



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, August 22, 2016

6:00 PM

Town Hall, 363 N. Main Street

MEETING CALLED TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

AGENDA REVIEW

1. MAYOR'S RECOGNITIONS AND ANNOUNCEMENTS

- 1A. [16-318](#) Presentation by California Recreation Alliance Director Sarah Huff Regarding Cleanup of Mendocino Coast Recreation and Park District Property on Highway 20

Attachments: [CRA - MCRPD Partnership Presentation](#)

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. [16-334](#)** Receive Presentation Regarding Fort Bragg Police Department's Annual Report

Attachments: [08222016 FB Police Dept Annual Report](#)
[FBPD Annual Report](#)

- 6B. [16-336](#)** Receive Recommendation from Community Development Committee and Provide Direction to Staff Regarding an Update to the Inland Land Use and Development Code

Attachments: [08222016 Inland Land Use and Development Code Update Final](#)
[Attachment 1 - 471 Whipple Street Rezoning \(reduced\)](#)
[Attachment 2 - Community Meeting Review](#)

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. [16-317](#)** Adopt City Council Resolution Confirming the Continued Existence of a Local Drought Emergency in the City of Fort Bragg

Attachments: [RESO Declaring Continuing Local Drought Emergency](#)

- 7B. [16-319](#)** Adopt City Council Resolution Amending the City of Fort Bragg Conflict of Interest Code

Attachments: [RESO City of Fort Bragg Conflict of Interest](#)

- 7C. [16-324](#)** Adopt City Council Resolution Approving a Project Agreement with Superior Pump and Drilling, Inc. to Construct and Complete Two New Water Wells (Amount Not to Exceed \$34,778; Account No. 615-6004-0731)

Attachments: [RESO Superior Pump Contract for Two New Water Wells](#)
[Superior Pump Well Drilling Agreement](#)

- 7D. [16-326](#) Adopt City Council Resolution Approving Budget Amendment No. 2017-01 Amending the FY 2016/17 Budget to Appropriate Funds in the Amount of \$25,000 from the General Fund Unallocated Fund Balance to Account No. 421-4957-0731 to Cover Costs for Removal and Replacement of the Noyo Headlands Park Visitors Center Roof

Attachments: [RESO Budget Amendment Chalet Roof](#)

- 7E. [16-333](#) Adopt City Council Resolution Accepting the Bid of Southwest Pipeline & Trenchless Corp. as the Lowest Responsive Bid, Awarding the Contract for the 2016 Slip Line Project, City Project 2016-04, to Southwest Pipeline & Trenchless Corp. and Authorizing City Manager to Execute Contract (Amount Not to Exceed \$128,980; Account No. 714-4713-0751)

Attachments: [RESO 2016 Sewer Slip Line Project](#)

[Slip Line Project Bid Opening](#)

[2016 Slip Line Contract](#)

- 7F. [16-325](#) Adopt Fort Bragg Municipal Improvement District Resolution Accepting Quote of Applied Marine Sciences, Awarding the Contract for Biological Survey and Outfall Inspection Project (Project); to Applied Marine Sciences and Authorizing District Manager to Execute Contract (Amount Not to Exceed \$32,756; Account #710-4712-0319)

Attachments: [RESOID Outfall Inspection](#)

[Applied Marine Sciences Contract](#)

- 7G. [16-338](#) Receive and File Minutes of June 28, 2016 Community Development Committee Meeting

Attachments: [CDCM_06282016](#)

- 7H. [16-337](#) Receive and File Minutes of June 29, 2016 Public Safety Committee Special Meeting

Attachments: [PSCM2016-06-29](#)

- 7I. [16-315](#) Approve Minutes of July 25, 2016

Attachments: [CCM2016-07-25](#)

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, SEPTEMBER 12,
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 agenda to be posted in the City Hall notice case on August 17, 2016.

Brenda Jourdain, Administrative Assistant

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).



City of Fort Bragg

416 N Franklin Street
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Phone: (707) 961-2823
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Text File

File Number: 16-318

Agenda Date: 8/22/2016

Version: 1

Status: Mayor's Office

In Control: City Council

File Type:
Recognition/Announcements

Agenda Number: 1A.

Presentation by California Recreation Alliance Director Sarah Huff Regarding Cleanup of Mendocino Coast Recreation and Park District Property on Highway 20

The background of the slide is a light gray gradient with several realistic water droplets of various sizes scattered across it. The droplets have highlights and shadows, giving them a three-dimensional appearance. The main text is centered in the upper half of the slide.

