff

Attachments: 05232016 Overtime Brewery Fees Staff Report

Attachment 1 - Overtime, fee summary

Attachment 2 - Overtime Floor Plan

Attachment 3 - Correspondence re Overtime Brewery Attached 05-20-2016

6D. 16-205 Receive Overview of Operable Unit E Removal Action Work Plan (OU-E RAW) from City's Environmental Consultant Glenn Young and Provide Direction to Staff

Attachments: 05232016 OU-E RAW Presentation

Attachment 1 - OU-E RAW Fact Sheet

4B. PUBLIC COMMENTS ON NON-AGENDA, CONSENT CALENDAR & CLOSED SESSION ITEMS (30 Minutes, If Necessary)

See 4A. above.

7. 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

7A. 16-204 Adopt City Council Resolution Approving a Professional Services Agreement with KASL Consulting Engineers for Preparation of Plans and Specifications for the 2016 Streets and Alleys Rehabilitation Project and Authorizing City Manager to Execute Same (Amount Not to Exceed $93,950; Account No. 414-4870-0731)

Attachments: RESO KASL Agreement for 2016 Streets and Alleys Rehabilitation Design

KASL Consultant Agreement

7B. 16-193 Adopt City Council Resolution Approving a Professional Services Agreement with The Sign Shop for Construction of a City of Fort Bragg Welcome Sign and Authorizing City Manager to Execute Same (Amount Not to Exceed $17,217.06; Account No. 110-4840-0375)

Attachments: RESO Sign Shop Welcome Sign Agreement

Sign Shop Welcome Sign Agreement

7C. 16-198 Adopt City Council Resolution Amending Resolution 3968-2016 Authorizing Expenditure of Asset Forfeiture Funds and Amending the FY 2015-16 Budget to Purchase Three Fully-Equipped Police Electric Motorcycles (Amount Not to Exceed $70,000; Transfered from Asset Forfeiture Account # 167-7999-0799 to Fleet Services Internal Service Account #522-4550-0742).

Attachments: RESO3896 Electric Motorcycle Purchase - Amended

7D. 16-208 Approve City Council Letter in Support of Active Trails Program Grant to Repave the MacKerricher Haul Road from Ward Avenue to the Pudding Creek Trestle

Attachments: 2016-05-23 Support ATP Grant Application

7E. 16-199 Approve Minutes of May 9, 2016

Attachments: CCM2016-05-09

7F. 16-200 Approve Minutes of Special Meeting of May 16, 2016

Attachments: CCM2016-05-16_Special

8. CLOSED SESSION

ADJOURNMENT

The adjournment time for all Council meetings is no later than 10:00 p.m. If the Council is still in session at 10:00 p.m., the Council may continue the meeting upon majority vote.

NEXT REGULAR CITY COUNCIL MEETING: 6:00 P.M., MONDAY, JUNE 6, 2016

STATE OF CALIFORNIA)
)ss.
COUNTY OF MENDOCINO)

I declare, under penalty of perjury, that I am employed by the City of Fort Bragg and that I caused this amended agenda to be posted in the City Hall notice case on May 19, 2016.

_____
June Lemos, 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 in the lobby of City Hall at 416 N. Franklin Street during normal business hours.*
- *Such documents are also available on the City of Fort Bragg's website at http://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.

The Council Chamber is equipped with a Wireless Stereo Headphone unit for use by the hearing impaired. The unit operates in conjunction with the Chamber's sound system. You may request the Wireless Stereo Headphone unit from the City Clerk for personal use during the Council meetings.

This notice is in compliance with the Americans with Disabilities Act (28 CFR, 35.102-35.104 ADA Title II).

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Text File

File Number: 16-207

Agenda Date: 5/23/2016 **Version:** 1 **Status:** Mayor's Office

In Control: City Council **File Type:** Recognition/Announcements

Agenda Number: 1A.

Presentation from Will Thomson Regarding Fort Bragg's Sister City - Otsuchi, Japan

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Text File

File Number: 16-194

Agenda Date: 5/23/2016 **Version:** 1 **Status:** Mayor's Office

In Control: City Council **File Type:** Proclamation

Agenda Number: 1B.

Proclamation Declaring June 4, 2016 as National Trails Day

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

"National Trails Day – June 4, 2016"

WHEREAS, the citizens of Fort Bragg have a deep appreciation for the many outdoor recreational opportunities and the extraordinary recreational trails located within and near the City of Fort Bragg, and;

WHEREAS, trails and parks promote the enjoyment of scenic beauty, whether on a beautiful beach, meandering bluff top trail, or shady trail through a redwood grove; and

WHEREAS, the City of Fort Bragg is home to two local glass beaches, all former coastal dump sites that cough up beautiful sea glass**;** and

WHEREAS, the City's new Noyo Headlands Park, comprised of 93 acres of coastal property extending along more than three miles of coastline, was acquired with $4.1 million in grant funds from the State Coastal Conservancy and a generous donation of land by Georgia-Pacific; and

WHEREAS, design, permitting and construction of Fort Bragg's Coastal Trail and other park facilities was funded by nearly $7 million in grants from the State Coastal Conservancy, State Parks, and Caltrans; and

WEREAS, Pomo Bluffs Park, which opened in April 2006, encompasses 25 acres of land on the southern bluffs above Noyo Bay, offering spectacular bluff-top views with outlook points and benches, blufftop pedestrian and bike trails, as well as interpretive exhibits; and

WHEREAS, Otis R. Johnson Wilderness Park is a 7-acre park that offers shady walking trails through majestic redwood groves and a close-up experience with nature; and

WHEREAS, Fort Bragg's trails provide quality-of-life benefits to our local citizens and serve as expressions of community character and pride, as living workshops for science education, as tools for economic revitalization, and as sites for social and cultural events; and

WHEREAS, in honor of National Trails Day, our new coastal trails and the grand opening of the Noyo Center for Marine Science's new visitor center, the "Crow's Nest," Fort Bragg is hosting its first ever Coastal Trail Celebration on Saturday, June 4, 2016.

NOW, THEREFORE, I, Dave Turner, Mayor of the City of Fort Bragg, on behalf of the entire City Council, do hereby proclaim June 4, 2016, as "NATIONAL TRAILS DAY" in Fort Bragg and invite all residents and visitors to join us in a free, fun-filled Coastal Trail Celebration at the South Coastal Trail in Noyo Headlands Park.

SIGNED this 23rd day of May, 2016.

_____

DAVE TURNER, Mayor

ATTEST:

_____

June Lemos, City Clerk

No. 13-2016

City of Fort Bragg

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Text File

File Number: 16-201

Agenda Date: 5/23/2016 **Version:** 1 **Status:** Business

In Control: City Council **File Type:** Staff Report

Agenda Number: 6A.

Receive Report Regarding Coastal Trail Phase 2 Design Decisions and Active Transportation Program (ATP) Grant Application and Provide Direction to Staff

AGENCY:	**City Council**
MEETING DATE:	**May 23, 2016**
DEPARTMENT:	**CDD**
PRESENTED BY:	**Marie Jones**

AGENDA ITEM SUMMARY

TITLE:
RECEIVE REPORT REGARDING COASTAL TRAIL PHASE 2 DESIGN DECISIONS AND ACTIVE TRANSPORTATION PROGRAM (ATP) GRANT APPLICATION, AND PROVIDE DIRECTION TO STAFF

ISSUE:
For nearly a decade, the City of Fort Bragg has pursued development of a coastal trail and park along the 3½ miles of coastline on the former Georgia Pacific mill site. In early 2010, the City acquired 93 acres with a $4.15 million grant from the State Coastal Conservancy and a dedication of land from Georgia-Pacific. After several years of environmental review and permitting, Phase 1 of the Fort Bragg Coastal Restoration and Trail Project was put out to bid in June 2014 and completed in late 2015. Both the north and south segments of the coastal trail are well used and well loved by Fort Bragg residents, coastal residents and visitors alike.

The City is preparing to begin the design and engineering process for the "central" section of the coastal trail which will traverse the Mill Pond area and connect the existing north and south Coastal Trail segments. This portion of the project has lagged behind the north and south trail alignments due to uncertainties around the environmental remediation, Mill Pond dam stability and limited funding. Georgia-Pacific (the responsible party for the remediation) is proposing a Remedial Action Work Plan (RAW) to remove contaminated hotspots in the Mill Pond area which will help facilitate construction of Phase 2 of the Coastal Trail.

Funding and timing constraints associated with the two grants (one of which has been awarded and the other for which the City is preparing an application) will necessitate Phase 2 being constructed in two separate phases. Additionally, it has become clear that the community would like to access the new Noyo Headlands Park from downtown, and a downtown access is both necessary and desirable in the near term, although not fundable with Prop 84 funding. Thus staff is looking for direction from Council as noted below under recommended action.

RECOMMENDED ACTION:
Provide direction to staff regarding Coastal Trail Phase 2 Active Transportation Program (ATP) grant application, construction timing, and preferred downtown connection alignment. Specifically, direction is needed regarding:

1. The proposed project design and the location of the preferred downtown access, whether at Alder Street or Redwood Avenue, and the preferred parking lot location;
2. The focus of 2017 construction activities with State Parks Prop 84 funding; and
3. The focus of the ATP application for the portion of the trail that would be constructed in 2019-20 (if the grant is awarded); and
4. Which components of the design contract to proceed with now for construction in 2017 with Prop 84 funding, and whether the City should use additional City funding to proceed with the entire Coastal Trail Phase 2 project design and engineering.

ALTERNATIVE ACTION(S):
Provide alternative direction to staff.

ANALYSIS:
The following background information is provided to help inform the Council's decisions:

Current Funding Status & Limitations. The City has received a $450,000 State Parks Prop 84 grant and is currently preparing another grant application requesting funding from Caltrans' Active Transportation Program (ATP). The application is due June 15th. The Prop 84 and ATP grants will fund different portions of the Coastal Trail Phase 2 project. Additionally, some portions of the project will need to be funded from other sources.

Prop 84 funding. The $450,000 Prop 84 grant can only be used to design, engineer and construct the following features:

> "Construct 3000 lineal feet of multi-use trails, beach access stairs, picnic areas, and the ecological restoration of 5 acres of paved industrial land."

This funding cannot be used for construction of a connection to the downtown, a parking lot, access road, or other amenities such as a restroom, as they were not part of the original grant scope. Likewise this funding cannot be used for design and engineering of these other features. Finally, this funding is only available on a reimbursement basis and the improvements must be put into service (use) at the end of the grant period (which is 2018). Thus the components of the project that are funded by Prop 84 must be permanent, fully functional, completed and put into service by 2018.

ATP Funding. The City is currently preparing a grant application for ATP funding. ATP funding cannot be used for the parking lot, access road, or restroom. ATP can only be used for portions of the project that provide alternative transportation facilities for bicycles and pedestrians. Thus ATP can be used for multi-use trail and pedestrian improvements. While the ATP grant awards will be announced August 2016, the funds cannot be used until FY 2019-20. Thus if the City is awarded an ATP grant for this project the construction process will need to be undertaken in two different phases.

Alternative funding. The City will need to secure other funding to complete the parking lot, welcome plaza and restroom, and access road from downtown to the parking lot. Possibilities include D1 funds and/or funding from other grant programs.

CEQA Review and Permitting. The City circulated and adopted a Subsequent EIR (SEIR) for construction of the Fort Bragg Coastal Trail through the Mill Pond area to connect the north and south alignments of the trail over the beach berm and around the Mill Pond. When CEQA and the Coastal Development Permit were approved, the City did not anticipate including a parking lot or access road to downtown as part of the project and these components of the project were not analyzed. If these project components are added to the design, both the CEQA document and the CDP, Use Permit and Design Review permit will have to be amended to reflect this change. These documents can be prepared in-house; however, a traffic study may need to be completed to determine if mitigation measures would be needed for the intersections at Main Street/Alder Street or Main Street/Redwood Avenue.

Conceptual Project Design. In early 2015, City Council provided direction to staff to pursue two multi-use trail connections, between the North and South trail, one which traverses the beach berm and another which skirted around the Mill Pond. In early 2016 as part of the community and Council discussion for the City of Trails plan, direction was provided to also seek a connection between Phase 2 of the Coastal Trail and the downtown.

Connection to Downtown. There are two options for the connection to downtown: Alder Street and Redwood Avenue.

An Alder Street connection offers some advantages as it would: 1) be cheaper to build as it is much shorter in length; 2) it would not interfere with GP operations as much; 3) it includes a pre-existing asphalt parking lot which could be used without improvements until such time as a permanent parking lot could be built; and 4) it would not impact parking in the downtown as much if there is overflow parking.

A Redwood Avenue connection offers the following advantages: 1) it is closer to the heart of downtown and would more readily serve pedestrians; and 2) it has a signalized intersection which would make left turns to and from Main Street easier. The Redwood Avenue connection would be more expensive to build, especially if the new access road is designed to follow the street grid of the Mill Site Specific Plan, which deviates from the current asphalt road surface.

Both options would require sidewalk improvements on the block between Chief Celeri Drive and Main Street. Council should provide direction regarding the preferred access. The multi-use portion of this access could be funded with ATP funds.

Parking Lot Location Options. As part of the City of Trails project, staff explored possible parking lot locations for the trail connection. If a connection is provided from the Coastal Trail to Main Street, it will generate significant parking demand which could interfere with customer parking in the downtown if the project does not include a parking lot and/or have overflow use.

Two potential alternative parking lot sites were identified: 1) the existing unpaved parking lot at the end of Alder Street, which is owned by Georgia-Pacific and is zoned Central Business District (see Attachment 1); and 2) a potential new parking lot which would be located on a large asphalt pad overlooking the Mill Pond area, which is owned by Georgia-Pacific and zoned Timber Resources Industrial (see Attachment 2).

Georgia-Pacific has expressed a preference that the City acquire the property which is zoned Timber Resources Industrial as it has less value than the Alder Street lot which is zoned CBD and is identified in the preliminary Mill Site Specific Plan as a possible location for multi-family housing. Additionally, the existing asphalt pad is in fairly good condition so a parking lot in this area would likely be less expensive. The parking lot cannot be funded with either Prop 84 or ATP funds.

Staff recommends the parking lot location in the lowland area because it provides closer access to the visitor, excellent views, and will be less expensive to acquire and develop into parking. Additionally this site can provide significantly more parking than the site at the end of Alder Street.

ATP Grant Application and Implications for Trail Segment Construction Timing. In order to identify the appropriate grant scope for the ATP application, it is necessary first to delineate what the Prop 84 grant can and cannot fund. As the Prop 84 funds require that a usable segment of trail be constructed with the $450,000 grant award, staff recommends that these funds be used for the following trail segments, in the following order of priority (Please refer to Attachment 2).

1. First Priority – Segment A-B - This segment would be the top priority because it can be connected to downtown if the City finds an alternative funding source to construct segment B-C.

2. Second Priority – Segment B-D is necessary to connect A-B to the existing road that extends around the Mill Pond and almost all the way to the Waste Water Treatment Facility (WWTF) and which can be used as a multi-use trail without improvements as an interim measure.

Segment E-F can remain as a gravel surface for the short term as there are not likely to be sufficient funds to complete it with Prop 84 funding. However, staff recommends that it be included as a bid alternate in the bid packet for 2017 in case there is sufficient funding. Segment D-E is already a functional road and can be used in the short term as a functional part of the multi-use trail without improvement.

Staff recommends that the City apply for ATP funds to complete the following components of the project.

1. First Priority – Segment B-C for multi-use trail and pedestrian improvements between Main Street and Chief Celeri Drive. ATP funds cannot be used for construction of the access road.
2. Second Priority – Segment E-F.
3. Third Priority – Segment D-E.
4. Fourth Priority – multi-use trail over the beach berm from A to E.

Design & Engineering Contract. Staff also requests direction from the Council on the best approach for dealing with the design and engineering for the project. The City released an RFP for design services for the entire project in March 2016. We received seven proposals and interviewed three firms. The top two firms were I.L. Welty and Associates and Northstar Engineering, with a total cost of $84,000 and $86,000 respectively. As Proposition 84 can only fund the design and engineering of the trail proper, in order to proceed with the entire design at this time, the City would need to dedicate funds from a non-Prop 84 source to cover design costs for the access road, parking lot, welcome plaza and restroom. If the City selects Welty, $17,000 in design costs would need to be covered from some other source, and if the City selects Northstar, $37,000 of their costs would need to be covered from some other source. Staff recommends proceeding with the design and engineering of the entire project at this time, as it will reduce overall costs and result in a more effective and efficiently designed project. The following potential sources of funds could cover the design and engineering of the entire project: D1 funds and Dredge Sands Tipping Fee funds (remaining from Phase 1 of the project). Staff seeks Council direction regarding whether to proceed with a contract for design and engineering services for the entire Phase 2 project by utilizing these sources for the remainder of the design.

FISCAL IMPACT:

The total Phase 2 Coastal Trail budget for design, engineering and construction is approximately $1.2 million. The City currently has $450,000 in secured funding for the project. The City anticipates applying for, and hopefully receiving ATP grant funds in the amount of $410,000. The City will need to utilize other funds for the construction of the parking lot, access road, restroom and welcome plaza (totaling about $340,000 in construction costs). Additionally, completion of Phase 2 will result in increased park maintenance and security costs. Overall, the project is expected to make the City and downtown a more desirable destination for tourists and thus will contribute to City revenues through increased visitor stays and retail spending.

CONSISTENCY:

The project is consistent with the Coastal General Plan, Coastal Land Use and Development Code and the City's Economic Development Strategy, which all envision coastal access along the former Mill Site property.

IMPLEMENTATION/TIMEFRAMES:
Construction of a portion of Phase 2 is anticipated in 2017, with the remainder of Phase 2 occurring when funding is available.

ATTACHMENTS:
1. Project Conceptual Plan

NOTIFICATION:
1. Coastal Trail interested parties list

City Clerk's Office Use Only

Agency Action ☐ Approved ☐ Denied ☐ Approved as Amended

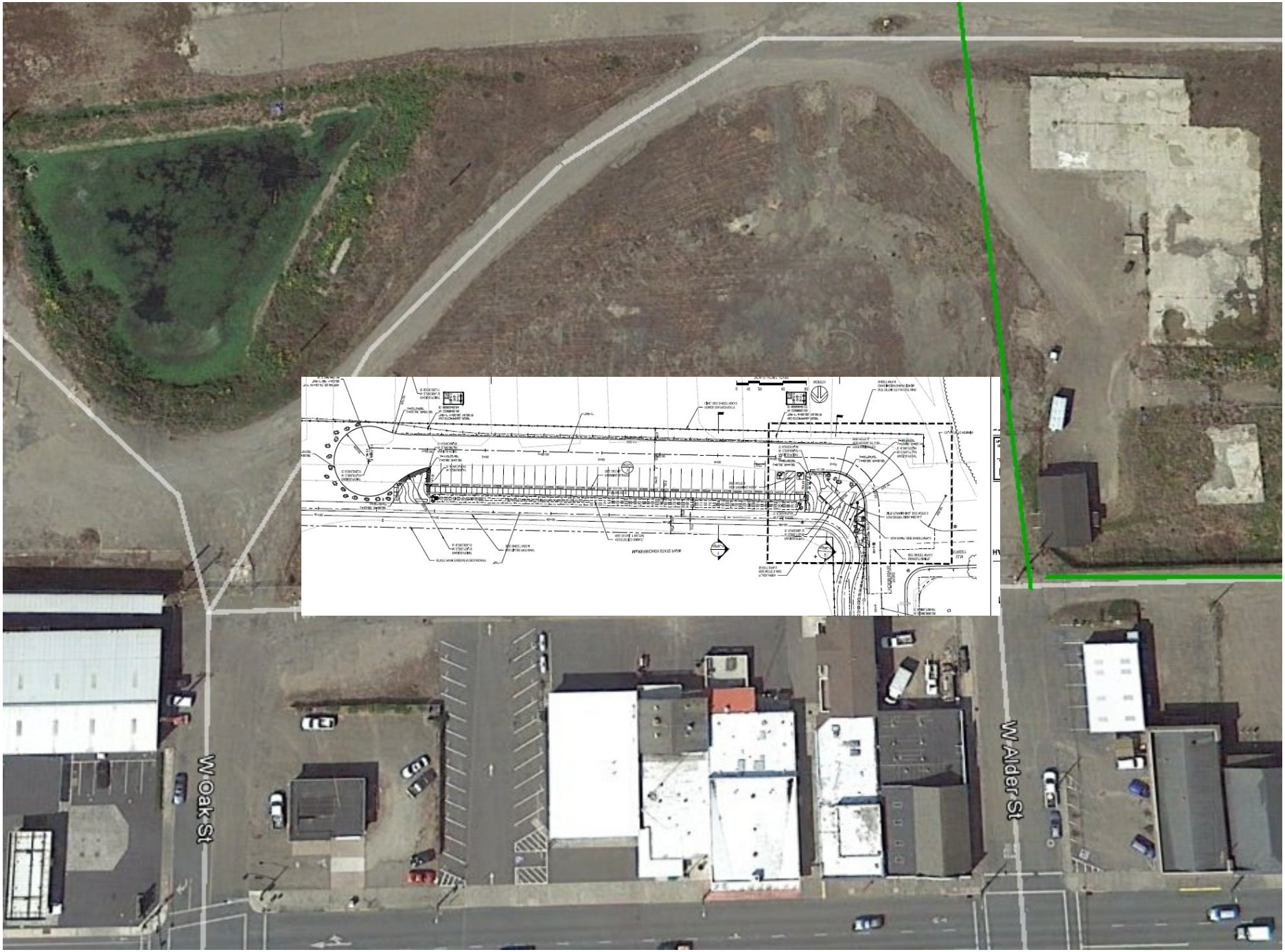
Resolution No.: _____ Ordinance No.: _____

Moved by: _____ Seconded by: _____

Vote: _____

☐ Deferred/Continued to meeting of: _____

☐ Referred to: _____


W Oak St
W Alder St

Designed NAG	Revision	Date	By
Drawn By BCZ			
Approved			
Date May 9, 2016			

NorthStar
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CITY OF FORT BRAGG

FORT BRAGG, CALIFORNIA

CONCEPT PLAN

PHASE 2 COAST TRAILS

Job Number	Scale		Sheet
N/A	1" = 100' Horz.	N/A Vert.	1 Of 1

City of Fort Bragg

416 N Franklin Street
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Text File

File Number: 16-189

Agenda Date: 5/23/2016 **Version:** 1 **Status:** Business

In Control: City Council **File Type:** Resolution

Agenda Number: 6B.