MCRPD & CRA REGIONAL PARK PROPERTY CLEAN-UP

JUNE & JULY 2016

THE CALIFORNIA RECREATION ALLIANCE

- FOUNDED 2011
- MISSION – “TO PROVIDE EDUCATION & SAFETY TRAINING RELATED TO RECREATION WHILE TEACHING ENVIRONMENTAL RESPONSIBILITY AND STEWARDSHIP”



WHO FUNDS THE CRA



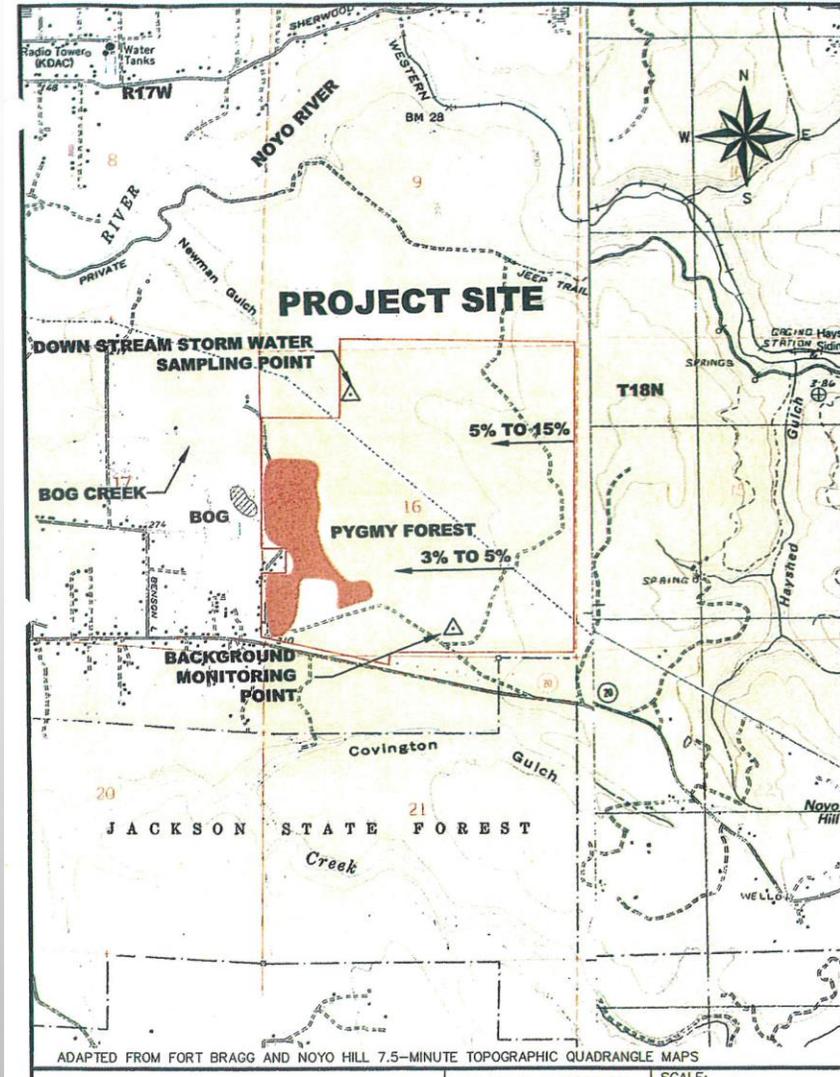
THE CALIFORNIA RECREATION ALLIANCE





MCRPD REGIONAL PARK PROPERTY

- 586 ACRES
- FORMER LOGGING UNIT
- 150 ACRES OF MENDOCINO CYPRESS PYGMY FOREST
- NEWMAN GULCH WATERSHED



JANUARY 2014

































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THE ACCOMPLISHMENTS



















































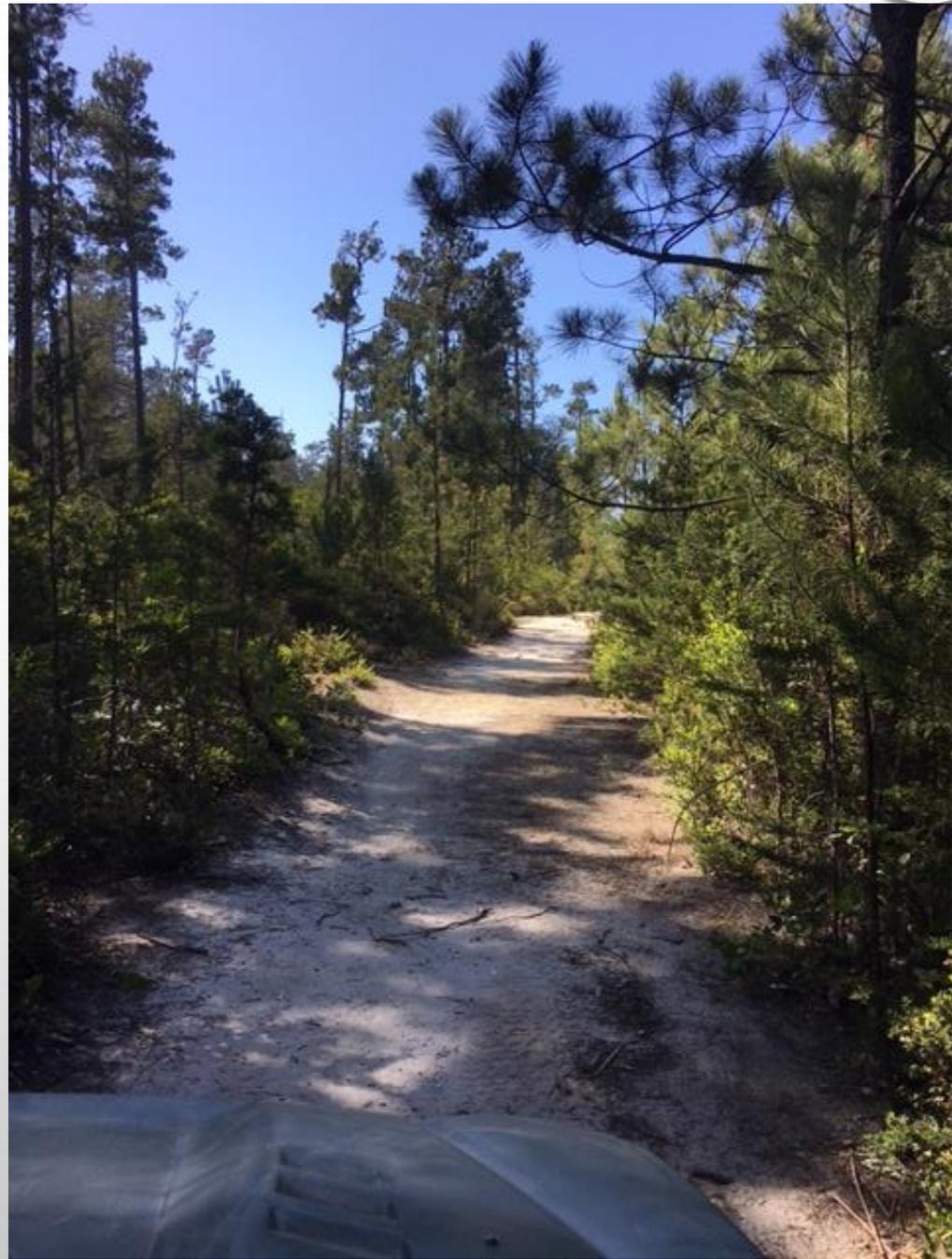


















AN UNEXPECTED FIND..









STEAM DONKEY































WHAT WAS REMOVED?

- 9 TONS OF TRASH
- 7 TONS OF METAL
- 7 CARS (STILL ON PROPERTY)
- 1.3 TONS HAZ MAT
- 2 – 55 GALLON DRUMS OF OIL
- 201 TIRES



- “UNLESS SOMEONE LIKE YOU CARES A WHOLE AWFUL LOT, NOTHING IS GOING TO GET BETTER. IT’S NOT.” – DR. SEUSS





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Text File

File Number: 16-334

Agenda Date: 8/22/2016

Version: 1

Status: Business

In Control: City Council

File Type: Staff Report

Agenda Number: 6A.

Receive Presentation Regarding Fort Bragg Police Department's Annual Report



AGENCY: City Council
MEETING DATE: August 22, 2016
DEPARTMENT: Police Department
PRESENTED BY: Chief Lizarraga

AGENDA ITEM SUMMARY

TITLE:

RECEIVE PRESENTATION REGARDING FORT BRAGG POLICE DEPARTMENT'S ANNUAL REPORT

THIS WILL BE AN ORAL PRESENTATION.



Fort Bragg Police Department Annual Report 2015

Fabian E. Lizarraga
Chief of Police



Table of Contents



• City Council	3
• Message from The City Manager	4
• Message from The Chief	5
• Mission Statement	6
• Department Summary	7
• Organizational Chart	8
• Community Involvement	9-10
• Employee Recognition	11-13
• Calls for Service	14
• Traffic Safety	15
• Gang Crime	16
• Property Crime	17
• Crimes Against Persons	18
• DUI Arrests	19