Receive Report and Consider Adoption of City Council Resolution Approving a Forgivable Loan Agreement with Mendocino Food & Nutrition, Inc. for the Food Bank Solar Project Using Program Income Funds through Community Development Block Grant #14-CDBG-9881 and Authorizing City Manager to Execute Same (Amount Not to Exceed: $75,000; Account No. 315-5030-0630)

AGENCY:	**City Council**
MEETING DATE:	**May 23, 2016**
DEPARTMENT:	**Community Devel.**
PRESENTED BY:	**J. Owen**

AGENDA ITEM SUMMARY REPORT

TITLE:
RECEIVE REPORT AND CONSIDER ADOPTION OF CITY COUNCIL RESOLUTION APPROVING A FORGIVABLE LOAN AGREEMENT WITH MENDOCINO FOOD & NUTRITION, INC. FOR THE FOOD BANK SOLAR PROJECT USING PROGRAM INCOME FUNDS THROUGH COMMUNITY DEVELOPMENT BLOCK GRANT #14-CDBG-9881 AND AUTHORIZING CITY MANAGER TO EXECUTE SAME (AMOUNT NOT TO EXCEED: $75,000; ACCOUNT NO. 315-5030-0630)

ISSUE:

On January 26, 2015, City Council adopted Resolution No. 3773-2015 approving the addition of three Supplemental Activities to the City's 2014 grant #14-CDBG-9881. The City has accumulated sufficient Program Income to fund the Food Bank Solar Project which was designated as the first priority of the three 2014 Supplemental Activities. Before activities can commence, the City must complete activity-specific General Conditions. One of the General Conditions is that the City must enter into a Forgivable (Deferred) Loan Agreement with Mendocino Food & Nutrition, Inc., owner and operator of the Fort Bragg Food Bank. Before the Loan Agreement can be executed, City Council must adopt a Resolution approving the language of the Loan Agreement.

RECOMMENDED ACTION:

Adopt City Council Resolution Approving a Forgivable Loan Agreement with Mendocino Food & Nutrition, Inc. for the Food Bank Solar Project using Program Income Funds Accumulated in Grant #14-CDBG-9881 and Authorize City Manager to Execute Same (Amount Not to Exceed: $75,000; Account No. 315-5030-0630).

ALTERNATIVE ACTION(S):

1. Do not adopt Resolutions approving loan agreements. The projects cannot proceed without the agreements.
2. Make changes to the draft loan agreement. This would delay submittal of the General Conditions package and would delay project implementation.

ANALYSIS:

On July 1, 2014, CDBG implemented new rules requiring that all CDBG Program Income on hand must be expended before any grant funds may be reimbursed for approved grant expenditures. Program Income is the funding the City receives as CDBG loans for housing rehabilitation or business loans are repaid to the City. The City Council adopted a new Program Income Reuse Agreement in September 2014 that stated that the City would expend Program Income on activities included in open and/or new grants, rather than establishing new housing or business Revolving Loan Funds. The City current collects approximately $6,833 per calendar quarter in Program Income funding. This amount could increase at any time if a loan is unexpectedly paid off.

In order to have an opportunity to fully expend both Program Income and grant funds, CDBG allows jurisdictions to add "Supplemental Activities" to open grants. A CDBG Design Phase Public Hearing was held on September 30, 2014, to solicit input from the public regarding 2014

Supplemental Activities. On January 26, 2015, with adoption of Resolution 3773-2015, City Council approved the addition of three Supplemental Activities to the 2014 grant #14-CDBG-9881. The three approved activities in order of priority were the Food Bank Solar Project, the Bainbridge Park Rehabilitation Project, and the Boatyard Drive Sidewalk Infill Project.

At this time, adequate Program Income has been collected to provide $75,000 for the Food Bank Solar Project. This project will add rooftop solar panels to the Food Bank facility to provide at least 50% roof coverage, which would provide approximately 22% of electrical usage. Depending upon actual cost of bids, the Food Bank has committed to leverage the CDBG funds to add up to $37,000 of their own funding to increase roof coverage. Based on the engineer's cost estimate, total combined funding could allow purchase of panels to cover 75% of the roof, providing up to 33% of utility usage.

The Forgivable (Deferred) Loan Agreement is the recommended form of agreement by CDBG for public facility projects. The Loan Agreement must be submitted to CDBG as part of the General Conditions Clearance package. CDBG requires that a "no change of use provision" must be recorded against the improved property for a minimum of five years. CDBG has advised staff that the five-year period should begin when the Public Facility project is completed and the "Public Benefit" is achieved. Public Benefit is generally achieved when improvements are completed and the project beneficiaries (that is, the clientele serviced within the Public Facility) are able to use the improved facility. The Loan Agreement accomplishes this requirement by including a Restrictive Covenant regarding the five-year Use Limitation to be recorded in the Mendocino County Recorder's office.

The Loan Agreement is in the same format as previously approved Forgivable Loan Agreements executed for 2012 Supplemental Activities. Major components include:

1. **Recitals**. These identify the subject property; explain that the CDBG Program is the source of the loan funding and that funds were provided as a grant to the City; and describe the purpose of the loan as described in the CDBG grant application.
2. **Definitions.** This section explains and clarifies specific terms and terminology as used in the loan documents;
3. **Loan of Funds**. This section describes the loan amount and terms of disbursement including:
   - Loan Amount (maximum amount to be disbursed to the non-profit sub-grantee);
   - Interest: No interest will be charged or accumulated on the loan amount.
   - Term of the loan: 5 years after project completion.
   - Required Documentation: The related documentation that must be executed prior to disbursement of funds is listed, including Exhibits to the Loan Agreement (Deed of Trust, Truth-In-Lending Disclosure, Notice of Right to Cancel, and Restrictive Covenant).
   - Disbursement of Funds: Funds for property rehabilitation will be released directly to vendors and contractors by the City. If the acquisition and rehabilitation activity requires less than the maximum loan amount, any amounts less than the maximum loan amount will be considered partial repayment of the loan.
4. **Repayment of the City Loan**. This section describes circumstances or "Triggering Events" that would cause repayment of the loan by the non-profit sub-grantees, including the following:
   - Any Transfer of the Property without the City's prior written consent.
   - Change of use such that the Food Bank stops using the property to provide services as described in the Supplemental Activities application. The use description is also stated in

the Regulatory Agreement to be recorded in the County Recorder's office.

- Failure to maintain the property at post-rehabilitation condition.
- Default of the Loan Agreement, including misrepresentations, failure to perform obligations contained in the Loan Agreement, or failure to notify the City if a "Triggering Event" occurs.
- Failure to maintain property insurance with City as loss payee.
- Failure to pay any property taxes due.
- If such a Triggering Event occurs, the City may determine the repayment terms, with discretion to allow monthly payments rather than a lump sum payment.

5. **CDBG Program Requirements**. This section requires conformity with HUD and CDBG regulations and provides that rehabilitation activities may proceed only with City approval and participation. In addition, this section contains Covenants regarding the property transfer restrictions, property maintenance requirements, prohibition against discrimination, the City's right to inspect the property, and the requirement to maintain adequate property insurance.
6. **Defaults and Enforcement**. This section describes "events of defaults," including those described in Item 4 above, and also states that if a default occurs, the City may declare the full loan amount due and payable. Liquidated damages are provided in the event of rent or lease of the property without City consent. Specific Performance is also required in this section, because the CDBG project serves a public purpose of a "special and unique kind."
7. **Subordination**. This section provides that the City may approve loan subordination at its discretion, but there are restrictions stated on terms of any new loan.
8. **General Provisions**. This section contains standard loan provisions that are not unique to this transaction except to identify Notice Addresses and signers.

FISCAL IMPACT:

Approval of loan documents accomplishes one of several CDBG General Conditions. Once General Conditions are cleared, CDBG will authorize implementation of the Food Bank Solar Project. The solar panels will reduce the Food Bank utility costs significantly, freeing up additional funds for their services to the City's neediest residents. The activity will also result in a positive fiscal impact for the City as it enables the City to expend Program Income on important community activities that might otherwise remain unfunded due to lack of resources. If this Supplemental Activity is not implemented, the City may be required to return awarded but unexpendable grant funds to the state. This could directly affect the City's ability to compete for future grants and could also impact the City's ability to assist local non-profit entities in the future. Program Income may be used to pay Activity Delivery costs specific to each activity and may in some cases be allocated to General Administration costs. The City is allowed to use General Administration funding from any open CDBG grant to assist with program management, and there is adequate General Administration funding available to cover staff costs for these activities.

CONSISTENCY:

Approval of Supplemental Activities is consistent with the Program Income Reuse Agreement adopted September 22, 2014. Certification of environmental compliance is required in order to clear General Conditions. Federal NEPA as required for CDBG and state CEQA review as required by the City will be completed for this activity as part of the General Conditions package.

IMPLEMENTATION/TIMEFRAMES:

Grant General Conditions must be assembled, submitted to CDBG, and cleared by CDBG before the activity can commence. Staff estimates that CDBG clearance will be obtained and activities will

be authorized to commence by June 15, 2016. The activity is expected to be completed by September 30, 2016.

ATTACHMENTS:

1. Resolution
2. Exhibit A to Resolution (Loan Agreement)

NOTIFICATION:

1. Nancy Severy, Executive Director, Fort Bragg Food Bank

City Clerk's Office Use Only

Agency Action ☐ Approved ☐ Denied ☐ Approved as Amended

Resolution No.: _____ Ordinance No.: _____

Moved by: _____ Seconded by: _____

Vote: _____

☐ Deferred/Continued to meeting of: _____

☐ Referred to: _____

RESOLUTION NO. ___*-2016*

RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING A FORGIVABLE LOAN AGREEMENT WITH MENDOCINO FOOD & NUTRITION, INC. TO USE PROGRAM INCOME FUNDS AVAILABLE FROM COMMUNITY DEVELOPMENT BLOCK GRANT #14-CDBG-9881 FOR THE FOOD BANK SOLAR PROJECT AND AUTHORIZING CITY MANAGER TO EXECUTE SAME (AMOUNT NOT TO EXCEED: $75,000; ACCOUNT NO. 315-5030-0630)

WHEREAS, the City of Fort Bragg was awarded funds from the 2014 State of California Department of Housing and Community Development, State Community Development Block Grant (CDBG) Community Development Allocation to fund various activities; and

WHEREAS, the City of Fort Bragg held a Design Phase Public Hearing on September 30, 2014, to provide information about the Community Development Block Grant (CDBG) program and to solicit input from the community as to suggestions about possible uses of grant funds and Program Income; and

WHEREAS, on January 26, 2015, City Council adopted Resolution 3773-2015 to approve the addition of three Supplemental Activities to the 2014 CDBG grant #14-CDBG-9881, including the Food Bank Solar Project; and

WHEREAS, Mendocino Food & Nutrition, Inc., is an experienced CDBG operator that provides food and other services to the City's neediest residents at its Food Bank facility located at 910 North Franklin Street, which meets the CDBG Program's National Objective of benefitting low and moderate income persons; and

WHEREAS, CDBG funding will allow Mendocino Food & Nutrition, Inc. to install a rooftop solar system to reduce energy costs; and

WHEREAS, execution of a Loan Agreement with Mendocino Food & Nutrition, Inc. enables the City to comply with the City's 2014 CDBG Standard Agreement #14-CDBG-9881 and Community Development Activity General Conditions for Public Facility activities, to ensure that Mendocino Food & Nutrition, Inc. complies with State and Federal overlay requirements and covenants and restrictions related to use of the Food Bank facility after it is improved with CDBG funds; and

WHEREAS, the Loan Agreement (attached as Exhibit A) imposes covenants and restrictions on Mendocino Food & Nutrition, Inc. to include for a period of five years, among other terms, a prohibition against transfer of the Food Bank property; requirement for general maintenance of the property; a requirement for adequate and ongoing property insurance coverage; required payment of any property taxes that may become due; and requirement that improvement activities are to be planned and implemented in cooperation and compliance with, and under the supervision of, the City; and

WHEREAS, the City will not be allowed to use the CDBG funding to implement the project until all General Conditions for the Public Facility Activity are completed, submitted to CDBG, and cleared by CDBG; and

WHEREAS, other General Conditions requiring certification include environmental compliance, and the Food Bank Solar Project has been determined to be exempt from CEQA per Section 15301(e); and Categorically Excluded from the National Environmental Policy Act (NEPA) Subject to Part 58.5(a)(3)(iii); and

WHEREAS, adequate funding is available from CDBG #14-CDBG-9881 and Program Income on hand to implement the Food Bank Solar Project; and

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

1. Mendocino Food & Nutrition, Inc. provides necessary and important services in the City of Fort Bragg at the Food Bank located at 910 North Franklin Street for the benefit of Fort Bragg's neediest citizens.
2. There is adequate funding provided in 2014 CDBG #14-CDBG-9881, including Program Income, to fund the Food Bank Solar Project including direct project costs as well as administrative costs.
3. The Loan Agreement and related documents contain covenants and restrictions that comply with CDBG General Conditions related to the Public Facility Activity.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby Approve a Forgivable Loan Agreement with Mendocino Food & Nutrition, Inc. to Use Program Income Funds from Community Development Block Grant #14-CDBG-9881 for the Food Bank Solar Project and Authorizes City Manager to Execute Same (Amount Not to Exceed: $75,000; Account No. 315-5030-0630).

The above and foregoing Resolution was introduced by Councilmember _____, seconded by Councilmember _____, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 23rd day of May, 2016, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
DAVE TURNER,
Mayor

ATTEST:

_____
June Lemos
City Clerk

LOAN AGREEMENT
(CDBG Deferred Payment Loan)

THIS LOAN AGREEMENT ("Agreement"), dated for reference purposes only [DATE], is made and entered into by and between MENDOCINO FOOD AND NUTRITION, INC., a California non-profit corporation (hereinafter referred to as "**Borrower**"), and the CITY OF FORT BRAGG, a California municipal corporation, (hereinafter referred to as the "**City**" or "**Lender**") with reference to the following facts:

RECITALS

A. Borrower owns the property commonly described as Fort Bragg Food Bank, 910 North Franklin Street, Fort Bragg, California, 95437, and legally described at Exhibit "A" attached hereto and by this reference incorporated herein (the "**Property**").

B. The City participates in the Community Development Block Grant ("**CDBG**") Program (42 U.S.C. Section 5300 et seq.) (the "**Program**") for the purpose of conserving and improving the supply of decent, safe, sanitary, and affordable housing and living conditions, principally for low- and moderate-income persons.

C. Borrower has applied for and been awarded assistance for the benefit of the Property as a Supplemental Activity under the City's 2014 Program Grant #14-CDBG-9881. Specifically, the City has awarded assistance to Borrower to rehabilitate the Property in accordance with the final plans, specifications, and work write-up approved by the City (the "**Project**").

D. The Borrower occupies the Property for the purpose of providing food and related products to a limited clientele concluded to be primarily low- and moderate-income persons, which meets the Program's National Objective of benefitting low and moderate income persons.

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties hereto agree as follows:

1. DEFINITIONS

For purposes of this Agreement, the following terms shall have the meanings set forth below:

The term **"Agreement"** has the meaning ascribed to it in the first paragraph of this Agreement.

The term **"Borrower"** has the meaning ascribed to it in the first paragraph of this Agreement.

The term **"City"** or **"Lender"** have the meaning ascribed to them in the first paragraph of this Agreement.

The term **"City Loan"** has the meaning ascribed to it in Section 2.1 of this Agreement.

The term **"Deed of Trust"** has the meaning ascribed to it in Section 2.4.2 of this Agreement.

The term **"Note"** has the meaning ascribed to it in Section 2.4.1 of this Agreement.

The term **"Notice of Right to Cancel"** has the meaning ascribed to it in Section 2.4.4 of this Agreement.

The term **"Program"** has the meaning ascribed to it in Recital "B" of this Agreement.

The term **"Project"** has the meaning ascribed to it in Recital "C" of this Agreement.

The term "**Project Completion Date**" means the date Project work is completed as shown on a properly executed Certificate of Completion that is accepted by City.

The term **"Property"** has the meaning ascribed to it in Recital "A" of this Agreement.

The term "**Restrictive Covenant**" has the meaning ascribed to it in Section 2.4.5 of this Agreement.

The term **"Term"** has the meaning ascribed to it in Section 2.3 of this Agreement.

The term "**Transfer**" shall mean any voluntary or involuntary sale, lease, rental, conveyance, bequest, devise, inheritance, or other transfer of title or any interest in to the Property, including a transfer to an inter vivos trust.

The term **"Triggering Event"** shall mean an event that triggers the requirement that Borrower repay all or a portion of the principal of the City Loan, and any interest accrued thereon, as provided in Section 3.2 of this Agreement.

The term **"Truth-in-Lending Disclosure"** shall have the meaning ascribed to it in Section 2.4.3 of this Agreement.

2. LOAN OF FUNDS

2.1 Loan Amount. Subject to the terms and conditions of this Agreement, City agrees to loan to Borrower, and Borrower hereby agrees to repay to City, the principal sum of Seventy Five Thousand Dollars ($75,000) (the "**City Loan**"). The proceeds of the City Loan shall be used for the sole purpose of funding the Project.

2.2 Interest. No interest shall accrue on the principal balance of the City Loan.

2.3 Term. The term of the City Loan shall be five (5) years from the Project Completion Date (the "**Term**").

2.4 Required Documentation. The City shall not disburse any funds until after all of the following documents are executed:

2.4.1 Note. A Note Secured by Deed of Trust (the "**Note**") in the form of Exhibit "B" attached hereto and by this reference incorporated herein.

2.4.2 Deed of Trust. A Deed of Trust (the **"Deed of Trust"**) in the form of Exhibit "C" attached hereto and by this reference incorporated herein.

2.4.3 Truth-In-Lending Disclosure. A Truth-in-Lending Disclosure (the "**Truth-in-Lending Disclosure**") in the form of Exhibit "D" attached hereto and by this reference incorporated herein.

2.4.4 Notice of Right to Cancel. A Notice of Right to Cancel (the "**Notice of Right to Cancel**") in the form of Exhibit "E" attached hereto and by this reference incorporated herein.

2.4.5 Restrictive Covenant. A Restrictive Covenant (the "Restrictive Covenant") in the form of Exhibit "F" attached hereto and by this reference incorporated herein.

2.5 Disbursement of Funds. The City shall disburse City Loan funds designated for Property rehabilitation directly to the contractors and vendors engaged in the rehabilitation of the Project, consistent with the Project construction and purchasing contracts. In the event that the City disburses less than the full amount of the City Loan for the Project, the difference between the amount disbursed and the full amount of the City Loan shall be considered a partial prepayment of the City Loan under Section 3.4 of this Agreement.

3. REPAYMENT OF CITY LOAN

3.1 Time for Repayment. Borrower shall repay the principal amount of the City Loan upon the occurrence of a Triggering Event during the Term. The amount to be repaid shall be determined in accordance with Section 3.5 of this Agreement. Borrower has no obligation to make periodic payments of principal during the Term except as provided in Section 3.4. If, upon the conclusion of the Term, no Triggering Event has occurred, the principal balance of the City Loan shall be forgiven.

3.2 Events Triggering Repayment. The principal amount of the City Loan and any other amounts due under this Agreement and the Note will be immediately due and payable, at the option of the City and without notice or demand, upon the occurrence of any one or more of the following Triggering Events:

(a) Any Transfer of the Property without the City's prior written consent.

(b) The Borrower ceases to utilize the Property for the provision of emergency shelter to homeless persons.

(c) The Borrower fails to maintain the Property in its post-rehabilitation condition, normal wear and tear excepted.

(d) The Borrower is in default of this Loan Agreement.

(e) The Borrower fails to maintain property insurance coverage naming the City as a loss payee (if the City Loan is in the first position) or an additional insured (if the City Loan is a junior lien).

(f) The Borrower fails to pay the property taxes on the Property when due.

(g) The Borrower defaults on any senior deed of trust.

3.3 Partial Repayment. After a Triggering Event occurs, the City may, in its sole discretion, allow Borrower to make monthly payments instead of the lump sum payment required by Section 3.2. The City reserves the right to determine the amount of such monthly payments. If the Borrower fails to make one or more monthly payments or another Triggering Event occurs, the City may require the Borrower to immediately repay the remaining principal due on the City Loan.

3.4 Prepayment. Borrower may prepay the outstanding principal of the City Loan at any time, provided that such prepayment shall not absolve Borrower of any other obligations contained in this Agreement or the Deed of Trust.

3.5 Repayment Amount. Upon the occurrence of a Triggering Event during the Term, the Borrower shall repay to the City the lesser of the following:

(a) The principal balance of the City Loan; or

(b) The current fair market value of the Property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the Property.

4. CDBG PROGRAM REQUIREMENTS

4.1 Program Regulations and Guidelines. Borrower agrees that Borrower is subject to the terms and conditions of the Program, including any rules and regulations adopted by the federal Department of Housing and Urban Development, the California Department of Housing and Community Development, or the City regarding the use of CDBG Funds, all of which are incorporated herein by this reference as they may be amended from time to time. If there is any conflict between the aforementioned rules and regulations and the terms of this Agreement, the terms of the regulations shall control.

4.2 Rehabilitation Activities. Borrower agrees:

(a) that the construction of the Project using City Loan funds shall adhere to the final plans, specifications and work write-up approved by the City, and

(b) that Borrower will contract with a licensed general contractor to perform the Project, and

(c) that the City shall approve the method and procedures utilized to procure the services of a licensed general contractor to perform the Project, and

(d) that the City shall approve the form and content of the contract between Borrower and its licensed general contractor prior to the execution of the contract.

4.3 Covenants. Borrower covenants and agrees, among other things:

(a) that Borrower shall utilize the Property for the purposes stated in Recital D of this Agreement and shall not lease or rent the Property to a third party, and

(b) that Borrower shall maintain the Property in accordance with the specifications of the Program, and

(c) that Borrower shall not discriminate on the basis of race, color, creed, age, handicap, sex or national origin, in any sale, use, or occupancy of the Property, and

(d) that City shall have the right to enter the Property, upon reasonable prior notice, for the sole purpose of determining compliance with the terms and conditions of the Program.

(e) that Borrower will maintain property insurance coverage on the Property naming the City as a loss payee (if the City Loan is in the first position) or as an additional insured (if the City Loan is a junior lien).

5. DEFAULTS & ENFORCEMENT

5.1 Defaults. If any one or more of the following events of default shall occur and shall not have been remedied:

(a) Any representation or warranty made by the Borrower in this Agreement or in any request or certificate of the Borrower furnished to City hereunder shall prove to have been incorrect in any material respect; and/or

(b) The Borrower shall default in the payment, when due, of any principal, interest, or other amount payable by Borrower with respect to the Property, whether due under this Agreement, the Note, or otherwise; and/or

(c) The Borrower shall default in the performance of any other obligation to be performed by it contained herein or in the Note; and/or

(d) The Borrower fails to notify the City of the occurrence of any Triggering Event.

Then, and in any such case, in addition to any other rights and remedies available to the City hereunder or at law or in equity or otherwise, City may declare the principal and any other amounts accrued on the Note to be forthwith due and payable, whereupon the same shall become forthwith due and payable, and/or City may immediately terminate its commitment hereunder.

5.2 Liquidated Damages. If Borrower rents or leases the Property to a third party Borrower shall be subject to liquidated damages in an amount equal to the total rent collected by Borrower throughout the duration of the violation.

5.3 Specific Performance. It is agreed that the services provided for under this Agreement serves a public purpose and is of a special and unique kind and character and that the rights granted to City hereunder are of a similar special and unique kind and character so that if there is a default by the Borrower, City would not have an adequate remedy at law. It is expressly agreed, therefore, that City's rights under this Agreement may be enforced by an action for specific performance and such other equitable relief, including an injunction for actions in violation of this Agreement, as is provided by the laws of the State of California.

6. SUBORDINATION

The City may approve a request for subordination, in its sole discretion. If the request for subordination is due to the Borrower's refinancing of a loan secured by the Property, the City may only approve the subordination request if the Borrower submits the documentation required by the City, and the refinancing will not result in any of the following:

6.1 A "cash out" of all or part of the loan proceeds. The loan proceeds must be used only to pay off the existing debt being refinanced and any reasonable closing costs.

6.2 A loan to value ratio that exceeds 75% of the Property's post-rehabilitation value.

6.3 A loan that has a higher interest rate than the existing loan.

6.4 A loan with a term of less than fifteen years.

6.5 The recorded position of the City Loan will be lower than its existing position (e.g. reduced from a second lien deed of trust to a third lien deed of trust).

7. GENERAL PROVISIONS

7.1 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the heirs, successors, assigns and representatives of the parties.

7.2 Entire Agreement. This Agreement, together with its Recitals which are a part of this Agreement, sets forth the entire understanding of the parties with respect to the subject matter hereof. In the event of any conflict between the terms of this Agreement and any other document entered into in furtherance of this Agreement, the terms of this Agreement shall prevail.

7.3 Attorneys' Fees. In the event of any legal proceeding arising out of or related to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs as set by the trier of fact.

7.4 Notices. All notices, requests, demands, consents and other communications required or permitted to be given under the terms of this Agreement shall be in writing addressed to the recipient party's Notice Address set forth below, and shall be deemed to have been duly given or made (a) if delivered personally (including commercial courier or delivery service) to the party's Notice Address, then as of the date delivered (or if delivery is refused, upon presentation), or (b) if mailed by certified mail to the party's Notice Address, postage prepaid and return receipt requested, then at the time received at the party's Notice Address as evidenced by the return receipt, or

(c) if mailed by first class mail to the party's Notice Address, postage prepaid, then at the time received at the party's Notice Address. A party may only change its Notice Address by a notice given in the foregoing form and manner. Each party's initial Notice Address is as follows:

If to Borrower:	Mendocino Food & Nutrition, Inc. 910 N. Franklin Street Fort Bragg, CA 95437 ATTN: Nancy Severi, Executive Director
If to the City:	City of Fort Bragg 416 N. Franklin St. Fort Bragg, CA 95437 Attn: Community Development Department

7.5 Severability. It is agreed that if any provision of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Agreement and all such other provisions shall remain in full force and effect.

7.6 Modification. This Agreement may not be changed, modified or amended orally or by a course of conduct, but only by a writing signed by the parties hereto, and this Agreement may not be discharged except by performance in accordance with the terms, or by writing signed by the parties hereto.

7.7 Time of Essence. Time is of the essence in all of the terms, covenants and conditions of this Agreement.

7.8 Choice of Law; Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any action to enforce or interpret any of the provisions of this Agreement shall be brought in Mendocino County, California.

7.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

7.10 Joint and Several. If more than one person executes this Agreement as Borrower, the agreements, covenants, representations, warranties, obligations and liabilities of such persons under this Agreement shall be joint and several.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date(s) set forth below.

“BORROWER”

Mendocino Food & Nutrition, Inc.

By: _____
Name: _____
Title: _____

“CITY”

City of Fort Bragg

By: _____
Linda Ruffing
City Manager

ATTEST:

By: _____
June Lemos
City Clerk

EXHIBIT A

APPROVED AS TO FORM:

By: _____
Samantha Zutler
City Attorney

EXHIBIT A

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA)
COUNTY OF MENDOCINO)

On _____, 2016 _____,
before me, _____,
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

personally appeared _____,
Name of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though this section is optional, completing this information can deter alternation of the document or fraudulent reattachment of this form to an unintended document.

CAPACIT(IES) CLAIMED BY SIGNER(S)

Signer's Name: _____

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General

☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other: _____

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number Of Pages

_____
Date Of Document

_____
Signer(s) Other Than Named Above

EXHIBIT A

EXHIBIT "A"

LEGAL DESCRIPTION

APN: 008-060-02-00

The land referred to herein is situated in the State of California, County of Mendocino, City of Fort Bragg and is described as follows:

All that certain portion of Lots 6 and 7 of Block 79, as shown and delineated on that certain Map entitled "Map of the Northern Addition to Fort Bragg", filed in the office of the County recorder of Mendocino County, California, on April 2, 1912, described as follows:

Beginning at the Southwest corner of Lot 7 of Block 79 of the aforementioned subdivision, thence from said point of beginning and along the exterior boundary lines of the piece of Parcel of land to be described as follows: East, 130 feet along the South boundary line of Lot 7; thence North, 100 feet; thence West 130 feet along the North boundary line of Lot 6 to a point in the East line of Franklin Street; thence along said East line of Franklin Street and along the Westerly boundary line of Lots 6 and 7, South 100 feet to the point of beginning.

It being the intention to describe the westerly 100 foot portions of Lots 6 and 7 of Block 79 of the North addition in the City of Fort Bragg.

EXHIBIT "B"

NOTE SECURED BY DEED OF TRUST

$75,000
[DATE]
910 N. Franklin St, Fort Bragg, CA 95437

For value received the undersigned, MENDOCINO FOOD AND NUTRITION, INC. (the "**Borrower**"), promises to pay the CITY OF FORT BRAGG at 416 N. Franklin St., Fort Bragg, California 95437, the sum of $75,000. This Note is subject to and payable in accordance with the terms of that certain Loan Agreement between Borrower and the City of Fort Bragg, dated for reference purposes [DATE] (the "Loan Agreement").

This Note is secured by a Deed of Trust of the same date as this Note, executed by Borrower, as trustor, in favor of the City of Fort Bragg, as beneficiary, and recorded with the Mendocino County Recorder as document number _____. The holder of this Note will be entitled to the benefits of the security provided by the Deed of Trust and will have the right to enforce the covenants and agreements of the Borrower contained in the Deed of Trust and/or the Loan Agreement.

All sums due and payable hereunder are payable solely in lawful money of the United States of America. This Note shall, at the option of the holder hereof, become fully due and payable, without notice or demand, upon any default by Borrower in the performance of any obligation arising out of or under the Loan Agreement. If any attorney is engaged by the holder of this Note to enforce or construe any provision of this Note, or the Deed of Trust, or the Loan Agreement, then Borrower will immediately pay to the holder, on demand, all attorneys' fees and other costs incurred by holder therein. All payments on this Note will be applied first to the payment of any costs, fees, or other charges incurred in connection with the enforcement of this Note; next, to the payment of costs, fees, or other charges, if any, arising under the Loan Agreement; then to the reduction of the principal balance.

Dated: _____, 2016

_____

_____

[NOTE: DO NOT SIGN THIS EXHIBIT]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

EXHIBIT "C"

City of Fort Bragg
416 N. Franklin St.
Fort Bragg, California 95437
Attn.: Community Development Dept.

Exempt Recording Per Government Code Sections 6103 and 27383

DEED OF TRUST
WITH ASSIGNMENT OF RENTS AS ADDITIONAL SECURITY

This DEED OF TRUST, made as of [DATE], between MENDOCINO FOOD AND NUTRITION, INC., herein called TRUSTOR, whose address is 910 North Franklin Street, Fort Bragg, California, 95437, and the CITY OF FORT BRAGG, herein called TRUSTEE, for the benefit of CITY OF FORT BRAGG as BENEFICIARY.

Trustor irrevocably grants, transfers and assigns to Trustee in Trust, with Power of Sale, that property in the City of Fort Bragg, County of Mendocino, California, described as:

> APN: 008-060-02-00
>
> All that certain portion of Lots 6 and 7 of Block 79, as shown and delineated on that certain Map entitled "Map of the Northern Addition to Fort Bragg", filed in the office of the County recorder of Mendocino County, California, on April 2, 1912, described as follows:
>
> Beginning at the Southwest corner of Lot 7 of Block 79 of the aforementioned subdivision, thence from said point of beginning and along the exterior boundary lines of the piece of Parcel of land to be described as follows: East, 130 feet along the South boundary line of Lot 7; thence North, 100 feet; thence West 130 feet along the North boundary line of Lot 6 to a point in the East line of Franklin Street; thence along said East line of Franklin Street and along the Westerly boundary line of Lots 6 and 7, South 100 feet to the point of beginning.

It being the intention to describe the westerly 100 foot portions of Lots 6 and 7 of Block 79 of the North addition in the City of Fort Bragg.
Together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits.

For the Purpose of Securing (1) payment of the sum of Seventy Five Thousand Dollars ($75,000.00) according to the terms of that promissory note executed on _____, 2016 by Trustor, payable to order of Beneficiary, and that loan agreement executed on _____, 2016 by Trustor and Beneficiary, which are incorporated herein by this reference as they may be amended, extended or renewed from time to time; (2) the performance of each agreement of Trustor incorporated by reference or contained herein or reciting it is so secured, including the performance of covenants and agreements made, and obligations assumed, by Trustor under the Loan Agreement and Note

Secured by Deed of Trust executed by Trustor on even date herewith in connection with the purchase of the property described above, which agreements are incorporated herein by reference; and (3) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

To protect the security of this Deed of Trust, and with respect to the property above described, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A of that certain Fictitious Deed of Trust referenced herein, and it is mutually agreed that all of the provisions set forth in subdivision B of that certain Fictitious Deed of Trust recorded in the book and page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, namely:

COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE
Alameda	1288	556	Kings	858	713	Placer	1028	379	Sierra	38	187
Alpine	3	130-31	Lake	437	110	Plumes	166	1307	Siskiyou	506	762
Amador	133	438	Lassen	192	367	Riverside	3778	347	Solano	1287	621
Butte	1330	513	Los Angeles	T-3878	874	Sacramento	71-10-26	615	Sonoma	2067	427
Calveras	185	338	Madera	911	136	San Benito	300	405	Stanislaus	1970	56
Colusa	323	391	Marin	1849	122	San Bernardino	6213	768	Sutter	655	585
Contra Costa	4684	1	Mariposa	90	453	San Francisco	A-804	596	Tehama	457	183
De[Norte	101	549	Mendocino	667	99	San Joaquin	2855	283	Trinity	108	595
El Dorado	704	635	Merced	1660	753	San Luis Obispo	1311	137	Tulare	2530	108
Fresno	5052	623	Modoc	191	93	San Mateo	4778	175	Tuolumne	177	160
Glenn	469	76	Mono	69	302	Santa Barbara	2065	881	Ventura	2607	237
Humboldt	801	83	Monterey	357	239	Santa Clara	6626	664	Yolo	769	16
Imperial	1189	701	Napa	704	742	Santa Cruz	1638	607	Yuba	398	693
Inyo	165	672	Nevada	363	94	Shasta	800	633			
Kern	3756	690	Orange	7182	18		San Diego Series 5 Book 1964, Page 149774				

shall inure to and bind the parties hereto, with respect to the property above described. Said agreements, terms and provisions contained in said subdivisions A and B, (identical in all counties) are preprinted on the following pages hereof and are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as if set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge thereof does not exceed the maximum allowed by laws.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him at his address hereinbefore set forth.

_____

_____

[NOTE: DO NOT SIGN THIS EXHIBIT]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA)
COUNTY OF MENDOCINO)

On _____, 2016 _____,
before me, _____,
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

personally appeared _____,
Name of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though this section is optional, completing this information can deter alternation of the document or fraudulent reattachment of this form to an unintended document.

CAPACIT(IES) CLAIMED BY SIGNER(S)

Signer's Name: _____

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General

☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other: _____

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number Of Pages

_____
Date Of Document

_____
Signer(s) Other Than Named Above

EXHIBIT A

DO NOT RECORD

The following is a copy of Subdivisions A and B of the fictitious Deed of Trust recorded in each County in California as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

A. To protect the security of this Deed of Trust, Trustor agrees:

(1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer, or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

(4) To pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may, make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his or her reasonable fees.

(5) To pay immediately and without demand all sums so expanded by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured

hereby, any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is mutually agreed:

(1) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him or her in the same manner and with the same effect as above provided for regarding disposition of proceeds of fire or other insurance.

(2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his or her right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

(5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his or her own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property , the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(6) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice

Trustee shall Cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

(8) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term Beneficiary shall mean the owner and holder, including pledgees of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or the neuter, and the singular number includes the plural.

(9) The Trustee accepts this Trust when this Deed, duty executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

DO NOT RECORD

REQUEST FOR FULL RECONVEYANCE

TO _____

The undersigned is the legal owner and holder of the note or notes and of all other indebtedness secured by the foregoing Deed of Trust. Said note or notes, together with all other indebtedness secured by said Deed of Trust, have been fully paid and satisfied, and all other obligations secured by said Deed of Trust have been fully satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note or notes above mentioned, and all other evidence of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you under the same.

Dated:_____

Please mail Deed of Trust,
Note and Reconveyance to _____

Do not lose or destroy this Dead of Trust OR THE NOTE which it secures. Both must be delivered to the Trustee for cancellation before reconveyance will be made.

EXHIBIT "D"

TRUTH-IN-LENDING DISCLOSURE

NOTICE TO BORROWER: This is a disclosure statement required by the Consumer Credit Protection Act related to your Loan. This statement is not a contract or a commitment. Please refer to the Promissory Note for the terms and provision of this transaction.

A. BORROWER(S): Mendocino Food and Nutrition, Inc.
910 N. Franklin Street
Fort Bragg, CA 95437

B. DISCLOSURE STATEMENT:

ANNUAL PERCENTAGE RATE	**FINANCE CHARGE**	**AMOUNT FINANCED**	**TOTAL OF PAYMENTS***
The cost of my Credit as yearly rate	The dollar amount the credit will cost me	The amount of credit provided to me or on my behalf	The amount I will have paid after I make all payments as scheduled
0%			
0% Effective	$0	$75,000	$75,000 (if loan is not forgiven)

C. PAYMENT SCHEDULE

Number of Payments	Amount of Payments	Payments Due Beginning
0	$0	n/a

Collection Service Charge	$0
Principal and Interest	$75,000
TOTAL PAYMENT	$75,000 (if loan is not forgiven)

D. SECURITY: The loan is secured by:

A Deed of Trust against the Real Property located at 910 N. Franklin St., Fort Bragg, CA 95437.

In the event of default, the filing and recording of a certificate of default with the County Recorder shall constitute a lien upon this property.

E. STATEMENT OF INSURANCE: Property, liability and/or flood insurance may be obtained by Borrower(s) through any person of his/her choice and is NOT obtainable through the City.

F. DEFAULT, DELINQUENCY AND SIMILAR CHARGES: Should the indebtedness not be paid when due, Borrower(s) shall be responsible for attorney's fees and all costs of collection.

G. PREPAYMENT: The Borrower may prepay at any time all or any part of the principal amount of this Note without the payment of penalties or premiums. However, any restrictions on the use of the Property associated with this loan shall remain in effect for the entire Term, regardless of any prepayment.

H. ASSUMPTION: Someone buying your Property will not be able to assume the remaining indebtedness.

I/We hereby acknowledge receipt of a completed copy of this statement and I/we have not signed any note, contract or any other agreement in connection with this credit transaction.

_____	_____
Date	Borrower

EXHIBIT "E"

NOTICE OF RIGHT TO CANCEL

IDENTIFICATION OF LOAN TRANSACTION

BORROWER	AMOUNT	SECURITY
Mendocino Food & Nutrition, Inc.	$75,000	INCLUDES REAL PROPERTY LOCATED AT: 910 N. Franklin St, Fort Bragg, CA 95437

NOTICE TO CUSTOMER REQUIRED BY FEDERAL LAW:

Your Right To Cancel:

You have entered into a transaction on_____(Date) which will result in a lien, mortgage, or other security interest in your property. You have a legal right under federal law to cancel this transaction, without cost, within three (3) business days from whichever of the following events occurs last:

(1) the date of the transaction set forth above; or

(2) the date you received your Truth-in-Lending Disclosures; or

(3) the date you received this notice of your right to cancel.

If you cancel the transaction, the mortgage lien or security interest is also cancelled. Within twenty (20) calendar days after we receive your notice, we must take the steps necessary to reflect the fact that the mortgage, lien or security interest on your home has been cancelled, and we must return to you any money or property you have given to us or to anyone else in connection with this transaction.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address below. If we do not take possession of the money or property within twenty (20) calendar days of your offer, you may keep it without further obligation.

How to Cancel:

If you decide to cancel this transaction, you may do so by notifying us in writing, at

City of Fort Bragg
Attn: Community Development Director
416 N. Franklin St., Fort Bragg, CA 95437

You may also use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of _____ _____ (or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I hereby cancel this transaction.