City Council



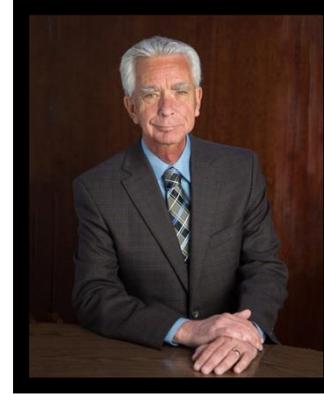
Mayor
Dave Turner



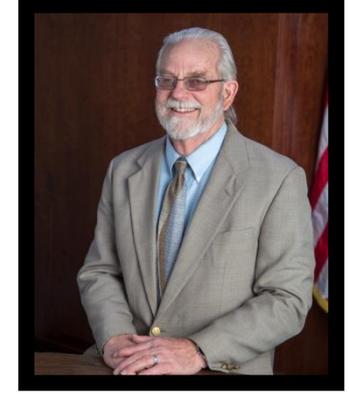
Vice Mayor
Lindy Peters



Councilmember
Michael Cimolino



Councilmember
Scott Deitz



Councilmember
Doug Hammerstrom

Mission Statement

*Fort Bragg is a small town
with a strong sense of community
that seeks to preserve its natural beauty
while providing exceptional public facilities and
infrastructure, safe streets,
and a well-planned framework
for sustainable development and prosperity.*

The Fort Bragg City Council meets on the second and fourth Mondays of every month at 6:00 p.m. at Town Hall, 363 N. Main Street, Fort Bragg, California. The public is encouraged to attend and participate in City Council meetings.



Message from the City Manager



Message from the City Manager:

The Fort Bragg Police Department plays a central role in protecting and enhancing the quality of life in our community. On a daily basis, our police officers work diligently to ensure that Fort Bragg remains safe. They are responsible for evenhandedly enforcing the laws and promptly dealing with calls for service. Fort Bragg is a small town with a small police force and, consequently, all of our officers are required to perform a complex array of tasks. Our officers respond to accidents and emergencies, investigate crimes, patrol the streets, respond to complaints, work with local youth, and collaborate with the many agencies and institutions that serve our community.

A police officer's work is very challenging. Fort Bragg's police officers contend with difficult and demanding situations every day, whether responding to a traffic accident, intervening in a domestic dispute, or investigating a serious crime. Our police officers are well-trained, hard-working, and dedicated to serving the citizens of Fort Bragg. They have earned the strong support of the Fort Bragg City Council, the City Manager, fellow City employees, and a broad cross-section of our community.

This annual report summarizes the accomplishments of the Fort Bragg Police Department over the past few years. It serves as a testament to the exceptional work performed by the Fort Bragg Police Department's sworn officers and non-sworn personnel.

Sincerely,

Linda Ruffing



Message from the Chief of Police



Message from the Chief of Police:

In re-issuing this annual report, I want to take the opportunity to thank the men and women of the Fort Bragg Police Department for the job they continue to do, and the dedication to the community they've shown for the last year. You have persevered through a time of local political turmoil, and continued to deliver outstanding Police Service to the citizens of Fort Bragg. I also want to express my appreciation for your warm welcome and support of me as I concluded my first year in this position. I will proudly represent you and together we will attain our goals of delivering quality community oriented police services while treating everyone we encounter with respect and dignity.

I also want to thank the members of the Fort Bragg community for your continuous support and appreciation of all the members of your Police Department. I look forward to establishing and reaffirming partnerships with residents, members of the business community and all segments of our community going forward. We also remain committed to working with our youth in helping them with their goals, assisting where we can, in avoiding the pitfalls of gang and drug involvement and assuring they have every opportunity to a bright and productive future. To that end, I hope to report next year on the successful implementation of a cadet post here in Fort Bragg, for youngsters aged 14 to 20.

From top to bottom, the members of the Fort Bragg Police Department will continue to take on challenges, work hard and establish more partnerships with you, our community, to ensure the best quality of life possible for all of the Fort Bragg Community. I look forward to meeting more of you as we achieve this and work together toward that end.

Sincerely,
Fabian E. Lizarraga



Mission Statement



The Fort Bragg Police Department is committed to provide excellence in police service to all segments of our Community. Acting under the tenet of Respect and Dignity for all, we strive to impact and improve the quality of life for families, the business community and visitors. We work in partnership with all segments of our community so that, together, we achieve a better standard of life by which our residents can live in an environment without the fear of crime.