_____ _____

(Date) (Customer's Signature)

ACKNOWLEDGMENT OF RECEIPT OF TWO COPIES OF NOTICE OF RIGHT OF RESCISSION

Each of the undersigned hereby acknowledges receipt of two completed copies of the Notice above.

_____

(Customer's Signature) (Date)

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO: City of Fort Bragg 416 N. Franklin St. Fort Bragg, California 95437 Attn.: Community Development Dept. **Exempt Recording Per Government Code Sections 6103 and 27383**	**EXHIBIT "F"**

RESTRICTIVE COVENANT

THIS DOCUMENT CONTAINS PROVISIONS RESTRICTING USE OF THE PROPERTY, REFINANCING, TRANSFERING OF THE PROPERTY AND ASSUMPTIONS.

This Restrictive Covenant is made and entered into by and between MENDOCINO FOOD AND NUTRITION, INC., a California non-profit corporation (hereinafter referred to as "Borrower"), and the CITY OF FORT BRAGG, a California municipal corporation, (hereinafter referred to as the "City" or "Lender") this __ day of _____, 2016, with reference to the following facts:

RECITALS

A. The City and Borrower entered into a Loan Agreement on _____, 2016, whereby the City loaned $75,000.00 to Borrower for the rehabilitation of the real property located at 910 North Franklin Street in the City of Fort Bragg (the "Property").

B. The loan was made by City as a Supplemental Activity under the City's 2014 Program Grant #14-CDBG-9881. The CDBG Program requires the Property to be used for the purpose of providing food and related products to low and moderate income persons for a period of at least five years after the Project Completion Date.

C. The Grant Agreement for CDBG Program Grant #14-CDBG-9881 requires a separate restrictive covenant be recorded against the Property prohibiting a change in use for the Property during the term.

NOW, THEREFORE, Borrower, for itself, its successors, and all other parties having an interest in the Property, by or through Borrower, covenants and agrees as follows:

I. **TERM**

The term of this Restrictive Covenant shall be for five years, commencing on the date first ascribed above.

II. **RESTRICTIVE COVENANTS**

Borrower covenants and agrees that the use of the Property will be restricted as follows:

In accordance with State and Federal regulations governing the Community Development Block Grant Program, the Property is required to be used to provide food and related products to low and moderate income persons for the Term of this Restrictive Covenant. Any proposed change in ownership, use and/or occupancy prior to the expiration of the Term must be submitted in writing to the City of Fort Bragg and must be authorized by the Department of Housing and Community Development, Community Affairs Division. The Borrower must receive written authorization from the City and HCD prior to change in use, ownership or occupancy.

III. COVENANTS RUN WITH THE LAND

This Restrictive Covenant shall inure to the benefit of and be binding upon Borrower and City and their respective heirs, executors, legal representatives, permitted successors and assigns. The Property is held and hereafter shall be held, conveyed, hypothecated, encumbered, leased, rented, used, and occupied subject to the covenants, conditions, restrictions and limitations of this Covenant. All of the herein stated covenants, conditions, restrictions and limitations are intended to constitute both equitable servitudes and covenants running with the land. Any purchaser of or successor in interest, transferee or assignee to the Property or of any portion of or interest in the Property no matter how that interest is acquired, shall be deemed to have taken title with knowledge of this Covenant and to have personally covenanted, consented to and accepted the covenants, conditions, restrictions and limitations set forth herein.

MENDOCINO FOOD & NUTRITION, INC.
A California nonprofit public benefit corporation

By: _____

City of Fort Bragg

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

Text File

File Number: 16-203

Agenda Date: 5/23/2016 **Version:** 1 **Status:** Business

In Control: City Council **File Type:** Staff Report

Agenda Number: 6C.

Receive Report Regarding Capacity Fees for Overtime Brewery Project and Provide Direction to Staff

AGENCY:	**City Council**
MEETING DATE:	**May 23, 2016**
DEPARTMENT:	**Public Works/Admin**
PRESENTED BY:	**T Varga/L Ruffing**

AGENDA ITEM SUMMARY

TITLE:
RECEIVE REPORT REGARDING OVERTIME BREWERY PROJECT CAPACITY FEES AND PROVIDE DIRECTION TO STAFF

ISSUE:
The developers of the Overtime Brewery are required to pay a variety of development-related fees in conjunction with their project. Staff has determined two options for the calculation of the capacity fees and seeks Council direction regarding which methodology to use. The applicants have requested that the City consider a payment plan for the capacity fees and staff seeks Council direction on that as well.

RECOMMENDED ACTION:
Provide direction to staff regarding applicable assumptions for capacity fee calculations and whether or not to provide a payment plan to the Overtime Brewery project.

If the Council is amenable to a payment plan, staff recommends the following terms:

1. Pay all fees upon issuance of building permit except for capacity fees.
2. Pay 50% of capacity fees upon issuance of certificate of occupancy.
3. Amortize remaining 50% over 24 months with monthly payments and an interest rate equaling the investment earnings of the City's water and wastewater enterprise funds.

ALTERNATIVE ACTION(S):
There are two options for the calculation of capacity fees (see below and Attachment 1).

ANALYSIS:
The applicants propose to manufacture craft beer within an existing building located at 190 E. Elm Street. A brewing system of up to 1,500 barrels per year is proposed. In addition to the proposed brewery, accessory retail as well as food and beverage service will be included in the project. It is important to note that the brewery is the primary use of the building, and the retail/food and beverage service are an accessory use. A full commercial kitchen is planned as an adjunct to brewery operations and will also prepare food for on and offsite consumption. There will be an onsite retailing area with a 15-seat bar and a dining area with 12 seats, and an outdoor event area. There will be a walk-in cooler and two restrooms. Proposed hours and days of operation are 11:00 AM to 10:00 PM, seven (7) days a week.

The brewery is subject to City water and wastewater fees: capacity (water and wastewater), connection (water), and fire sprinkler connection. Additional fees include permit/inspection, engineering, storm drainage, planning, and building permit. Since there is no record of a storm drain fee being paid, there is no credit available to apply toward this fee.

The issue that is brought forward for Council direction is the basis for the calculation of water and wastewater capacity fees. Capacity fees are impact fees that pay for a new user's fair share of

capital improvements of the water and wastewater systems. These are calculated on an Equivalent Dwelling Unit (EDU) basis. Non-residential users of the City's water and wastewater systems are charged rates that use residential use as a comparative baseline.

As shown on Attachment 1, there are two different ways of calculating the capacity fees for the Overtime Brewery which yield substantially different fees. If the facility is broken down into three functional areas (brewery, retail, restaurant/bar), the total water and sewer capacity fees are $59,684.17. If the facility is simply considered brewery and retail, the total capacity fees are $30,384.48. It should be noted that while the facility is permitted to have onsite sales and consumption of food and beverages, the use permit granted by the Planning Commission places considerable restrictions on such uses:

- There shall be no external evidence of any commercial activity outside of the primary use of the site for the brewery. No retail merchandise shall be suspended from any windows or otherwise visible from either Franklin or Elm Streets. Additionally, the applicant's signage shall be limited to advertising the brewery operation. Signage shall not reference a "restaurant or bar" facility at the brewery.
- The operating hours for the accessory retail and service uses and outside events shall be from 11:00 AM to 10:00 PM, seven days a week. The manufacturing of beer can occur outside these hours; however, no onsite or offsite retail sales of food, merchandise, or beer or outdoor events shall occur after 10:00 PM.
- Overtime Brewing, Inc. shall only sell (on and off sale) alcoholic beverages which are brewed on site and locally grown Mendocino County wines.

These special conditions were added to ensure that the sale of food and beverages is truly accessory to the brewery.

In addition, a credit for the previous use has been applied to the fee calculation. The previous building tenants included a tire shop and an art gallery/paper manufacturer. Staff recommends that the higher credit (art gallery/paper manufacturer) be applied.

FISCAL IMPACT:

Capacity fees for the water and wastewater systems are the primary source of locally generated funds that pay for capital improvements and major maintenance projects. Reducing the fee in turn will decrease the funds for these purposes. The amounts collected should represent a fair contribution from each development.

CONSISTENCY:

The project has received its planning approvals and was found to be consistent with the Inland General Plan and Inland Land Use & Development Code.

IMPLEMENTATION/TIMEFRAMES:

The Overtime Brewery developers await a decision on this matter to ensure they have the resources to pay the required fees.

ATTACHMENTS:

1. Fee calculation table
2. Floor plans
3. Correspondence Re Overtime Brewery

NOTIFICATION:

1. Overtime Brewery applicants

City Clerk's Office Use Only

Agency Action ☐ Approved ☐ Denied ☐ Approved as Amended

Resolution No.: _____ Ordinance No.: _____

Moved by: _____ Seconded by: _____

Vote: _____

☐ Deferred/Continued to meeting of: _____

☐ Referred to: _____

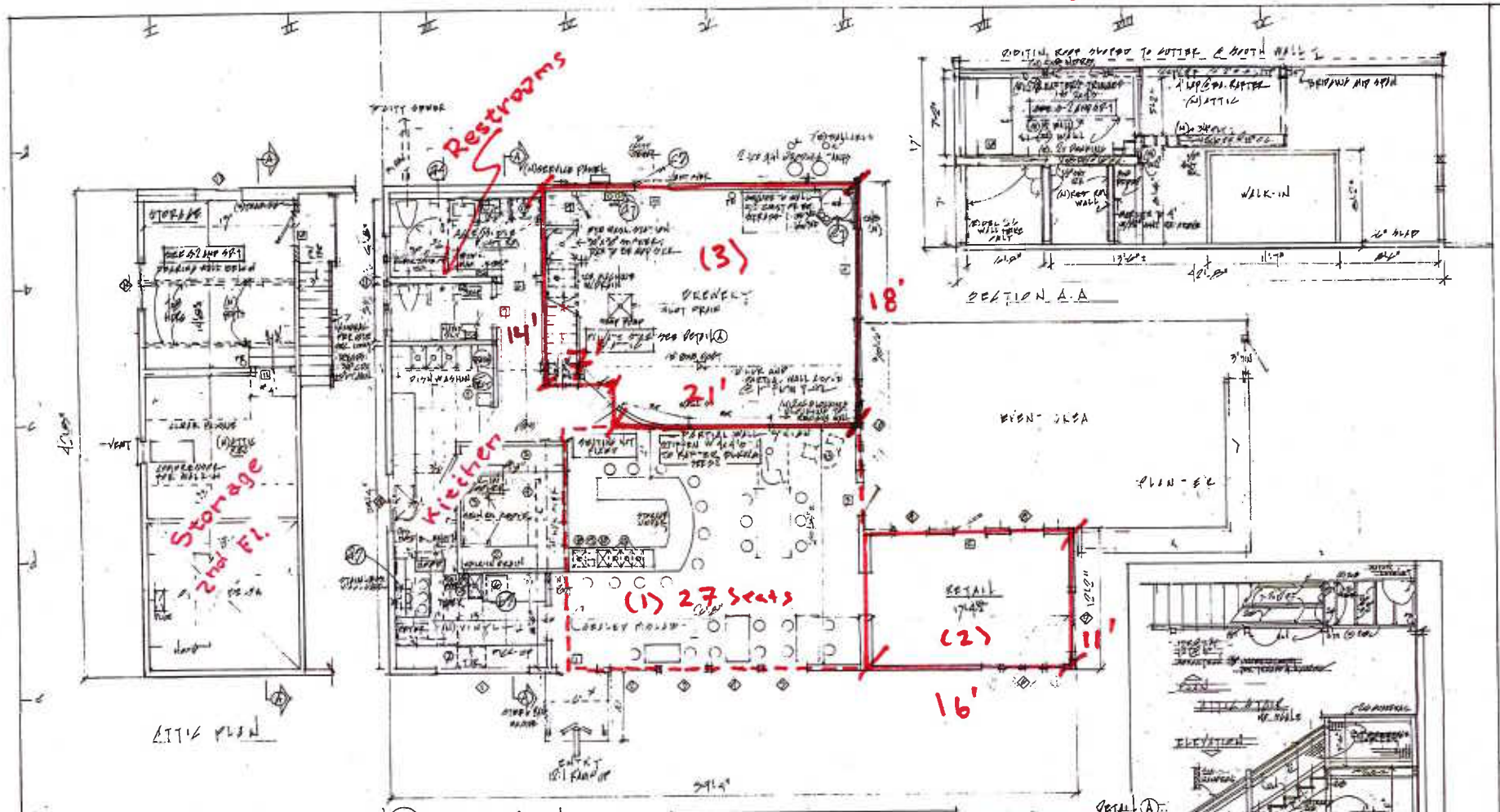
Overtime Brewery, Water & Sewer fee options

Note: this does not include all applicable fees

	Brewery/Retail/Food & Drink Service			Brewery/Retail		
	Water	Sewer	Total	Water	Sewer	Total
Water/Sewer Rates:						
Permit & Insepction	$70.00	$130.00	$200.00	$70.00	$130.00	$200.00
Capacity	$28,801.33	$30,882.84	$59,684.17	$14,612.13	$15,772.35	$30,384.48
Service Connection	$3,481.49	$0.00	$3,481.49	$3,481.49	$0.00	$3,481.49
Fire Sprinkler	$6,430.77	$0.00	$6,430.77	$6,430.77	$0.00	$6,430.77
Engineering	$90.00	$0.00	$90.00	$90.00	$0.00	$90.00
Water & Sewer subtotal	$38,873.59	$31,012.84	$69,886.43	$24,684.39	$15,902.35	$40,586.74
Storm Drainage :			$1,458.66			$1,458.66
Water/Sewer Credit for Previous Use (Tire Store)	(1,793.03)	(1,937.39)	(3,730.42)	(1,793.03)	(1,937.39)	(3,730.42)
Net Water/Sewer Fee	$37,080.56	$29,075.45	$66,156.01	$22,891.36	$13,964.96	$36,856.32
Total, Sewer/Water/Drainage Fees			**$67,614.67**			**$38,314.98**
Water/Sewer Credit for Previous Use (Gallery & Paper Manufacture)	(5,453.79)	(5,870.89)	(11,324.68)	(5,453.79)	(5,870.89)	(11,324.68)
Net Water/Sewer Fee	$33,419.80	$25,141.95	$58,561.75	$19,230.60	$10,031.46	$29,262.06
Total, Sewer/Water/Drainage Fees			**$60,020.41**			**$30,720.72**

Divided OT Brewery Bldg into 3 parts ; (1)- Food & Beverage | (2)- Retail | (3)- Brewery

Units : 27 Seats | 176 Sq. ft | 476 Sq. ft



WINDOWS

1. 8-0 X 2-0 FIXED, DUAL PANE, (NEW, TO REPLACE 6-0 X 5-0 (EXISTING)
2. 4-0 X 3-0 FIXED, DUAL PANE, TEMPERED (NEW, TO REPLACE (EXISTING)
3,4,5. 4-0 X 5-0 FIXED, SINGLE PANE
6. 7-0 X 3-0 FIXED, SINGLE PANE
7. 6-0 X 3-0 GLIDE, DUAL PANE
8. 3-0 X 3-0 FIXED
9. 3-0 X 3-0 FIXED
10. 8-0 X 3-0 FIXED, SINGLE PANE
11. 8-0 X 3-0 FIXED, SINGLE PANE
12. 5-0 X 3-0 GLIDE, DUAL PANE
13. 4-0 X 2-0 GLIDE, DUAL PANE (NEW)
14. 4-0 X 2-0 GLIDE, DUAL PANE (NEW)

DOORS

1. 3-6 X 7-0 1 3/4" ONE LIGHT, GALVANIZED STEEL, ACCESSIBLE EGRESS
2. 2-8 X 6-8 1 3/4" H.C. GALV. STEEL
3. 2-8 X 6-8 1 3/4" H.C. GALV. STEEL
4. 8-0 X 8-0 STEEL ROLL-UP (E)
5. 3-0 X 6-8 1 3/4" H.C. STEEL, EGRESS
6. 3-0 X 6-8 1 3/8" H.C. STEEL, ACCESSIBLE
7. 2-8 X 6-8 1 3/8" H.C. STEEL
8. 3-0 X 4-0 CAFÉ DOORS
9. 2-0 X 6-8 HC SLAB
10. 3-0 X 6-8 HC SLAB (verify)
11. 5-0 X 5-0 HC SLAB (verify)

NOTES:

ALL DIMENSIONS TO BE VERIFIED IN FIELD

FE FIRE EXTINGUISHER, TYPE A-10BC, TYP.

(24) SEE ITEM 'A' P4 - TYPICAL NOTE

RESTROOMS TO HAVE MECHANICAL VENTILATION AS PER CBC 2013

ACCESSIBLE REST RM - 80 CFM; OTHER - 42 CFM MIN.

DOORS TO BE SELF-CLOSING, TIGHT FITTING

(1) LINEN HAMPER
(2) SHELVING
(3) REACH-IN FREEZER
(4) KEG STORAGE
(5) HAND SINK
(6) U-COUNTER FRIG (12 cu.')
(7) U-COUNTER TRASH/RECY
(8) U-COUNTER HAND SINK
(9) U-COUNTER SINKS
(10) DUMP SINK
(11) FLOOR SINK BELOW
(12) EMPLOYEE LOCKERS
(13) EMPLOYEE BREAK AREA

APPROVED
COMMUNITY DEVELOPMENT DEPARTMENT
DATE

VERIFY ALL DIMENSIONS IN FIELD

SEE ENGINEERING SHEETS FOR ALL STRUCTURAL REQUIREMENTS

VERIFY ANY DESIGN CHANGES WITH ARCHITECT; ANY STRUCTURAL CHANGES WITH ENGINEER

RESPONSIBILITY NOTIFICATION

Let it be known that these documents of design and working drawings as required by my client are to the best of my knowledge complete and acceptable by city, county, and state authorities concerning requirements of present day construction. If any items of standard requirements have been omitted from said drawings they shall be the responsibility of the owner/builder or contractor during the course of construction. If there are discrepancies of any type related to methods of construction, interpretations of drawings, written notations, or dimensions, said discrepancies shall be brought to the attention of the designer prior to commencing actual construction. Once proceeding with actual construction said issues shall be the responsibility of the owner/builder or contractor.

SAM WALDMAN ARCHITECTURE
P.O.B. 49 MENDOCINO, CA 95460
tesarole@mcn.org 707-318-5385
C 31874

FLOOR PLANS; SECTION

OVERTIME BREWERY

190 E. ELM ST. · FORT BRAGG, CA

REVISIONS

DATE

Lemos, June

From: Chuck & Suzye <cmtsro@mcn.org>
Sent: Wednesday, May 18, 2016 8:55 AM
To: Lemos, June
Subject: Overtime Brewing

If the City of Fort Bragg wants to encourage new businesses please reconsider the onerous capacity fee that has been imposed on Overtime Brewing.

Thank You, Chuck Taylor

Lemos, June

From: Suzye <suzyeo@sbcglobal.net>
Sent: Wednesday, May 18, 2016 7:35 PM
To: Lemos, June; Jones, Marie; Ruffing, Linda; Varga, Tom; Barber, Teri Jo; Prairie, Crystal; Smith, John; Daniels, Heath; coneill@fortbragg.com
Subject: Overtime Brewery: Please distribute to all Council Members and Planning Commission Members and appropriate departments

> We have recently become aware and are extremely concerned about the many obstacles that Overtime Brewery have encountered in their pursuit of opening their business in Fort Bragg. We attended the Planning Commission meeting where Overtime was approved for their business. As we recall, it appeared clear to us that they are to open a brewery with some Mendocino wines, other beverages and some food to accompany their beer. We believe it is to be a brewery highlighting local brewed beer with some food.
>
> We have been informed that clear communication with various city departments has been difficult resulting in additional fees that appear unreasonable. At the Planning meeting we attended we interpreted many of the comments that the City was "new business" friendly and the City supported and welcomed new businesses. With the many vacant store fronts we view daily this appears hard for us to believe.
>
> We have observed in our seven years of living in Fort Bragg that North Coast Brewery and other venues such as Piaci's, Sea Pal, Djangos, Golden West, Sea Valley and most restaurants serve and highlight craft beers. We have talked with tourists who specifically come for North Coast beers and other craft beers. It seems clear to us that another venue with locally brewed beers will contribute to this growing national trend and only serve to bring more people to visit our community.
>
> We hope that the various City departments will review their actions, improve their communication, better assist new businesses in the various departments and truly be "new business friendly". We understand that it is a two way street and that the various departments are busy with their own nuances and regulations. The Overtime owners are extremely competent and reasonable individuals with much experience. If they feel communication has been hampered we believe that the city needs to take notice of this and work with Overtime to resolve differences and work together to truly be "new business friendly".

> We also hope that capacity fee imposed with be dismissed due to the City's communication difficulties with Overtime Brewery or at least be significantly reduced to reflect the true nature of this business venture. It would be a significant loss to the city and our community if this business does not open.

Sincerely,
Suzye Ogawa and Chuck. Taylor
245 W. Fir St, Fort Bragg, CA

Lemos, June

From: Chuck <cmta@sbcglobal.net>
Sent: Thursday, May 19, 2016 8:39 AM
To: Lemos, June
Subject: Overtime Brewing

Please inform any and all responsible parties that we The City of Fort Bragg need the energy and ambitions of people like the folks behind Overtime Brewing. Thank You

Lemos, June

From: patty joslyn <22pearls@gmail.com>
Sent: Thursday, May 19, 2016 8:27 PM
To: overtimebrewing@gmail.com; Lemos, June
Subject: Overtime Brewery

From our house we walk every morning around the sweet, sometimes sad, town of Fort Bragg.
There are several empty storefronts, many which could use a new coat of paint.
In our eyes and minds we think and say Yeah! to folks wanting to start up something new.
Let's continue to bring life and resources to town. Let's bring people and monies and down right joy.
Not only do we need to open our arms and thoughts we also must also entice and make things a bit easier.
The good folks connected to Overtime Brewery are hard-working forward-thinking people.
Let's, as a community, invite them in with ease and truth.
And let's try like heck to keep their costs in a range called reasonable with no more or new surprises.
It's Wonderful to think our great town could be even better.
Thank uou for your time in reading this and looking beyond today.

Patty Joslyn and Larry Babic

all is connected to the divine.
any given moment is a place of blessing.

www.22pearls.blogspot.com

Lemos, June

From: Steven Taylor <slt1954@gmail.com>
Sent: Thursday, May 19, 2016 9:42 PM
To: Lemos, June
Subject: Overtime Brewery

Dear Ms. Lemos,

I was able to attend the Planning Commission meeting where Overtime was approved for their brewery business. It appeared clear to me that the commission is to open a brewery with some Mendocino wines, other beverages, and small plate foods.

I've become aware that communication with the various city departments has been difficult and "unclear" resulting in additional fees that appear unreasonable and would create a stumbling block for any new business. At the planning meeting, many of the comments from the City were interpreted as being "new business" friendly and that the City supportive and welcoming to new businesses. With the many vacant storefronts throughout town, I would think that the city has to be even more "Business friendly".

I have seen over my years of visiting Fort Bragg that North Coast Brewery and other venues such as Piaci's, Sea Pal, Django's, the Golden West, Sea Valley and most restaurants serve and highlight craft beers. I have spoken with many tourists who *specifically* come for the "craft beer and food experience" featuring local craft beers and, of course, the beautiful scenery. It seems to me

that a new brewery owned and run by Fort Bragg locals can not only contribute to the local economy (to local jobs, to city tax coffers, as another tourist destination)

I hope that the city of Fort Bragg will review their actions, improve their communication, better assist new businesses be more “new business friendly”. I understand that the various departments within the city are busy with their own nuances and regulations. The owners of Overtime are extremely competent and reasonable individuals with much experience in the world of food and brewing. If Overtime feels communication has been hampered, I believe the city should take notice of this and work to resolve these differences and work together. That to me is "business friendly".

I also hope that capacity fee imposed will be dismissed, if for no other reason, due to the city's "communication difficulties" that they had with Overtime Brewery...or at least be significantly reduced to reflect the true nature of this business venture being a brewery. I believe that the city of Fort Bragg would be making a mistake to not embrace and for lack of a better word, nurture this business. A business that will only add to the local community in so many ways.

Side note: I am not a Fort Bragg resident at this time, but hope to be one soon! I have family that lives in town and I visit multiple times a year. I am also a craft beer enthusiast. I belong to a

homebrewers organization, The LA Ale Club and am friends with many people in the brewing industry. The northern California has been a "beer destination" for quite some time and is only growing. Adding Overtime Brewing to that beer-map will only increase the North Coast as a tourist destination.

Thank you for your time and consideration,

Steven Taylor

1430 Stone Gate Street

Monterey Park CA 91754

Lemos, June

From: Katee Taylor <kateet@gmail.com>
Sent: Friday, May 20, 2016 2:18 PM
To: Lemos, June
Subject: Overtime Brewery

Please accept this statement as our support for Overtime Brewing Co. and as our expression of concern over the capacity fees that are being imposed on them since initial approval last Aug. I understand this promising future business is being assessed an exorbitant fee, evaluated as a restaurant establishment and not as brewery, which seems unjust and needs immediate correction or some reform. This incredible fee would be make it virtually impossible for this new business (a great potential asset for our community) , to ever come to fruition. Please reconsider your decision on assessing this fee and enable the Overtime Brewing Co. to progress in this business endeavor without any further delays or obstacles. We are Fort Bragg citizens, property owners, tax payers, business owner, partners and parents and Thank you for your service and your reflective consideration in this matter.

Lemos, June

From: carolynmae@juno.com
Sent: Friday, May 20, 2016 3:40 PM
To: Lemos, June
Subject: overtime brewing company

Dear City Council Members--

Ths is to request that you reconsider the $70,000 fee that the new local business Overtime Brewing Company is being assessed--they are not a restaurant and should not be charged wastewater capacity fees as if they were. I have heard that they have hired a consultant who is a specialist in brewery wastewater treatment, and that both speaks to their sincerity in dealing with their water use and to the possibility that they should not need to pay any capacity fees at all. If they are assessed such fees, they should be based on their use permit (craft brewery not restaurant), and they should be permitted to make payments since they were not informed of such a fee until almost a year after it was assessed.

Overtime Brewing Company is exactly the kind of business the city economic plan wants to encourage--homegrown, attractive, and sure to contribute to taxes that the city depends on. Fort Bragg wants to be business friendly, and better communication between city departments and clear steps to follow to open a business here, including fee assessments, are essential.

Please provide the city council members and the planning commission members with a copy of this letter.

Thank you.

Carolyn Schneider
Fort Bragg
707-513-6657

The New York Times
Finding Love Again, This Time With A Man http://thirdpartyoffers.juno.com/TGL3141/573f92561aead125519cbst01vuc

City of Fort Bragg

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

Text File

File Number: 16-205

Agenda Date: 5/23/2016 **Version:** 1 **Status:** Business

In Control: City Council **File Type:** Staff Report

Agenda Number: 6D.

Receive Overview of Operable Unit E Removal Action Work Plan (OU-E RAW) from City's Environmental Consultant Glenn Young and Provide Direction to Staff

AGENCY:	**City Council**
MEETING DATE:	**May 23, 2016**
DEPARTMENT:	**Administration**
PRESENTED BY:	**L. Ruffing/G. Young**

AGENDA ITEM SUMMARY REPORT

TITLE:
RECEIVE OVERVIEW OF OPERABLE UNIT-E REMOVAL ACTION WORKPLAN (OU-E RAW) AND PROVIDE DIRECTION TO STAFF

ISSUE:
The State Department of Toxic Substances Control (DTSC) has initiated the public comment period for the Removal Action Workplan for Operable Unit-E at the former Georgia-Pacific Mill Site. Since 2005, environmental consultant Glenn Young has participated in the mill site remediation process on behalf of the City of Fort Bragg. Glenn, together with toxicologist Mark Stelljes, has the expertise to review and comment on the various documents submitted to DTSC by Georgia-Pacific. Glenn will provide a presentation summarizing the proposed OU-E RAW and answer any questions posed by the Council. The Council should consider whether it wishes to submit comments to DTSC during the public comment period and, if so, should provide direction to staff who can prepare a letter on the Council's behalf. The public comment period ends on June 13th, DTSC conducted a Community Workshop on the draft RAW on April 21st and will conduct another workshop on June 2nd.

RECOMMENDED ACTION:
If Council wishes to submit any comments to DTSC on the draft RAW, direction should be provided to staff regarding the substance of the comments and a letter will be drafted.

ALTERNATIVE ACTION(S):
No action.

ANALYSIS:
The DTSC Fact Sheet for the OU-E RAW is included as Attachment 1.

FISCAL IMPACT:
The City is not responsible for the cleanup of OU-E – those costs will be borne by Georgia-Pacific. The City does incur costs associated with the peer review services provided by Glenn Young.

IMPLEMENTATION/TIMEFRAMES:
Once the public comment period on the draft RAW closes, DTSC will prepare a response to comments document. Following that, the Council will review the RAW with the response to comments document and the Mitigated Negative Declaration and, acting under the authority of the Polanco Redevelopment Act, the Council will either accept or reject the RAW. If the Council accepts the RAW, DTSC will then take action.

ATTACHMENTS:
1. DTSC Fact Sheet

NOTIFICATION:
1. Glenn Young
2. Tom Lanphar, DTSC

AGENDA ITEM NO. 6D

City Clerk's Office Use Only

Agency Action ☐ Approved ☐ Denied ☐ Approved as Amended

Resolution No.: _____ Ordinance No.: _____

Moved by: _____ Seconded by: _____

Vote: _____

☐ Deferred/Continued to meeting of: _____

☐ Referred to: _____

COMMUNITY UPDATE

The mission of DTSC is to protect California's people and environment from harmful effects of toxic substances through the restoration of contaminated resources, enforcement, regulation and pollution prevention.

DTSC Proposes a Removal Action Workplan for Operable Unit-E at the former Georgia-Pacific Mill Site

DTSC invites you to comment on the draft Removal Action Workplan (draft RAW) for Operable Unit-E (OU-E) of the former Georgia-Pacific Mill Site (Site) located at 90 West Redwood Avenue, Fort Bragg, California, 95437. The draft RAW proposes cleanup actions for soil within the Terrestrial Lowland area and sediment in the South Ponds area (Ponds 1-4), Pond 7, and portions of the Riparian Channel. Please see the aerial on page 2.

The RAW is an interim action and not the final cleanup. DTSC will further evaluate the cleanup for these areas in a future Feasibility Study and future Remedial Action Plan (RAP).

DTSC will host two Community Workshops on the draft RAW in Fort Bragg, with the first Workshop on April 21 and the second on June 2, 2016. The 30-day public comment period on the draft RAW and the Mitigated Negative Declaration (MND) will begin on May 12, 2016.

There is no immediate health risk at the Site, because the public is not currently exposed to contaminated soil or groundwater. However, the DTSC approved Baseline Human Health and Ecological Risk Assessment concluded that contaminants in OU-E could pose a future risk to human health. Soil contaminants in OU-E include lead, benzo (a) pyrene, dioxin, and diesel fuel.

Why a Removal Action Workplan for a part of OU-E?

DTSC plans this Removal Action to support the construction and public use of the central portion of the Fort Bragg Coastal Trail in 2017. The City of Fort Bragg will construct the section of the Coastal Trail through this area in 2017. Public access will occur once construction is complete and this removal work is necessary in 2016 in order to be protective of human health once the trail opens in 2017. This removal will speed up cleanup where digging out soil and trucking it off-site is our recommended choice. If approved, DTSC will oversee the removal work to make sure that all the contractors perform the cleanup safely and responsibly for all.

OU-E Location

OU-E has about 28 acres in the west-central portion of the Site, as well as 10 man-made ponds (Ponds 1 through 9 and the North Pond). Georgia Pacific's historic lumber mill is in OU-E. Workers used Pond 8 for logs. Fire crews used Pond 9 for fire protection. Waste water flowed into Ponds 1, 2, 3, 4, and 7. Workers used water to debark logs and the water then flowed into Pond 6 and North Pond. Storm water flowed into Pond 5.

Community Workshops

DTSC to host two Community Workshops on the draft RAW April 21 and June 2, 2016.

A 30-day public comment period will begin May 12, 2016.

Please submit written comments sent by June 13, 2016 to:

Mr. Tom Lanphar
DTSC Project Manager
700 Heinz Avenue
Berkeley, California 94710

Tom.Lanphar@dtsc.ca.gov

You can view documents electronically, at DTSC's Envirostor website: www.envirostor.dtsc.ca.gov/public/ using the following steps:

Click on "Site/Facility Search" under "Tools;"
Enter "Fort Bragg" in the city field, and "Georgia-Pacific" in the facility field, then click "Get Report";
Click the "Report" link next to "Georgia-Pacific Corporation";
Click the "Community Involvement" tab to find the draft OU-E RAW and Initial Study/Mitigated Negative Declaration.

Proposed Cleanup Actions

The OU-E draft RAW describes cleanup activities proposed for four areas. DTSC recommends cleanup approaches:

- **Soil Excavation and Disposal:** DTSC proposes soil excavation and disposal to remove soil contaminants at 9 locations within the Terrestrial Lowland area. Please see the aerial at right. Soil contaminants include lead, dioxin, benzo (a) pyrene and petroleum. Workers will remove about 1,082 cubic yards of soil during the summer of 2016. Trucks will transport the soil off-site to a state permitted and inspected landfill.
- **Sediment Excavation and Disposal:** Additionally, DTSC proposes sediment excavation and disposal to remove contaminated sediments in Ponds 2, 3 and Pond 7, and within a channel located in the Riparian area. Please see the aerial at right. This removal targets dioxin in sediment. We plan to remove about 1,680 cubic yards of sediment. Water will drain from the removed sediment before it is loaded onto trucks. Trucks will transport the sediment off-site to a state permitted landfill.

Safety and Dust Control During Cleanup

DTSC plans the following actions to protect the public and to minimize dust:

- Driving all vehicles at slow speeds, not exceeding 15 miles per hour, while on the property;
- Stopping activities if winds exceed 15 miles per hour for 15 minutes or if wind gusts exceed 25 miles per hour;
- Spraying water on all work areas, stockpiles, and roadways to control dust;
- Covering stockpiled soil with heavy duty plastic sheeting;
- Monitoring the air for dust and volatile organic compounds;
- Removing soil and debris from truck trailers, tires, and cabs before leaving the excavation area; and
- Securing trucks with sealed covers before leaving. the work area.

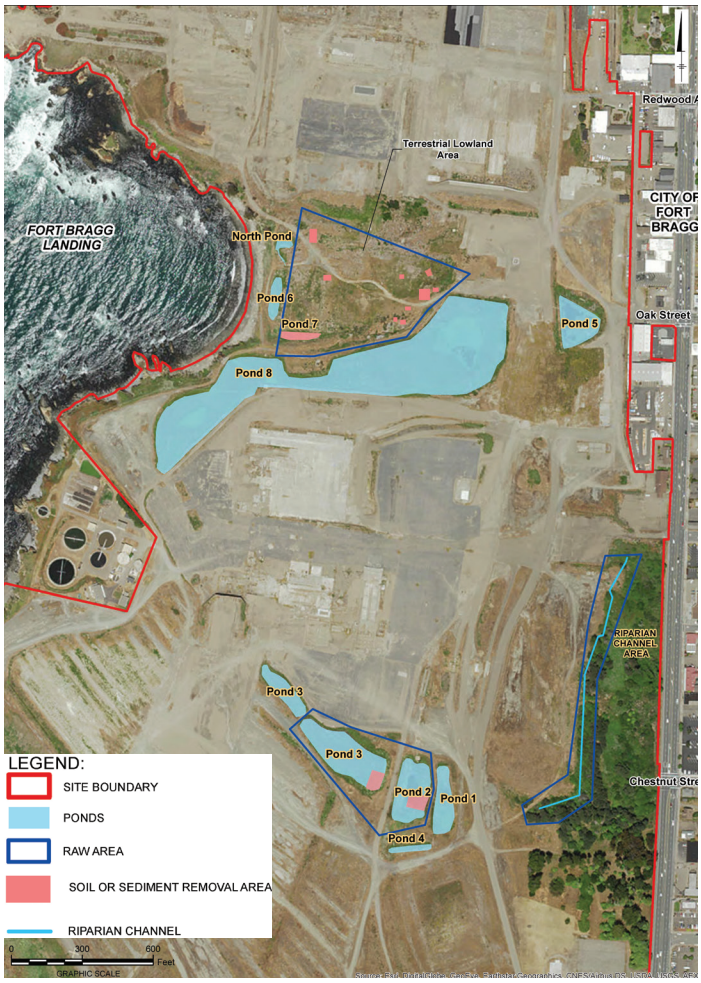


Figure 1 – DTSC plans soil and sediment removals in the Terrestrial Lowland area, Ponds 2, 3, and 7, and at locations within the Riparian Channel.

Proposed Excavation Schedule and Truck Route

If approved, the OU-E removal work will occur at the same time as the DTSC approved work in OU-C and D. All will take place during the late summer and early fall of 2016. This work reduces risk to public health and the sources of groundwater contamination. Depending on the amount of soil and sediment removed, crews may have to use up to 250 trucks. Truckers will drive down State Highway 1 to State Highway 20. They will turn left onto State Highway 20 to drive over to State Highway 101.

California Environmental Quality Act (CEQA)

Consistent with CEQA, DTSC has prepared an Initial Study to evaluate the potential impacts of the proposed project on the environment. The Initial Study findings show that the project should not have a significant effect on public health or the environment as long as we include measures to protect cultural resources, reduce dust emissions, and protect sensitive environmental habitat. Therefore, we have prepared a proposed Mitigated Negative Declaration for the draft RAW. You can review and comment on both the Initial Study and proposed Mitigated Negative Declaration during the public comment period.

Community Workshops

DTSC will hold two Community Workshops on the OU-E draft RAW and the former Mill Site cleanup at 6:30 P.M. at the Town Hall in Fort Bragg on April 21, 2016 and June 2, 2016. At the first Workshop, we will present the proposed removal and future cleanup efforts and answer questions. The second Workshop gives you a chance to tell us what you think about the draft RAW.

Next Steps

We will accept written public comments on the draft RAW and draft Mitigated Negative Declaration until June 13, 2016. At the end of the public comment period, DTSC will consider all public comments. Then based on our evaluation, we will make any needed changes to the draft RAW for OU-E. Also, we will prepare a Response to Comments and mail a copy to those who provided comments or requested to receive a copy. We will place a copy of this document in the places listed below.

Coastal Development Permit

The City of Fort Bragg's Planning Commission will consider a Coastal Development Permit for the implementation of the RAW. The Coastal Development Permit will be processed after DTSC approves the RAW and MND. The Planning Commission will make the final determination about the project in July or August of 2016.

Where to Find Information

The City of Fort Bragg's Planning Commission will consider a Coastal Development Permit for the implementation of the RAW. The Coastal Development Permit will be processed after DTSC approves the RAW and MND. The Planning Commission will make the final determination about the project in July or August of 2016.

Fort Bragg Library
499 East Laurel Street
Fort Bragg, CA 95437
(707) 964-2020

Fort Bragg City Hall
Planning Counter
416 N. Franklin Street
Fort Bragg, CA 95437
(707) 961-2823

Full Administrative Record:
DTSC
700 Heinz Avenue
Berkeley, CA 94710
(510) 540-3800
(please call for an appointment)

You can view documents electronically, at DTSC's Envirostor website: *www.envirostor.dtsc.ca.gov/public/*. If you have questions, please contact:

Mr. Tom Lanphar
DTSC Project Manager
700 Heinz Avenue
Berkeley, California 94710
(510) 540-3776
Tom.Lanphar@dtsc.ca.gov

Nathan Schumacher
Public Participation Specialist
(916) 255-3650, toll free at
(866) 495-5651
Nathan.Schumacher@dtsc.ca.gov

News Media Inquiries only:
Sandy Nax
DTSC Public Information Officer
(916) 327-6114
Sandy.Nax@dtsc.ca.gov

NOTICE TO HEARING IMPAIRED: TTY users may use the California Relay Service @ 711 or 1-800-855-7100. You may also contact the Public Participation Specialist listed at the end of this update.

Department of Toxic Substances Control
Nathan Schumacher, Public Participation Specialist
8800 Cal Center Drive
Sacramento CA 95826-3200

Inside: Information on Georgia Pacific Former Mill Site, Fort Bragg, California

For more information about the DTSC, please visit our web site at: *www.dtsc.ca.gov*

City of Fort Bragg

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

Text File

File Number: 16-204

Agenda Date: 5/23/2016 **Version:** 1 **Status:** Consent Agenda

In Control: City Council **File Type:** Resolution

Agenda Number: 7A.

Adopt City Council Resolution Approving a Professional Services Agreement with KASL Consulting Engineers for Preparation of Plans and Specifications for the 2016 Streets and Alleys Rehabilitation Project and Authorizing City Manager to Execute Same (Amount Not to Exceed $93,950; Account No. 414-4870-0731)

On May 13, 2016, two civil engineering consulting firms submitted proposals for survey and design of the 2016 Streets and Alleys Rehabilitation Project. The Public Works Department reviewed the proposals and recommends KASL Consulting Engineers as the design engineer for the project. Their proposal was responsive, they are qualified to perform the work, and they submitted the lowest bid. The scope of the project includes preparation of plans and specifications for rehabilitation of priority streets and alleys during the 2016 construction season. Locations include N. Sanderson Way from Cedar St. to the north end, S. Franklin St. from Oak St. to N. Harbor Dr., Boatyard Drive /Ocean View Dr. from Main St. (Highway 1) to Boatyard Shopping Center, the alley between S. Main St. (Highway 1) and S. Franklin St. from Walnut St. to Chestnut St., the alley between S. Whipple and Grove St. from Walnut St. to Chestnut St., the alley between N. Franklin St. and N. McPherson St. from Redwood Ave. to Laurel St., and the alley between Stewart St. and Main St. (Highway 1) from Spruce St. to Elm St. The not-to-exceed contract amount is $93,950.