Department Summary



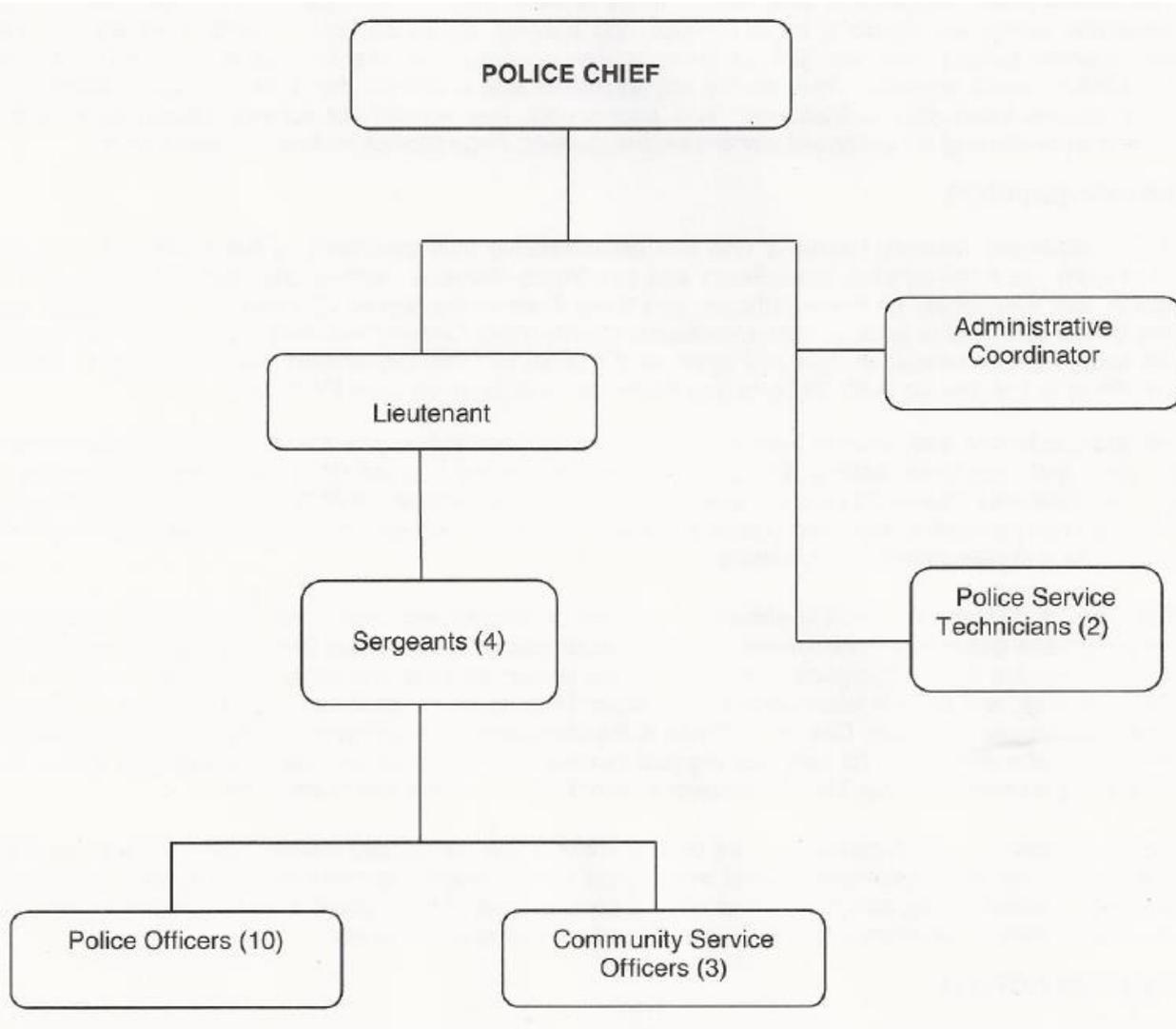
The Fort Bragg Police Department is made of up 19 full-time employees. Chief Fabian Lizarraga, Lieutenant Charles Gilchrist, Administrative Coordinator Debbie Desmond, Police Service Technician/Records Supervisor Sally Provencher and Police Service Technician/Property & Evidence Tech Lesley Bryant make up the Administrative Division. Along with administrative responsibilities, the Administrative Division is responsible for records management, property and evidence management, Live Scan services and other duties. The Operations Division is comprised of 4 Sergeants, 9 full-time sworn Police Officers, and 2 Community Service Officers. The Operations Division is tasked with handling all items related to the enforcement of laws.

The Fort Bragg Police Department is the only law enforcement agency on the California coast between Eureka and the San Francisco Bay Area with sworn law enforcement officers on duty 24 hours per day. The Police Department is divided into 4 teams, each working 12-hour shifts. Police Officers respond to a variety of calls for service, including criminal and non-criminal incidents. Examples of criminal incidents include assault/battery, domestic violence, burglaries and public intoxication. Examples of non-criminal incidents include non-DUI traffic collisions, civil disputes, and landlord-tenant disputes.





Organizational Chart





Community Involvement



Police Activities League Bicycle Rodeo

Officers work with the youth in our community teaching them the rules of the road and safe habits when riding their bicycles on our local streets. One of the goals of the Bicycle Rodeo is to teach children good bicycle safety. Free helmets are given out by the Police Department to any child who needs one.



Coast Police Activities League Fishing Clinic

Shown here are youth from our community getting an opportunity to fish in a local pond during the annual Police Activities League Fishing Clinic. The Fish and Wildlife Department stocks the pond, then along with other law enforcement members, help the children with their catch!