RESOLUTION NO. ___*-2016*

RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH KASL CONSULTING ENGINEERS FOR PREPARATION OF PLANS AND SPECIFICATIONS FOR THE 2016 STREETS AND ALLEYS PROJECT AND AUTHORIZING CITY MANAGER TO EXECUTE SAME (AMOUNT NOT TO EXCEED $93,950; ACCOUNT NO. 414-4870-0731)

WHEREAS, on January 25, 2016, City Council directed the Public Works Department to go forward with improvements to several streets and alleys; and

WHEREAS, on May 13, 2016, proposals for engineering design services for the rehabilitation were received from LACO Associates and KASL Consulting Engineers; and

WHEREAS, those proposals were reviewed and evaluated on the basis of capabilities, qualifications, and responsiveness to scheduling constraints; and

WHEREAS, KASL Consulting Engineers' proposal was rated as the best proposal; and

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

1. KASL Consulting Engineers is qualified to provide necessary professional services to complete plans and specifications for the 2016 Streets and Alleys Rehabilitation Project; and
2. KASL Consulting Engineers is prepared to meet the scheduling constraints to allow for construction of these improvements during 2016.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby approve a Professional Services Agreement with KASL Consulting Engineers for Preparation of Plans and Specifications for the 2016 Streets and Alleys Project, which is attached as Exhibit A, and Authorizes the City Manager to execute same (Amount Not to Exceed $93,950; Account No. 414-4870-0731).

The above and foregoing Resolution was introduced by Councilmember _____, seconded by Councilmember _____, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 23rd day of May, 2016, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
DAVE TURNER,
Mayor

ATTEST:

_____
June Lemos
City Clerk

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT

AGREEMENT

This Agreement is made and entered into this _____ day of May, 2016 by and between the City of Fort Bragg, a California Municipal Corporation, 416 N. Franklin Street, Fort Bragg, California, 95437 ("City"), and KASL Consulting Engineers, 7777 Greenback lane, Suite 104, Citrus Heights, CA, a "Consultant."

RECITALS

WHEREAS, City has determined that it requires the following professional services from a consultant: to prepare plans and specifications for the 2016 Streets and Alleys Rehabilitation Project; and

WHEREAS, Consultant represents and warrants that it is fully qualified to perform such professional services by virtue of specialized experience and training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, the legislative body of the City on May 23, 2016, by Resolution No. _____-2016 authorized execution of this Agreement on behalf of the City in accordance with Chapter 3.20 of the City Municipal Code and/or other applicable law;

NOW, THEREFORE, City and Consultant, for the consideration hereinafter described, mutually agree as follows:

1. DESCRIPTION OF SERVICES OR SCOPE OF WORK

The services to be performed under this Agreement ("Services" or "Work") are as follows: preparation of plans and specifications for rehabilitation of priority streets and alleys during the 2016 construction season. Locations include N. Sanderson Way from Cedar St. to the north end, S. Franklin St. from Oak St. to N. Harbor Dr., Boatyard Drive /Ocean View Dr. from Main St. (Highway 1) to Boatyard Shopping Center, the alley between S. Main St. (Highway 1) and S. Franklin St. from Walnut St. to Chestnut St., the alley between S. Whipple and Grove St. from Walnut St. to Chestnut St., the alley between N. Franklin St. and N. McPherson St. from Redwood Ave. to Laurel St., and the alley between Stewart St. and Main St. (Highway 1) from Spruce St. to Elm St. The Services are further described in Consultant's proposal (the "Proposal"), which is attached to and made a part of this Agreement as Exhibit A.

2. TERM

EXHIBIT A

The Agreement term will commence on May 25, 2016, and expire on August 31, 2016, unless the Agreement term is amended or the Agreement is terminated in accordance with its terms.

3. PAYMENT TERMS AND NOT TO EXCEED AMOUNT

City agrees to pay Consultant for Services that are actually performed in accordance with this Agreement. To be eligible for payment, Consultant invoices must be submitted not more often than monthly to the City and list the Services performed and the amounts to be paid according to the cost categories and prices in the Proposal. In no event will the City's obligation to pay the Consultant under this Agreement exceed $93,950 (the "Not to Exceed Amount"), unless this Agreement is first modified in accordance with its terms. Where the Proposal provides for compensation on a time and materials basis, Consultant must maintain adequate records to permit inspection and audit of Consultant's time and material charges under this Agreement. Consultant will make such records available to the City during normal business hours upon reasonable notice. In accordance with California Government Code § 8546.7, if the Not to Exceed Amount exceeds TEN THOUSAND DOLLARS ($10,000.00), this Agreement and the Consultant's books and records related to this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

4. TIME OF COMPLETION

Consultant must commence performance of the Services upon receipt of written direction to proceed from City. Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 7 below and to satisfy Consultant's obligations hereunder. Consultant will complete the Services in accordance with this Agreement by August 31, 2016 (the "Time of Completion"). The Time of Completion may only be modified by an amendment of the Agreement in accordance with its terms.

5. INDEPENDENT CONTRACTOR

Consultant and City agree that the Consultant will perform the Services as an independent contractor and not as an employee or agent of the City. Persons employed or utilized by Consultant in the performance of the Services will not be employees or agents of the City. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

6. SUBCONTRACTING

Consultant may subcontract portions of the Services upon the prior written approval of the City. Consultant will be solely responsible for payment of such subcontract Services. No contractual relationship will exist between any such subcontractors of the Consultant and the City.

Subcontractor agrees to be bound to Consultant and City in the same manner and to the same extent as Consultant is bound to City under the Agreement. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

7. STANDARD OF PERFORMANCE

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

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

8. OTHER GOVERNMENTAL REGULATIONS

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

9. USE OF RECYCLED PRODUCTS

Consultant shall endeavor to prepare and submit all reports, written studies, and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

10. PREVAILING WAGE LAWS

In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which

the Work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in the California Labor Code must be paid to all workers engaged in performing the Work. In accordance with California Labor Code Section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed. In accordance with California Labor Code Section 1773, the City has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the project. In accordance with California Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at the City Public Works Department and will be made available on request. Throughout the performance of the Work the Contractor, and its subcontractors, must comply with all provisions of the Contract Documents and all applicable laws and regulations, including without limitation Labor Code Sections 1776 and 1810-1815, that apply to wages earned and hours worked in performance of the Work.

Pursuant to California Labor Code Section 1771.1, this Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR). A Contractor may not bid, nor be listed as a subcontractor for any bid proposal submitted for public work without first registering with the DIR and paying the annual fee. Application and renewal are completed online at http://www.dir.ca.gov/Public-Works/PublicWorks.html. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

Contractor, and its subcontractors, shall be responsible for compliance with Labor Code Section 1776. This Project is subject to prevailing wage compliance monitoring and enforcement by the Department of Industrial Relations. Contractor must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the work for this Project. Each payroll record shall contain or be verified by a written declaration as required by Labor Code Section 1776. The payroll records must be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor as required by Labor Code Section 1776.

11. INDEMNITY

To the maximum extent permitted by law, Consultant shall, at its own expense, indemnify, defend with counsel acceptable to the City, (which acceptance will not be unreasonably withheld), and hold harmless City and its officers, officials, employees, agents and volunteers ("Indemnitees") from and against any and all liability, loss, damage, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, claims expenses, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature, whether actual, alleged or threatened, arising out of or in

connection with the Services or Consultant's failure to comply with any of the terms of this Agreement, regardless of any fault or alleged fault of the Indemnitees.

The Consultant's obligation to indemnify, defend and hold harmless under this provision shall not be excused because of the Consultant's inability to evaluate Liability, or because the Consultant evaluates Liability and determines that the Consultant is not or may not be liable. The Consultant must respond within 30 calendar days to any tender for defense and indemnity by the City, unless the time for responding is extended by an authorized representative of the City in writing. If the Consultant fails to accept tender of defense and indemnity within 30 calendar days, in addition to any other remedies authorized by law, so much of the money due or that may become due the Consultant under this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the matter subject to tender, or until the Consultant accepts the tender, whichever occurs first.

The Consultant waives any and all rights to express or implied indemnity against the Indemnitees concerning any Liability of the Consultant arising out of or in connection with the Services or Consultant's failure to comply with any of the terms of this Agreement .

Notwithstanding the foregoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code § 2783, as may be amended from time to time, Consultant's duty to indemnify under this provision shall not apply when to do so would be prohibited by California Civil Code § 2782, as may be amended from time to time.

Notwithstanding the foregoing, to the extent that the Services include design professional services subject to Cal. Civil Code § 2782.8, as amended from time to time, Consultant's duty to indemnify shall only be to the maximum extent permitted by Civil Code § 2782.8.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this agreement.

Consultant/Subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

EXHIBIT A

12. INSURANCE

a. Before commencing performance of the Services, Consultant, at its own cost and expense, must: a) procure "occurrence coverage" insurance of the kinds and in the amounts specified below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services hereunder by the Consultant or its agents, representatives, employees, or subcontractors; and b) submit to the City certificates of insurance and endorsements evidencing insurance coverage that meets the requirements of this section. Consultant must maintain the insurance policies required by this section throughout the Agreement term. The cost of such insurance must be included in the Consultant's proposal.

Consultant agrees to include with all subcontractors in their subcontract the same requirements and provisions of this Agreement including the indemnity and Insurance requirements to the extent they apply to the scope of the subcontractor's work. The Consultant shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in this Agreement prior to commencement of any work and Consultant will provide proof of compliance to the City.

Consultant may not allow any subcontractor to commence work on the Services until Consultant and/or the subcontractor have obtained all insurance required by this Agreement for the subcontractor(s) and submitted certificates of insurance and endorsements evidencing such coverage to City.

b. Workers Compensation Insurance. Consultant must, at its sole cost and expense, maintain Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. Workers' Compensation Insurance as required by the State of California, with coverage providing Statutory Limits, and Employer's Liability Insurance with limits of not less than ONE MILLION DOLLARS ($1,000,000.00) per occurrence must be provided. The insurance must be endorsed to waive all rights of subrogation against City and its officials, officers, employees, and volunteers for loss arising from or related to the Services.

c. Consultant, at its own cost and expense, must maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000.00) per occurrence, TWO MILLION DOLLARS ($2,000,000.00) aggregate, combined single limit coverage for risks associated with Services. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Services or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

d. Except for Workers' Compensation insurance and Professional Liability insurance, all other insurance coverages required pursuant to this Agreement must include or be endorsed to include the following:

(1) City and its officials, officers, employees, agents, and volunteers ("Additional Insured") shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by Consultant. The coverage may contain no special limitations on the scope of protection afforded to City or its officials, officers, employees, agents, or volunteers.

(2) The Additional Insured coverage under the Consultant's policy shall be "primary and non-contributory" and Consultant's coverage will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

e. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured; whichever is greater.

f. The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

g. Insurance coverage required pursuant to this Agreement must include or be endorsed to include the following:

(1) Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

(2) Required insurance coverage may not be suspended, voided, canceled, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City.

h. Consultant, at its own cost and expense, must maintain for the period covered by this Agreement professional liability insurance in an amount not less than

TWO MILLION DOLLARS ($2,000,000) covering errors and omissions. Any deductible or self-insured retention under the required professional liability insurance may not exceed $150,000 per claim.

i. All insurance required under this Agreement must be placed with insurers with a Best's rating of no less than A:VII unless otherwise approved by the City.

j. The City may approve a variation in the foregoing insurance requirements, upon a determination that the coverages, scope, limits, and forms of such insurance are either not commercially available, or that the City's interests are otherwise fully protected.

k. All self-insured retentions (SIR) must be disclosed to City for approval and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or the City. City reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

l. To the extent this Agreement is a "construction contract" as defined by California Civil Code § 2783, as may be amended from time to time, Consultant shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following completion of the Services. In the event Consultant fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Consultant.

13. NON DISCRIMINATION

During the performance of this Agreement, Consultant will not discriminate against any employee of the Consultant or applicant for employment because of race, religion, creed, color, national origin, sex, or age. Consultant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, creed, color, national origin, sex or age.

14. LICENSES & PERMITS

a. BUSINESS LICENSE

Before the City will issue a notice to proceed with the Services, Consultant and any subcontractors must acquire, at their expense, a business license from City in accordance with Chapter 5.04 of the Fort Bragg Municipal Code. Such licenses must be kept valid throughout the Agreement term.

b. OTHER LICENSES AND PERMITS

Consultant represents and warrants to City that Consultant 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.

15. OWNERSHIP OF WORK PRODUCTS AND TREATMENT OF DOCUMENTS

All plans, specifications, reports, designs and other documents prepared by Consultant pursuant to this Agreement shall be and remain the property of the City. Any modification or reuse of such documents by the City without Consultant's prior written consent will be at the City's sole risk. Except as may be otherwise required by law, Consultant will disclose no data, plans, specifications, reports or other documents pertaining to the Services without the prior written consent of City.

16. TERMINATION AND REMEDIES

a. City may terminate this Agreement for convenience by giving at least 10 days written notice to Consultant specifying the termination effective date. Upon receipt of such notice, Consultant may continue performance of the Services through the date of termination. City shall pay Consultant for all Services actually performed in accordance with this Agreement through the termination effective date.

b. If Consultant materially breaches any term of this Agreement, in addition to any other remedies the City may have at law or equity, the City may:

(1) Terminate the Agreement by notice to the Consultant specifying the termination effective date;

(2) Retain, and/or recover from the Consultant at no additional cost to the City, the plans, specification, drawings, reports and other design documents and work products prepared by Consultant, whether or not completed;

(3) Complete the unfinished Services itself or have the unfinished Services completed, and/or;

(4) Charge Consultant, or deduct from monies that may be due or become due the Consultant under this Agreement, the difference between the cost of completing the unfinished Services pursuant to this Agreement and the amount that would otherwise be due Consultant had Consultant completed the Services in accordance with this Agreement.

17. BINDING EFFECT AND ASSIGNMENT PROHIBITION

This Agreement is binding upon City, Consultant, and their successors. Except as otherwise provided herein, neither City nor Consultant may assign, sublet or transfer its

interest in this Agreement or any part thereof without the prior written consent of the other, and any purported assignment without such consent will be void.

18. REPRESENTATIVES

a. City representative for purposes of this Agreement will be Nancy Atkinson, Associate City Engineer. Consultant representative for purposes of this Agreement will be Jack Scroggs, Principal-in-Charge. The parties' designated representatives will be the primary contact persons regarding the performance of the Services. The parties intend that their designated representatives will cooperate in all matters regarding this Agreement and in such manner so as to achieve performance of the Services in a timely and expeditious fashion.

b. Notices:

Any written notice to Consultant shall be sent to:

KASL Consulting Engineers
7777 Greenback Lane, Suite 104
Citrus Heights, CA 95610

Any written notice to City shall be sent to:

June Lemos, City Clerk
City of Fort Bragg
416 N. Franklin Street
Fort Bragg, California 95437

19. INTEGRATION AND AMENDMENT

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

20. CONFLICT OF INTEREST PROHIBITION

City and Consultant will comply with the requirements of the City's Conflict of Interest Code adopted pursuant to California Government Code §87300 et seq., the Political Reform Act (California Government Code §81000 et seq.), the regulations promulgated by the Fair Political Practices Commission (Title 2, §18110 et seq. of the California Code of Regulations), California Government Code §1090 et seq., and any other ethics

laws applicable to the performance of the Services and/or this Agreement. Consultant may be required to file with the City Clerk a completed Form 700 before commencing performance of the Services unless the City Clerk determines that completion of a Form 700 is not required, pursuant to City's Conflict of Interest Code. Form 700 forms are available from the City Clerk.

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

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

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

21. APPLICABLE LAW AND VENUE

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

22. RECOVERY OF ATTORNEYS' FEES

If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret any term of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be

entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

23. SEVERABILITY

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

24. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

IN WITNESS HEREOF, the parties have caused their authorized representative to execute this Agreement on the date first written above.

CITY	CONSULTANT
By: _____	By: _____
Linda Ruffing	(John C.) Jack Scroggs, PE
Its: City Manager	Its: Principal-in-Charge

ATTEST:

[Attach Notary Page]

By: _____
June Lemos
City Clerk

APPROVED AS TO FORM:

By: _____
Samantha W. Zutler, City Attorney

Exhibits: Exhibit A – Consultant's Proposal

Rev. 2016-01-22

E. SCOPE OF WORK

The following scope of work tasks are proposed in response to the City's Request for Proposal.

Document and Data Review

KASL has compiled, from our previous work with the City of Fort Bragg, AutoCAD files of existing water, sewer and storm drainage improvements within and adjacent to the 2016 Project Streets and Alleys. The approximate alignment and size of underground improvements are shown in these files. Vertical data is, however, limited. At some locations depth to flowlines are noted at storm drainage inlets and at storm drainage and sewer manholes. As further described in our scope of work, the alignment of water, sewer and storm drainage facilities will be field verified for each of the Project Streets and Alleys and vertical information will be collected to verify depths to inverts and flowline elevations.

Improvements to existing storm drainage facilities are critical to meeting the objectives of the 2016 Streets and Alleys Rehabilitation Project. Based on review of existing storm water files there are currently no underground storm drainage improvements in North Sanderson Street from Cedar Street to the north end (Street 1). Existing storm drainage facilities are also limited on South Franklin Street from Oak Street to North Harbor Drive (Street 2). There are storm drainage improvements on South Franklin between Hazel Street and Chestnut Street. There are also opportunities for connection to existing storm drains at some of the roadways that intersect South Franklin. Storm drainage improvements in Boatyard Drive / Ocean View Drive (Street 3) are limited to drainage inlets and storm drain pipelines located near the Boatyard Shopping Center.

Review of existing storm drainage facilities within the 2016 Project Alleys indicates that only Alley 1, located between South Main Street and South Franklin Street from Walnut Street to Chestnut Street, is currently improved with underground storm drainage facilities. Existing drainage inlets are, however, limited. There are existing storm drainage improvements at intersecting streets available for Alley 2, located between South Whipple and Grover Street, from Walnut Street to Chestnut Street and for Alley 4, located between Stewart Street and Main Street, from Spruce Street to Elm Street.

A Citywide Storm Drainage Master Plan has been prepared. Existing storm drainage facilities within the 2016 Project Streets and Alleys and opportunities for extension or connection to other adjacent street drainage improvements in conformance with the City Storm Drainage Master Plan will be included in the Document and Data Review task.

With assistance from Cliff Zimmerman, local Fort Bragg Surveyor, right of way documents will be compiled for each of the 2016 Project Streets and Alleys. Accurate delineation of available rights of way is critical to the design of accessible pedestrian facilities in conformance with ADA requirements and City of Fort Bragg Improvement Standards. North Sanderson Way, Street 1, is a narrow roadway with no curb, gutter or sidewalk improvement or bike lanes. Opportunities for providing accessible pedestrian facilities for this Project Street within available rights of way may be limited to curb ramps at the Cedar Street intersection.

In contrast, South Franklin Street, from Oak Street to North Harbor Drive is improved with curb, gutter and sidewalks, Class II Bike Lanes and on-street parking, both sides, throughout most of the Project limits. Curb ramp improvements at each of the South Franklin intersections will be evaluated for conformance with current ADA guidelines and reviewed with the City. There are "gaps" in existing curbs, gutters and sidewalks at the South Franklin Street approach to North Harbor Drive. We will review with the City curb, gutter and sidewalk infill improvements that should be included in the 2016 Streets and Alley Project.

An assessment of surface improvements was conducted for the four alleys of the 2016 Streets and Alley Project as part of the City of Fort Bragg Alley Master Plan prepared by KASL. A similar assessment of existing paved surface conditions will be conducted for the 2016 Project Streets. A summary identifying possible limits of pavement removal and replacement and areas where pavement overlays may be warranted will be prepared for the City as part of this task.

EXHIBIT A

E. SCOPE OF WORK

Deliverables:

- Summary of Project Area Storm Drainage Improvements and Proposed Storm Drainage Master Plan Facilities
- Project Right of Way Maps
- Existing Pedestrian Facilities and ADA Compliant Ramps
- Preliminary Assessment of 2016 Street and Alley Surface Conditions
- Summary of Data Collection Findings

Kick-off Meeting

With the completion of the Document and Data Review task, a Kick-off Meeting will be held with City of Fort Bragg Public Works staff. We will review with the City the goals and objectives of the 2016 Streets and Alley Rehabilitation Project and the preliminary findings compiled for this Project. The City's Schedule and Budget for completion of the Project improvements will be reviewed together with priorities and possible phasing. Aerial photos, ground photos, right of way maps and existing Project area utility plans will be reviewed with staff. KASL will prepare the Kick-off Meeting agenda and prepare the meeting minutes together with the City's directives and action items developed from the Kick-off Meeting. At the conclusion of the in-office meeting a "job-walk" of the 2016 Project Streets and Alleys will be conducted with Public Works staff to ensure that the City's goals and objectives and areas of particular importance are addressed with the Project design documents.

Deliverables:

- Kick-off Meeting Agenda
- Meeting Minutes, Directives, Action Items
- Job Walk Photos and Notes

Topographic and Base Mapping

Topographic surveys and base mapping shall be prepared for all of the streets and alleys for the 2016 Project. KASL has previously developed survey control throughout the City. This will expedite completion of the survey tasks. The field surveys shall include existing topographic features, elevations, visible utilities, fences, walls, structures, curb, gutter, sidewalk, driveway and pavement improvements and mature vegetation. Field surveys shall include elevations at inverts, ditches, culverts and shall focus on the location, limits and elevations of existing pedestrian improvements. From these field surveys, scaled (1"=20' or 1" = 40') base maps will be prepared which will include elevation and topographic data, contour intervals, centerline stationing, right of way limits and utility data compiled from City files and confirmed in the field. Survey limits shall, at a minimum, extend to back of walk or fence lines and wherever possible, shall extend 25 feet beyond edge of pavement, curbs and sidewalks to locate and plot topographic features important to the design of the 2016 Street and Alley Rehabilitation improvements.

At the intersection of Project streets, the limits of the topographic surveys shall be extended a minimum of 100 feet, each direction, and include curb, gutter, sidewalks, utilities, topographic features and elevations of the intersecting streets. To verify the location and depth of the nearest existing storm drainage improvements, surveys will be extended beyond these limits, as necessary.

Record information, ownership data and adjacent property information including assessor's parcel numbers with owner's name will be shown on the Project base maps. Easements shown on record maps will also be shown on the base maps. The scaled topographic base maps will be reviewed with City Public Works staff.

Deliverables:

- 1" = 20' Scale Topographic Base Maps

Potholing of Existing Utilities

Where field topographic surreys or existing City of Fort Bragg utility data identify underground improvements that could be in conflict with proposed improvements, potholing shall be conducted to assist with utility relocation design and resolution of conflicts. Potholing will be coordinated with the City Public Works Department. Where potholing cannot be conducted by City forces, an outside potholing contractor shall be retained. KASL shall identify with Public Works staff proposed pothole locations and schedule the pothole work. Results of pothole data will be included in the plan and profile sheets prepared for Project improvements.

E. SCOPE OF WORK

Deliverables:

- Pothole Location Map with Pothole Location Coordinates and dimensions
- Results of Pothole Investigations

Letter Report, 2016 Project Rehabilitation Alternatives and Recommendations

Prior to the preparation of plans, specifications and detailed cost estimates, rehabilitation alternatives will be developed for each of the 2016 Project Streets and Alleys. Street improvements will include extension of drainage pipelines, additional storm drain inlets and manholes, curb and gutter improvements and roadside ditches, where appropriate. The location and limits of accessible ramp improvements and sidewalk gap closures will be itemized and shown for each of the Project Streets. Field surveys will locate the limits of failed or failing pavement sections. Alternative pavement removal and replacement limits will be developed for each street together with suggested limits for pavement overlay. KASL has successfully used Asphalt Rubber Hot Mix overlays together with pavement reinforcement fabric to effectively repair and overlay damaged pavement sections. The service life for pavement rehabilitation options will be reviewed with the City.

For the alleys included in the 2016 Rehabilitation Project, KASL will evaluate alternative alley surface treatments and LID improvements which best achieve the City's goal of extending service life and reducing storm water runoff volumes. Green Alley alternatives to be considered will include:

- Permeable pavements
- Permeable interlocking concrete pavers
- Infiltration trenches
- Native plant bioretention cells or "rain gardens'
- Water catchment and infiltration systems
- Filtered storm drain inlets
- Infiltration inlets

As directed by the City, LID alternatives will specifically be recommended for Alley 3, however, Green Alley features will be considered for all 4 alleys of the 2016 Project. KASL will evaluate with the City the three alleys recently reconstructed in Fort Bragg and discuss with Public Works staff the LID features that appear to best meet the City's objectives.

Cost estimates shall be prepared for rehabilitation alternatives developed for each of the 2016 Project Streets and Alleys. A draft of the Letter Report shall be submitted to Public Works staff and staff comments will be incorporated in the final Letter Report document. With submittal of the draft Letter Report, a design review meeting will be held with City staff. KASL will prepare the Design Review Meeting Agenda and Meeting Minutes, City Directives and Action Items.

Deliverables:

- Draft Letter Report
- Design Review Meeting Agenda, Minutes, Directives
- Final Letter Report

Preparation of 60% design, 90% and 100% Plans, Technical Specifications and Estimates

For each design submittal, not less than five (5) sets of Plans, Specifications and Estimates (PS&E) will be submitted to the City for review. The 60% design will include the rights of way, topographic features and base maps prepared for the Project Streets and Alleys together with preliminary plans and profile of the improvements recommended in the Letter Report and approved by the City. Improvement Plans shall be prepared consistent with City of Fort Bragg Standard Plan and Standard Specifications. Proposed street and alley improvements will be shown in Plan view. Existing centerline grades, existing underground utilities and proposed gutter flow line and drainage improvements will be shown in profile. The 60% submittal will include:

- 1" = 20' or 1" = 40' plan and profile sheets
- Title Sheet; Construction Notes with typical cross sections and typical details, appropriate for the improvements recommended
- ADA compliant ramps,
- Proposed curb, gutter and sidewalk improvements
- Drainage improvements
- Preliminary LID and Green Alley improvements
- Outline of Technical Specifications
- Preliminary construction cost estimate

Half size, 60% design plans will be submitted. With the 60% design submittal, a Design Review meeting will be conducted with City staff.

E. SCOPE OF WORK

60% Design Deliverables:

- Five Sets of Half Size; 60% Plans
- Outline of Technical Specifications
- Preliminary Construction Cost Estimates

The 90% design submittal shall reflect the City's review comments received on the 60% design submittal. The 90% design shall include details of proposed drainage, street rehabilitation, accessible pedestrian improvements and LID improvements proposed for Project alleys. Detailed Plan and Profile sheets will be submitted. Draft Technical Specifications will be prepared together with quantity and cost estimates which accurately reflect the 90% design.

90% Design Submittals:

- Five sets of half size, 90% Plans
- Draft Technical Specifications
- Detailed Quantity and Cost Estimates

With the 90% design submittal, a Design Review meeting will be held with City staff.

The 100% design submittal shall incorporate the City's review comments received from the 90% design. The 100% design submittal shall then be reviewed with the City. After 100% Plans, Specifications and Estimates, complete and ready for construction bids are reviewed and approved by the City, a set of stamped and signed original Plans and two copies of the 100% Plans, Technical Specifications and Bid Schedule shall be prepared and submitted.

100% Design Submittals:

- Full Size Sets of 100% Plans, Specifications and Estimates for Final City Review
- Stamped and Signed Original Plans
- Two Sets of Stamped and Signed Plans, Technical Specifications and Bid Schedule

Design Resign Review Meetings and Community Meetings

As outlined in the previously described tasks, Design Review Meetings are proposed

- With Submittal of the Letter Report
- With 60% Design Submittal
- With 90% Design Submittal
- With 100% Design Submittal

Before each design review meeting we shall prepare and distribute a meeting agenda. After each meeting we shall prepare meeting notes which will include a summary of key topics, City review comments and the actions items to be completed in response to the City's review and directives. All phases of the design development, design review and design completion shall be coordinated with the City of Fort Bragg

Deliverables: Design Review Meetings

- Meeting Agenda
- Meeting Minutes, Directives, Action Items

The scope of services shall also include participation in two community meetings including a presentation to the Fort Bragg City Council.

It is recommended that the first community meeting be conducted after the Letter Report, outlining project alternatives and proposed improvements is reviewed and approved by City Public Works staff. An outline of the Letter Report, a power point presentation of alternatives and recommendations and "display" boards for each of the three streets and four alleys of the 2016 Project Streets and Alleys Rehabilitation Project will be prepared.

The second community meeting should be conducted after the 90% design submittal is completed and approved by City staff.

Deliverables: Community Meetings

- Outline of Presentation
- Power Point, Alternatives and Recommended Improvements
- Display Boards of Proposed Improvements, Each Street and Alley, of the 2016 Rehabilitation Project

Electronic Submittals

Final approved Improvement Plans, Technical Specifications, Special Provisions, Bid Schedule and Cost Estimates shall be provided to the City as pdf, AutoCAD, Microsoft and Excel files, as appropriate.

Deliverables:

- Electronic Files of Final Approved Documents

F. BUDGET AND SCHEDULE OF CHARGES

Fee Proposal

We propose to complete the tasks and deliverables of the Fort Bragg 2016 Streets and Alleys Rehabilitation Project as outlined in the Scope of Work, Tab 6, **for a not to exceed fee of $93,950.00.**

This proposed fee shall be reviewed with the City and compared to the amount budgeted by the City for these design services.

Personnel rates charged to the City of Fort Bragg for our services will be as follows:

Principal Engineer	$140 / hr
Survey Manager	$124 / hr
Senior Engineer	$124 / hr
Project Engineer / Project Surveyor	$108 / hr
Designer / CAD Operator	$91 / hr
Administrative Assistant	$64 / hr
2 Person Survey Crew	$195 / hr

The above proposed not to exceed fee includes:

ENGEO Geotechnical Engineering	$8800
Cliff Zimmerman, PLS (QA/QC Survey and Design Services)	$5000

For the purpose of this fee proposal it is assumed that potholing of existing utilities, where needed to resolve potential conflicts, will be conducted by City forces.

Land surveying services provided for pre-construction work such as project base mapping and topographic surveys required for project design shall be charged at prevailing wage rates. Typically, we do not invoice our clients mileage or equipment charges. Should KASL personnel be required to stay overnight in the Fort Bragg area to effectively complete scope of work tasks, the City would be invoiced for the actual cost of overnight lodging and meals. We believe that these direct costs have been adequately included in the not to exceed fee proposal presented above.

Job Description for Personnel

The **Principal Engineer** for this Project shall be **Jack Scroggs**. His responsibilities shall include:

- Project Coordination with the City of Fort Bragg
- Project and personnel management
- Review Project Budget and Schedule with the City
- Identify with the City priority improvements and possible phasing
- Conduct preliminary evaluation of existing Project area drainage, pavement and accessible pedestrian facilities
- Organize Project Kick-off Meeting
- Coordinate Field Surveys and base mapping limits
- Identify pothole locations and coordinate potholing with City staff
- Prepare, with Project Engineers, Letter Report of Alternatives and Recommendations
- Field review Project design elements with City Staff
- Prepare Technical Specifications
- Conduct in-house review of design submittals with Project Engineers
- Submit and review 60%, 90% and 100% Improvement Plans and Technical Specifications, Cost Estimates and Bid Schedule
- Conduct Design Review Meetings with the City
- Conduct Fort Bragg Community Meetings

The **Project Engineers** for the Project shall be **Bill Ostroff, Octavio Perez** and **Jorge Beltran.** Their responsibilities shall include:

- Coordinate field work
- Oversee preparation of base maps
- Conduct field and desktop evaluation of Project design elements and alternatives
- Prepare draft Letter Report elements
- Prepare draft 60%, 90% and 100% improvement plans
- Prepare quantity takeoffs and construction cost estimates
- Participate in Design Review meetings and community meetings
- Assist Principal Engineer with the preparation of Technical Specifications

EXHIBIT A

F. BUDGET AND SCHEDULE OF CHARGES

The **Survey Manager** for this Project shall be **Kevin Romero.** His responsibilities will include:

- Scheduling of Field Surveys
- Coordinate previously prepared control surveys and conduct topographic surveys required for 2016 Streets and Alley Project
- Download field data and prepare scaled base maps
- Coordinate field data acquisition with Principal Engineer and Project Engineers

Jonathan Boland, Geotechnical Engineer, ENGEO, will oversee and coordinate geotechnical investigations to determine pavement subsurface conditions (R value) and conduct percolation tests in Project alleys for design of LID infiltration and infiltration inlets. Mr. Boland, together with ENGEO pavement specialists, will also prepare recommendations regarding the most suitable pavement rehabilitation measures.

Cliff Zimmerman, PLS, will collect and research existing right of way documents, assist KASL surveyors with locating right of way monuments and conducted QA/QC of design submittals.

City of Fort Bragg

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

Text File

File Number: 16-193

Agenda Date: 5/23/2016 **Version:** 1 **Status:** Consent Agenda

In Control: City Council **File Type:** Resolution

Agenda Number: 7B.

Adopt City Council Resolution Approving a Professional Services Agreement with The Sign Shop for Construction of a City of Fort Bragg Welcome Sign and Authorizing City Manager to Execute Same (Amount Not to Exceed $17,217.06; Account No. 110-4840-0375)
On February 8, 2016, the City Council considered three proposals for the new Fort Bragg Welcome Sign and selected The Sign Shop's design. The proposal listed a cost of $15,850 for design, construction and delivery of the sign to the City's corporate yard. Upon review of the proposed Professional Services Agreement, Rick Sacks of The Sign Shop requested that the Not to Exceed amount of the contract include sales tax of $1,367.06. The attached contract reflects a Not to Exceed amount of $17,217.06, consisting of the $15,850 design proposal and $1,367.06 in sales tax.

RESOLUTION NO. ____*-2016*

RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING PROFESSIONAL SERVICES AGREEMENT WITH THE SIGN SHOP FOR CONSTRUCTION OF A WELCOME SIGN FOR THE CITY OF FORT BRAGG AND AUTHORIZING CITY MANAGER TO EXECUTE SAME (AMOUNT NOT TO EXCEED $17,217.06; ACCOUNT 110-4840-0375)

WHEREAS, in March 2013, the City Council provided direction regarding placement, location and design of a City of Fort Bragg Welcome Sign as part of the Fort Bragg Wayfinding Plan; and

WHEREAS, in December 2015, a Request for Proposals was released requesting informal bids on the Welcome Sign design and construction costs, per the City's informal bidding process for construction projects with a cost of less than $25,000; and

WHEREAS, on January 15, 2016, the City received three qualified bids from three local sign contractors; and

WHEREAS, on January 26, 2016, the Community Development Committee reviewed the proposals and made recommendations to Council; and

WHEREAS, on February 8, 2016, the City Council considered the three Welcome Sign proposals, selected The Sign Shop's "Fort Bragg Welcomes You" design for a cost of $15,850, and instructed staff to prepare a contract for construction of the Welcome Sign; and

WHEREAS, the total cost for the design, construction and delivery of the sign ($15,850.00) plus sales tax ($1,367.06) totals $17,217.06; and

WHEREAS, funds in the amount of $32,850 were set aside in the FY 2015-2016 Budget for the Wayfinding Signs project and sufficient funds are available for this contract; and

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

1. The City has determined that a new "Fort Bragg Welcomes You" sign is a central part of the Fort Bragg Wayfinding Plan and requires the professional services of a consultant to design and construct the sign.
2. The Sign Shop is fully qualified to perform such professional services by virtue of specialized experience and training, education and expertise of its principals and employees.
3. A contractual agreement with The Sign Shop is required for the design, construction and delivery of a new Welcome Sign for the City of Fort Bragg.
4. The Council has determined that sufficient funds are available in the adopted FY 2015-2016 City of Fort Bragg Budget for the costs associated with the services performed in building the sign.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby approve the Professional Services Agreement with The Sign Shop to build a Welcome Sign for the City of Fort Bragg, which is attached as "Exhibit A" and incorporated

herein, and authorizes the City Manager to execute same (Amount Not to Exceed $17,217.06; Account 110-4840-0375).

The above and foregoing Resolution was introduced by Councilmember _____, seconded by Councilmember _____, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 23rd day of May, 2016, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
DAVE TURNER,
Mayor

ATTEST:

_____
June Lemos
City Clerk

PROFESSIONAL SERVICES AGREEMENT

AGREEMENT

This Agreement is made and entered into this _____ day of May, 2016 by and between the City of Fort Bragg, a California Municipal Corporation, 416 N. Franklin Street, Fort Bragg, California, 95437 ("City"), and The Sign Shop, 43197 Road 409, Mendocino, California 95460 ("Consultant").

RECITALS

WHEREAS, City has determined that it requires the following professional services from a consultant: to build a Welcome sign for the City of Fort Bragg; and

WHEREAS, Consultant represents and warrants that it is fully qualified to perform such professional services by virtue of specialized experience and training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, the legislative body of the City on May 23, 2016, by Resolution No. _____-2016, authorized execution of this Agreement on behalf of the City in accordance with Chapter 3.20 of the City Municipal Code and/or other applicable law;

NOW, THEREFORE, City and Consultant, for the consideration hereinafter described, mutually agree as follows:

1. DESCRIPTION OF SERVICES OR SCOPE OF WORK

The services to be performed under this Agreement ("Services") are as follows: Design, build, and deliver a Welcome sign for the City of Fort Bragg. The Services are further described in Consultant's proposal (the "Proposal"), which is attached to and made a part of this Agreement as Exhibit A.

2. TERM

The Agreement term will commence on April 15, 2016 and expire on December 31, 2016 unless the Agreement term is amended or the Agreement is terminated in accordance with its terms.

3. PAYMENT TERMS AND NOT TO EXCEED AMOUNT

City agrees to pay Consultant for Services that are actually performed in accordance with this Agreement. To be eligible for payment, Consultant invoices must be submitted not more often than monthly to the City and list the Services performed and the amounts to be paid according to the cost categories and prices in the Proposal. In no

event will the City's obligation to pay the Consultant under this Agreement exceed Seventeen Thousand Two Hundred Seventeen Dollars and Six Cents **($17,217.06)** (the "Not to Exceed Amount" which includes sales tax), unless this Agreement is first modified in accordance with its terms. Where the Proposal provides for compensation on a time and materials basis, Consultant must maintain adequate records to permit inspection and audit of Consultant's time and material charges under this Agreement. Consultant will make such records available to the City during normal business hours upon reasonable notice. In accordance with California Government Code § 8546.7, if the Not to Exceed Amount exceeds TEN THOUSAND DOLLARS ($10,000.00), this Agreement and the Consultant's books and records related to this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

4. TIME OF COMPLETION

Consultant must commence performance of the Services upon receipt of written direction to proceed from City. Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 7 below and to satisfy Consultant's obligations hereunder. Consultant will complete the Services in accordance with this Agreement by **October 31, 2016** (the "Time of Completion"). The Time of Completion may only be modified by an amendment of the Agreement in accordance with its terms.

5. INDEPENDENT CONTRACTOR

Consultant and City agree that the Consultant will perform the Services as an independent contractor and not as an employee or agent of the City. Persons employed or utilized by Consultant in the performance of the Services will not be employees or agents of the City. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

6. SUBCONTRACTING

Consultant may subcontract portions of the Services upon the prior written approval of the City. Consultant will be solely responsible for payment of such subcontract Services. No contractual relationship will exist between any such subcontractors of the Consultant and the City.

Subcontractor agrees to be bound to Consultant and City in the same manner and to the same extent as Consultant is bound to City under the Agreement. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

7. STANDARD OF PERFORMANCE

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

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

8. OTHER GOVERNMENTAL REGULATIONS

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

9. USE OF RECYCLED PRODUCTS

Consultant shall endeavor to prepare and submit all reports, written studies, and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

10. INDEMNITY

To the maximum extent permitted by law, Consultant shall, at its own expense, indemnify, defend with counsel acceptable to the City, (which acceptance will not be unreasonably withheld), and hold harmless City and its officers, officials, employees, agents and volunteers ("Indemnitees") from and against any and all liability, loss, damage, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, claims expenses, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature, whether actual, alleged or threatened, arising out of or in connection with the Services or Consultant's failure to comply with any of the terms of this Agreement, regardless of any fault or alleged fault of the Indemnitees.

The Consultant's obligation to indemnify, defend and hold harmless under this provision shall not be excused because of the Consultant's inability to evaluate Liability, or because the Consultant evaluates Liability and determines that the Consultant is not or may not be liable. The Consultant must respond within 30 calendar days to any tender for defense and indemnity by the City, unless the time for responding is extended by an authorized representative of the City in writing. If the Consultant fails to accept tender of defense and indemnity within 30 calendar days, in addition to any other remedies authorized by law, so much of the money due or that may become due the Consultant under this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the matter subject to tender, or until the Consultant accepts the tender, whichever occurs first.

The Consultant waives any and all rights to express or implied indemnity against the Indemnitees concerning any Liability of the Consultant arising out of or in connection with the Services or Consultant's failure to comply with any of the terms of this Agreement .

Notwithstanding the foregoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code § 2783, as may be amended from time to time, Consultant's duty to indemnify under this provision shall not apply when to do so would be prohibited by California Civil Code § 2782, as may be amended from time to time.

Notwithstanding the foregoing, to the extent that the Services include design professional services subject to Cal. Civil Code § 2782.8, as amended from time to time, Consultant's duty to indemnify shall only be to the maximum extent permitted by Civil Code § 2782.8.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this agreement.