Coast Police Activities League Christmas Party

Every year staff from the Fort Bragg Police Department participates in the Coast Police Activities League Christmas Party. The children at this event are presented with a multitude of activities from a variety of games to play to decoration creation and other craft activities.



Community Involvement



Take Back Event

The Police Department participated in the annual Take Back Event in cooperation with the Drug Enforcement Administration (DEA). This event was successful in removing a great deal of potentially dangerous drugs and substances from our community. The Department has a "Red Box" to collect unused, expired and unwanted drugs throughout the year.



Fire Safety Day

Each year the Police Department joins many other agencies such as the Fire Department, CalFire, Mendocino County Sheriff's Office, Fish and Wildlife, CalStar and PG&E on Fire and Safety Day. This event is usually held at Timberwolf Stadium and is open to all 3rd, 4th and 5th graders at Dana Gray School who are taught various safety tips throughout the day.



National Night Out

National Night Out is an annual community-building campaign that promotes police-community partnerships and neighborhood camaraderie to make our neighborhoods a safer, better place to live. The Police Department had a hot dog BBQ at Bainbridge Park in 2015 to celebrate the event with the community.



Employee Recognition



Sergeant Oscar Lopez

On 06/14/15, Officer Oscar Lopez was promoted to the rank of Sergeant. Sergeant Lopez started his career with the Fort Bragg Police Department on 04/11/05. During his time with the department Sergeant Lopez has worked as a School Resource Officer and a Field Training Officer. He is a gang expert and has worked closely with the school system teaching the GRIP program. Prior to working in Law Enforcement Sergeant Lopez was an Infantryman in the United States Army.



Sergeant Jonathan McLaughlin

On 07/12/15, Officer Jonathan McLaughlin was promoted to the rank of Sergeant. Sergeant McLaughlin started his career with the Fort Bragg Police Department on 10/13/05. Sergeant McLaughlin started out as a volunteer then due to a staffing shortage was hired as a Police Services Technician. Sergeant McLaughlin worked his way up into the Community Services Officer position then went to the academy to become a Police Officer. Sergeant McLaughlin has worked as a Field Training Officer and a Bicycle Patrol Officer.



Employee Recognition

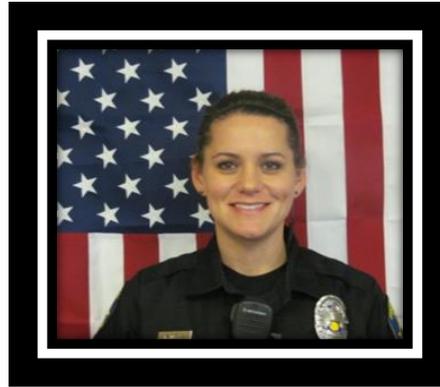


Lieutenant Charles Gilchrist

On 06/14/2015, Sergeant Gilchrist was promoted to the rank of Lieutenant. Lieutenant Gilchrist started his career with the Fort Bragg Police Department on 06/23/2001. During his time with the Department, Lieutenant Gilchrist has worked as a Field Training Officer, Detective and Sergeant. Lieutenant Gilchrist managed the Department's firearms training program for 14 years. He was also a member of the Special Weapons and Tactics Team. You can often find him working special events on his police bicycle. Prior to working in Law Enforcement, Lieutenant Gilchrist spent 10 years in the U.S. Coast guard conducting Search and Rescue, and law enforcement missions all over the world.



Employee Recognition: Police Recruit



Officer Kimberly Nell

Kimberly Nell began her career with the Fort Bragg Police Department as a Community Service Officer in the spring of 2013. Recruited to law enforcement from a local coffee house, Kimberly was said to have had a lifelong dream of serving in law enforcement.

Being a mother of three children, and wife of a tenured US Postal Worker, Kim was said to have waited a long time to begin the career she had dreamed of. With all of her children at the age of mostly self-sufficiency, Kim seized the opportunity to dive into a new career. Having never been truly exposed to the law enforcement lifestyle and culture, Kim quickly realized that law enforcement was more than just a regular '9 to 5' job. Kim found herself immersed in a culture and career where the people she serves with depend on her deeply, and the demands and expectations are higher than anything she had ever experienced.

Once Kim completed her training as a Community Service Officer, she quickly became proficient at her duties, and began developing her own methods and styles of making her position more productive and efficient. As her knowledge and interest in law enforcement grew deeper by working alongside police officers, Kim began expressing a deeper desire to be more involved, and take on greater challenges in the field as a police officer herself. Kim was chosen early in 2015, as the next candidate from within the department to attend the challenging six month long law enforcement training academy in Santa Rosa.