Consultant/Subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

11. INSURANCE

a. Before commencing performance of the Services, Consultant, at its own cost and expense, must: a) procure "occurrence coverage" insurance of the kinds and in the amounts specified below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services hereunder by the Consultant or its agents, representatives, employees, or subcontractors; and b) submit to the City certificates of insurance and endorsements evidencing insurance coverage that meets the requirements of this section. Consultant must maintain the insurance policies required by this section throughout the Agreement term. The cost of such insurance must be included in the Consultant's proposal.

Consultant agrees to include with all subcontractors in their subcontract the same requirements and provisions of this Agreement including the indemnity and Insurance requirements to the extent they apply to the scope of the subcontractor's work. The Consultant shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in this Agreement prior to commencement of any work and Consultant will provide proof of compliance to the City.

Consultant may not allow any subcontractor to commence work on the Services until Consultant and/or the subcontractor have obtained all insurance required by this Agreement for the subcontractor(s) and submitted certificates of insurance and endorsements evidencing such coverage to City.

b. Workers Compensation Insurance. Consultant must, at its sole cost and expense, maintain Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. Workers' Compensation Insurance as required by the State of California, with coverage providing Statutory Limits, and Employer's Liability Insurance with limits of not less than ONE MILLION DOLLARS ($1,000,000.00) per occurrence must be provided. The insurance must be endorsed to waive all rights of subrogation against City and its officials, officers, employees, and volunteers for loss arising from or related to the Services.

c. Consultant, at its own cost and expense, must maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000.00) per occurrence, TWO MILLION DOLLARS ($2,000,000.00) aggregate, combined single limit coverage for risks associated with Services. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Services or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

d. Except for Workers' Compensation insurance and Professional Liability insurance, all other insurance coverages required pursuant to this Agreement must include or be endorsed to include the following:

(1) City and its officials, officers, employees, agents, and volunteers ("Additional Insured") shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by Consultant. The coverage may contain no special limitations on the scope of protection afforded to City or its officials, officers, employees, agents, or volunteers.

(2) The Additional Insured coverage under the Consultant's policy shall be "primary and non-contributory" and Consultant's coverage will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

e. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured; whichever is greater.

f. The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

g. Insurance coverage required pursuant to this Agreement must include or be endorsed to include the following:

(1) Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

(2) Required insurance coverage may not be suspended, voided, canceled, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City.

h. Consultant, at its own cost and expense, must maintain for the period covered by this Agreement professional liability insurance in an amount not less than

ONE MILLION DOLLARS ($1,000,000) covering errors and omissions. Any deductible or self-insured retention under the required professional liability insurance may not exceed $150,000 per claim.

i. All insurance required under this Agreement must be placed with insurers with a Best's rating of no less than A:VII unless otherwise approved by the City.

j. The City may approve a variation in the foregoing insurance requirements, upon a determination that the coverages, scope, limits, and forms of such insurance are either not commercially available, or that the City's interests are otherwise fully protected.

k. All self-insured retentions (SIR) must be disclosed to City for approval and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or the City. City reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

l. To the extent this Agreement is a "construction contract" as defined by California Civil Code § 2783, as may be amended from time to time, Consultant shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following completion of the Services. In the event Consultant fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Consultant.

12. NON DISCRIMINATION

During the performance of this Agreement, Consultant will not discriminate against any employee of the Consultant or applicant for employment because of race, religion, creed, color, national origin, sex, or age. Consultant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, creed, color, national origin, sex or age.

13 LICENSES & PERMITS

a. BUSINESS LICENSE

Before the City will issue a notice to proceed with the Services, Consultant and any subcontractors must acquire, at their expense, a business license from City in accordance with Chapter 5.04 of the Fort Bragg Municipal Code. Such licenses must be kept valid throughout the Agreement term.

b. OTHER LICENSES AND PERMITS

Consultant represents and warrants to City that Consultant 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.

14. OWNERSHIP OF WORK PRODUCTS AND TREATMENT OF DOCUMENTS

Consultant will obtain and own the copyright for the design used on the Welcome sign shown in Exhibit A. Consultant grants to City exclusive and unlimited rights to use the design in whatever manner in which the City desires. Except as may be otherwise required by law, Consultant will disclose no data, plans, specifications, reports or other documents pertaining to the Services without the prior written consent of City.

15. TERMINATION AND REMEDIES

a. City may terminate this Agreement for convenience by giving at least 10 days written notice to Consultant specifying the termination effective date. Upon receipt of such notice, Consultant may continue performance of the Services through the date of termination. City shall pay Consultant for all Services actually performed in accordance with this Agreement through the termination effective date.

b. If Consultant materially breaches any term of this Agreement, in addition to any other remedies the City may have at law or equity, the City may:

(1) Terminate the Agreement by notice to the Consultant specifying the termination effective date;

(2) Retain, and/or recover from the Consultant at no additional cost to the City, the plans, specification, drawings, reports and other design documents and work products prepared by Consultant, whether or not completed;

(3) Complete the unfinished Services itself or have the unfinished Services completed, and/or;

(4) Charge Consultant, or deduct from monies that may be due or become due the Consultant under this Agreement, the difference between the cost of completing the unfinished Services pursuant to this Agreement and the amount that would otherwise be due Consultant had Consultant completed the Services in accordance with this Agreement.

16. BINDING EFFECT AND ASSIGNMENT PROHIBITION

This Agreement is binding upon City, Consultant, and their successors. Except as otherwise provided herein, neither City nor Consultant may assign, sublet or transfer its interest in this Agreement or any part thereof without the prior written consent of the other, and any purported assignment without such consent will be void.

17. REPRESENTATIVES

a. City representative for purposes of this Agreement will be Community Development Director Marie Jones. Consultant representative for purposes of this Agreement will be Rick Sacks. The parties' designated representatives will be the primary contact persons regarding the performance of the Services. The parties intend that their designated representatives will cooperate in all matters regarding this Agreement and in such manner so as to achieve performance of the Services in a timely and expeditious fashion.

b. Notices:

Any written notice to Consultant shall be sent to:

Rick Sacks
The Sign Shop
43197 Road 409
Mendocino, California 95460

Any written notice to City shall be sent to:

Marie Jones
Community Development Director
City of Fort Bragg
416 N. Franklin Street
Fort Bragg, California 95437

18. INTEGRATION AND AMENDMENT

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

19. CONFLICT OF INTEREST PROHIBITION

City and Consultant will comply with the requirements of the City's Conflict of Interest Code adopted pursuant to California Government Code §87300 et seq., the Political Reform Act (California Government Code §81000 et seq.), the regulations promulgated by the Fair Political Practices Commission (Title 2, §18110 et seq. of the California Code of Regulations), California Government Code §1090 et seq., and any other ethics laws applicable to the performance of the Services and/or this Agreement. Consultant

may be required to file with the City Clerk a completed Form 700 before commencing performance of the Services unless the City Clerk determines that completion of a Form 700 is not required, pursuant to City's Conflict of Interest Code. Form 700 forms are available from the City Clerk.

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

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

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

20. APPLICABLE LAW AND VENUE

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

21. RECOVERY OF ATTORNEYS' FEES

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

22. SEVERABILITY

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

23. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, the parties have caused their authorized representative to execute this Agreement on the date first written above.

CITY

By: _____
Linda Ruffing
Its: City Manager

CONSULTANT

By: _____
Rick Sacks
Its: Principal

ATTEST:

By: _____
June Lemos
City Clerk

[Attach Notary Acknowledgment Page]

APPROVED AS TO FORM:

By: _____
Samantha W. Zutler, City Attorney

Exhibits: Exhibit A – Consultant's Proposal

The Sign Shop
DISTINCTIVE SIGNS ON ALMOST ANYTHING

43197 Road 409
Mendocino

fone.. 707-964-0608
fax..

rick@mendosign.com
cont. lic.527921

72 in

192 in

Heart B 3" thick redwood carved on one side, transparent stain on border, exterior paints that are as color stable as available in California, with joints fastened with all thread as well as glue. $15,850 delivered to the city yard

EXHIBIT A

This is an original unpublished drawing created by THE SIGN SHOP. It is submitted for your personal use in conjunction with a project being planned for you. It is not to be shown to anyone outside your organization, nor is it to be reproduced, copied, or exhibited in any fashion without expressed written permission from THE SIGN SHOP. Right to use designs for anything other than the subject sign is a violation of copyright laws.

The design rights are sold separately for other uses.

City of Fort Bragg

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

Text File

File Number: 16-198

Agenda Date: 5/23/2016 **Version:** 1 **Status:** Consent Agenda

In Control: City Council **File Type:** Resolution

Agenda Number: 7C.

Adopt City Council Resolution Amending Resolution 3968-2016 Authorizing Expenditure of Asset Forfeiture Funds and Amending the FY 2015-16 Budget to Purchase Three Fully-Equipped Police Electric Motorcycles (Amount Not to Exceed $70,000; Transfered from Asset Forfeiture Account # 167-7999-0799 to Fleet Services Internal Service Account #522-4550-0742).

On April 25, 2016, the City Council adopted Resolution 3968-2016 amending the FY 2015-16 Budget and authorizing the expenditure of Asset Forfeiture Funds on three electric motorcycles. Afterwards, staff realized that the Council action did not record the transfer of funds correctly as the electric motorcycles will be part of the City's fleet and should be purchased and maintained by the Fleet Internal Service Fund. An amended resolution is brought forward so that the Asset Forfeiture Fund will transfer funds to the Fleet Internal Service Fund to facilitate the purchase.

AMENDED
RESOLUTION NO. 3896-*2016*

RESOLUTION OF THE FORT BRAGG CITY COUNCIL AUTHORIZING EXPENDITURE OF ASSET FORFEITURE FUNDS AND AMENDING THE FY 2015-16 BUDGET TO PURCHASE THREE FULLY EQUIPPED POLICE ELECTRIC MOTORCYCLES (AMOUNT NOT TO EXCEED $70,000; ~~ACCOUNT #167-4215-0381)~~ TRANSFER FROM ASSET FORFEITURE ACCOUNT #167-7999-0799 TO FLEET ACCOUNT #522-4550-0742)

WHEREAS, the Fort Bragg Police Department has accumulated certain asset forfeiture funds as a result of participation in the Mendocino County Major Crimes Task Force; and

WHEREAS, asset forfeiture funds may be used to purchase certain law enforcement equipment; and

WHEREAS, the Police Department wishes to spend some of the asset forfeiture funds available ($70,000) to purchase three fully-equipped police electric motorcycles; and

WHEREAS, these electric motorcycles will be used for patrol of the city as well as the north and south portions of the Coastal Trail; and

WHEREAS, available asset forfeiture funds exist to provide for these purchases; and

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

1. These purchases will provide an eco-friendly tool for members of the Fort Bragg Police Department to patrol the Coastal Trail.
2. These motorcycles will allow Officers to respond quickly to calls for service from the Coastal Trail to any area of the City.
3. These motorcycles may also be used for traffic control and patrol purposes by the Fort Bragg Police Department.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby authorize the expenditure of asset forfeiture funds to purchase three fully equipped police electric motorcycles (amount not to exceed $70,000; ~~Account #167-4215-0381).~~ Transfer from Asset Forfeiture Account #167-7999-0799 to Fleet Account #522-4550-0742).

The above and foregoing Amended Resolution was introduced by Councilmember _____, seconded by Councilmember _____, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 23rd day of - May, 2016, by the following vote:

AYES: -
NOES: -
ABSENT: -
ABSTAIN: -

_____

DAVE TURNER
Mayor

ATTEST:

_____

June Lemos
City Clerk

City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
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Text File

File Number: 16-208

Agenda Date: 5/23/2016 **Version:** 1 **Status:** Business

In Control: City Council **File Type:** Council Letter

Agenda Number: 7D.

Approve City Council Letter in Support of Active Trails Program Grant to Repave the MacKerricher Haul Road from Ward Avenue to the Pudding Creek Trestle

CITY OF FORT BRAGG

Incorporated August 5, 1889
416 N. Franklin St.
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802
http://city.fortbragg.com

May 23, 2016

State of California
Department of Transportation, ATP Cycle 3 Program
Chief, Office of Active Transportation & Special Programs
Division of Local Assistance
1120 N Street, MS-1
Sacramento, CA 95814

RE: Active Trails Program (ATP) Grant Application for the Rehabilitation of the MacKerricher Haul Road

To Whom It May Concern:

The Fort Bragg City Council enthusiastically supports the Active Trails Program (ATP) grant application for the rehabilitation of the MacKerricher Haul Road between the Pudding Creek Trestle and Ward Avenue, within MacKerricher State Park in Fort Bragg.

As you know, the Mendocino Coast is known for its stunning coastal vistas. The MacKerricher Haul Road offers spectacular views of the ocean and recreational opportunities to residents, commuters and hundreds of thousands of tourists each year. It is heavily used by bicyclists, hikers, walkers, joggers and equestrians.

Additionally this trail connects with the Pudding Creek Trestle and the new Fort Bragg Coastal Trail. Once the middle section of the Coastal Trail is completed, the two trail systems will provide 11.2 miles of coastal multi-use trails and form a segment of the Pacific Bikeway. There is an overwhelming need to provide an alternate route for bicycles and pedestrians through the narrow stretch of Highway One from Cleone to the Fort Bragg city limits. This much needed project will help move pedestrian and bicycle traffic off of the Highway One corridor.

Due to constant use, coastal conditions and State Parks budgetary issues, the MacKerricher Haul Road has seriously deteriorated over the years rendering it difficult for some uses and in places, it is not ADA accessible. Maintaining the recreational trail is a high priority for the community as it is an important tourism attraction in our tourism dependent economy.

It is clear that State Parks cannot repair the Haul Road without support from regional partners. Therefore State Parks, the City of Fort Bragg, and the community are working together to plan and fund this rehabilitation project for the Haul Road.

We encourage you to award an ATP grant for the restoration of the Haul Road, so that it will continue to serve tourists from around the world and Californians of all walks of life for the next 30 years.

Sincerely,

Dave Turner
Mayor

Lindy Peters
Vice Mayor

Michael Cimolino
Councilmember

Scott Deitz
Councilmember

Doug Hammerstrom
Councilmember

cc: Sarah Bradley Huff, California State Parks Mendocino Sector, Sarah.Bradley@parks.ca.gov

City of Fort Bragg

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

Text File

File Number: 16-199

Agenda Date: 5/23/2016 **Version:** 1 **Status:** Consent Agenda

In Control: City Council **File Type:** Minutes

Agenda Number: 7E.

Approve Minutes of May 9, 2016

City of Fort Bragg

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

Meeting Minutes

City Council

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

Monday, May 9, 2016 | **6:00 PM** | **Town Hall, 363 N. Main Street**

MEETING CALLED TO ORDER

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

PLEDGE OF ALLEGIANCE

ROLL CALL

Present: 5 - Vice Mayor Lindy Peters, Councilmember Michael Cimolino, Councilmember Scott Deitz, Councilmember Doug Hammerstrom and Mayor Dave Turner

AGENDA REVIEW

1. MAYOR'S RECOGNITIONS AND ANNOUNCEMENTS

1A. 16-175 Presentation of Proclamation Declaring May 15 through May 21, 2016 as National Police Week

Vice Mayor Peters presented a proclamation declaring May 15-21, 2016 as National Police Week to Chief Fabian Lizarraga.

1B. 16-177 Presentation of Proclamation Recognizing National Bike Month - May 2016

Mayor Turner presented a proclamation recognizing bike month to representatives of Walk & Bike Mendocino and Mendocino Coast Cyclists.

2. STAFF COMMENTS

City Manager Ruffing announced a Public Safety Committee meeting set for May 11, 2016 at 3 PM at the Police Department conference room. Chief Lizarraga invited the public to attend the Day in the Park event on May 14, 2016 from 12 to 3 PM at Bainbridge Park.

3. MATTERS FROM COUNCILMEMBERS

Vice Mayor Peters spoke about the Redwood Empire Division of the League of California Cities meeting in Lakeport. Councilmember Cimolino reported on the Coalition for Gang Awareness and Prevention meeting, graffiti prevention, and a presentation to promote education on teenage binge drinking on May 26, 2016 at 6 PM at the Diederich Center.

4A. PUBLIC COMMENTS ON NON-AGENDA, CONSENT CALENDAR & CLOSED SESSION ITEMS (30 Minutes)

- Judy Valadao spoke about the Mendocino Coast Hospitality Center's Giving Garden and read an email about Segways.
- Frank Casian spoke about the No on Measure U campaign, realignment of Main Street, and the future of the City.
- David Gurney suggested that the Noyo Center for Marine Science install a weather station to provide data and observations to the National Oceanic and Atmospheric Administration.
- Ann Rennacker spoke about Segways and electric motorcycles on the Coastal Trail.
- Jeanne Stubenrauch spoke in support of Measure U.

5. PUBLIC HEARING

6. CONDUCT OF BUSINESS

6A. 16-182 Receive Recommendation from Public Safety Committee and Provide Direction to Staff Regarding an Ordinance to Address Medical Marijuana Manufacturing

City Manager Ruffing presented the recommendations of the Public Safety Committee regarding an ordinance to address the manufacturing of medical marijuana, as outlined in the written staff report. A presentation was made by representatives of Root One Botanical and Sonoma County Growers Alliance and a regulatory analyst. During the discussion the City Council expressed concern about water, wastewater, emissions and safety.
Public Comment on this agenda item was received from: Harold Sipila, Ken Fennell, George Reinhardt, Gabriel Martin, Malcolm MacDonald, Ann Rennacker, Eric Dwyer and Richard Mack.

The City Council directed staff to move forward with the crafting of an ordinance to address the manufacturing of medical marijuana within City Limits. In addition, staff was directed to:
- **Consider land use and zoning;**
- **Consider a separate licensing scheme;**
- **Address environmental, water, solid waste, emissions, safety and security issues;**
- **Involve local businesses and regulatory agencies such as Fire, Police, Environmental Health, Solid Waste Franchise Operator and City Attorney's office;**
- **Propose a fee structure.**

The Council directed that staff report to the Public Safety Committee with a draft ordinance and invite public comment before returning to City Council for introduction of the ordinance.

4B. PUBLIC COMMENTS ON NON-AGENDA, CONSENT CALENDAR & CLOSED SESSION ITEMS (30 Minutes, If Necessary)

7. CONSENT CALENDAR

Approval of the Consent Calendar

A motion was made by Councilmember Hammerstrom, seconded by Vice Mayor Peters, to approve the Consent Calendar. The motion carried by the following vote:

Aye: 5 - Vice Mayor Peters, Councilmember Cimolino, Councilmember Deitz, Councilmember Hammerstrom and Mayor Turner

7A. 16-178 Approve Scope of Work for CDBG Business Loan Development and Loan Servicing Activities

This Scope of Work was approved on the Consent Calendar.

7B. 16-179 Adopt Resolution Confirming the Continued Existence of a Local Drought Emergency in the City of Fort Bragg

This Resolution was adopted on the Consent Calendar.

Enactment No: RES 3900-2016

7C. 16-176 Receive and File Minutes from March 17, 2016 Public Works and Facilities Committee Meeting

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

7D. 16-181 Approve Minutes of Special Meeting of April 18, 2016

These Minutes were approved on the Consent Calendar.

7E. 16-180 Approve Minutes of April 25, 2016

These Minutes were approved on the Consent Calendar.

8. CLOSED SESSION

ADJOURNMENT

Mayor Turner adjourned the meeting at 8:04 PM.

_____
DAVE TURNER, MAYOR

_____
June Lemos, City Clerk

IMAGED (_____)

City of Fort Bragg

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Text File

File Number: 16-200

Agenda Date: 5/23/2016 **Version:** 1 **Status:** Consent Agenda

In Control: City Council **File Type:** Minutes

Agenda Number: 7F.

Approve Minutes of Special Meeting of May 16, 2016

City of Fort Bragg

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

Meeting Minutes

Special City Council

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

Monday, May 16, 2016 **3:00 PM** **Upstairs Conference Room, 416 N. Franklin Street**

Special Closed Session

MEETING CALLED TO ORDER

Mayor Turner called the meeting to order at 3:05 PM.

ROLL CALL

Present: 5 - Vice Mayor Lindy Peters, Councilmember Michael Cimolino, Councilmember Scott Deitz, Councilmember Doug Hammerstrom and Mayor Dave Turner

1. PUBLIC COMMENTS CLOSED SESSION ITEM

None.

2. CLOSED SESSION

Mayor Turner recessed the meeting at 3:05 PM. The meeting reconvened to Closed Session at 3:06 PM.

16-192 Public Employee Performance Evaluation; Pursuant to Government Code Section 54957: Title: City Attorney

Mayor Turner reconvened the meeting to Open Session at 3:45 PM and reported that no reportable action was taken in Closed Session.

ADJOURNMENT

Mayor Turner adjourned the meeting at 3:45 PM.

_____
DAVE TURNER
Mayor

_____
June Lemos
City Clerk

IMAGED (_____)