In July of 2015, Kim began her next phase of progression toward becoming a police officer by attending the Santa Rosa Junior College Public Safety Training Center. After months of challenging training, testing, and a deeper immersion into the law enforcement culture, Kim emerged successful, transformed, and ready to begin the next phase of her journey.

After completion of the police academy in December of 2015, Kim promptly began the Field Training Program as a Police Officer with the Fort Bragg Police Department. Kim is expected to complete the Field Training Program in April of 2016.

The Fort Bragg Police Department has been fortunate to be able to harvest local talent from the men and women within the community that are willing to serve and protect their own families and friends.

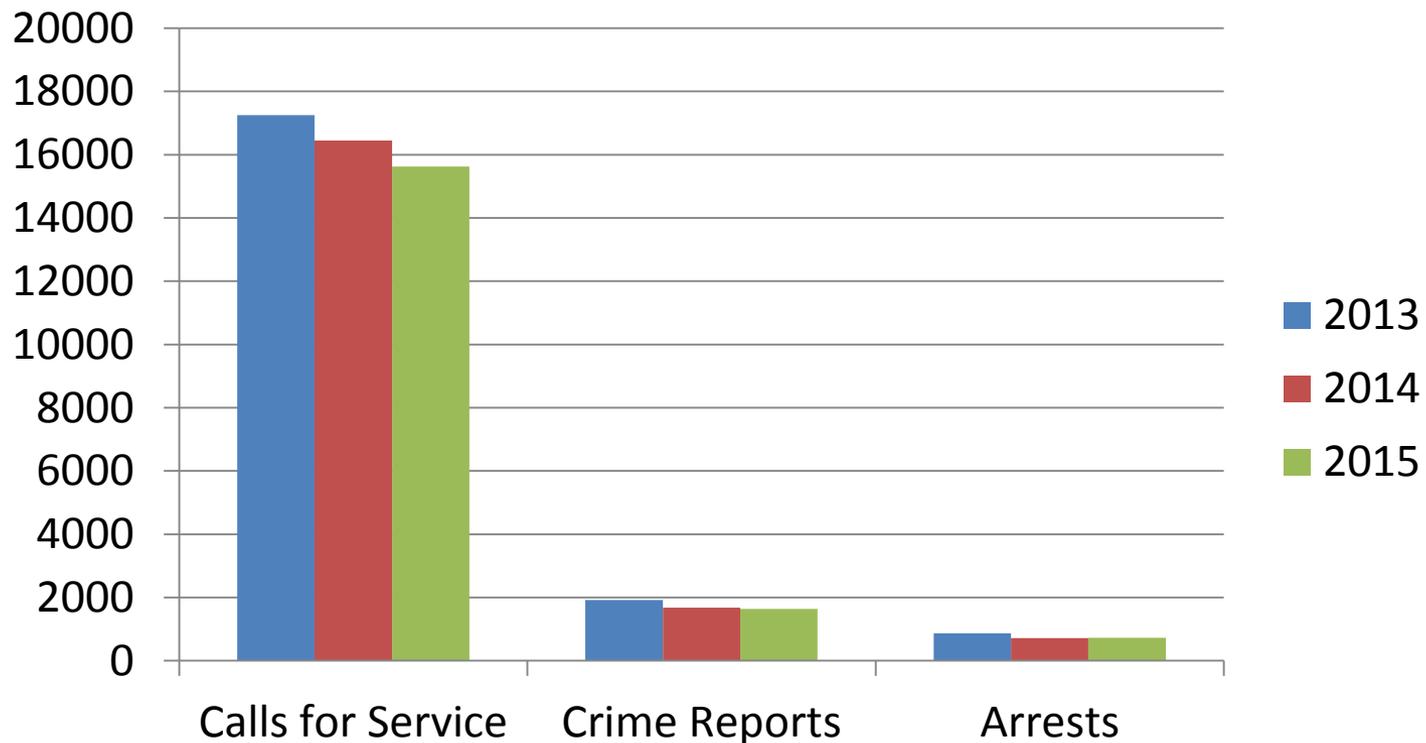
The Fort Bragg Police Department currently employs 4 Police Officers who have previously served the department in the capacity of Community Service Officer.



Calls for Service/Reports/Arrests



In 2013, Fort Bragg Police Officers responded to a total of 17,147 calls for service and wrote 1,925 Crime Reports associated with those calls for service, which resulted in 869 arrests. In 2014, Fort Bragg Police Officers responded to a total of 16,350 calls for service and wrote 1,681 Crime Reports associated with those calls for service, which resulted in 721 arrests. In 2015, Fort Bragg Police Officers responded to a total of 15,629 calls for service and wrote 1,643 Crime Reports associated with those calls for service, which resulted in 722 arrests.

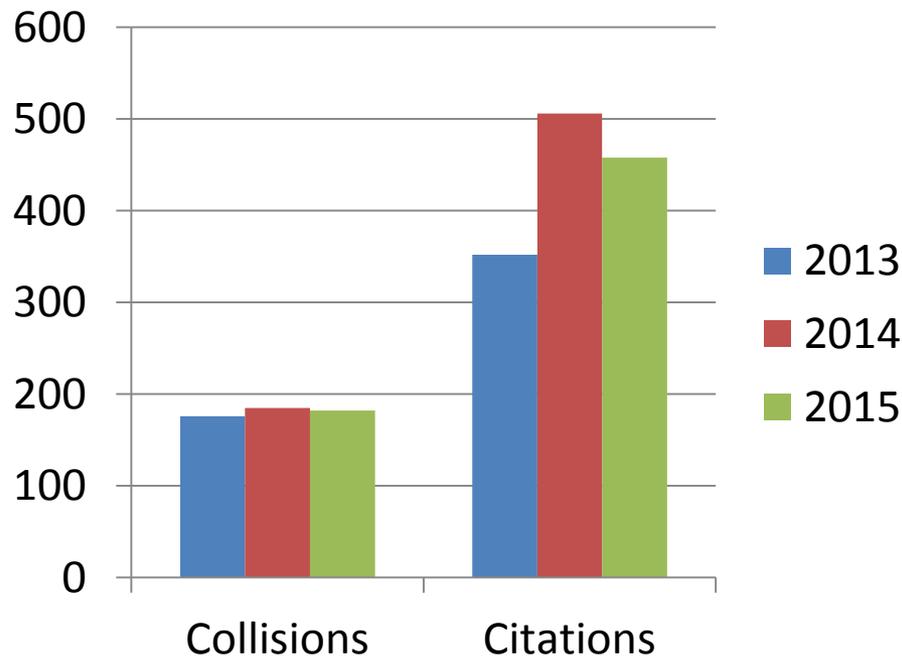




Traffic Safety

A major concern for the Fort Bragg Police Department and community alike is traffic safety. There have been many street improvements in recent years, increasing the safety of motorists traveling within Fort Bragg city limits.

The Fort Bragg Police Department initiates traffic stops on traffic safety violators with the purpose of education and enforcement. These two aspects combined lead to greater driver awareness and an ultimate goal of decreasing traffic collisions, thus increasing traffic safety in our community. Below are statistics for the number of traffic collision reports taken and traffic violation citations issued by Fort Bragg Police Officers from years 2013 through 2015 :

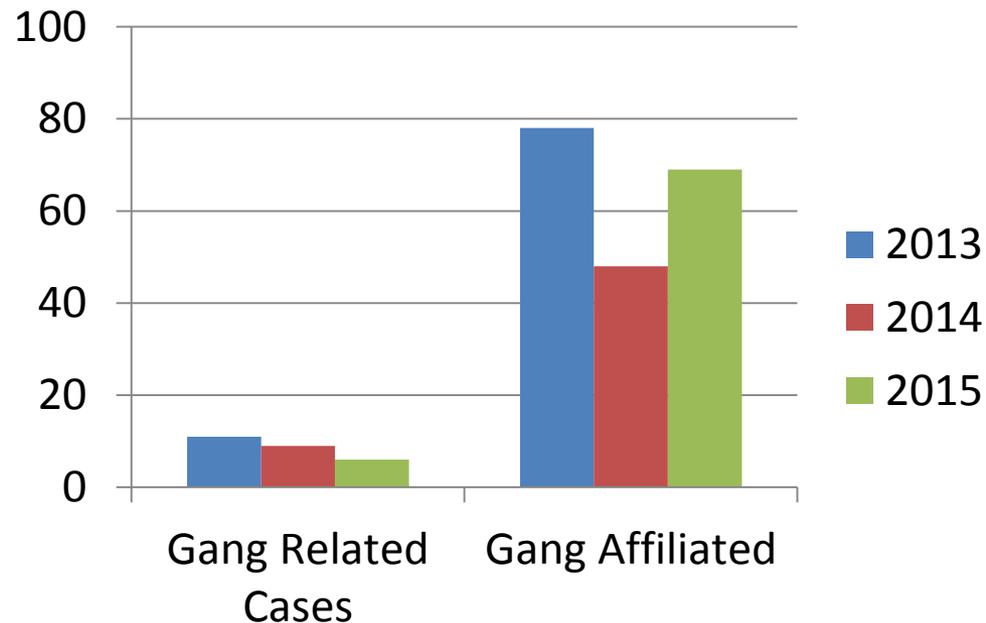




Gang Crime

Criminal Street Gangs present a threat to the safety of law enforcement and the community alike. Criminal Street Gangs are responsible for drug sales and trafficking, weapons violations, property crimes for the benefit of the gang, violence against citizenry, law enforcement and rival gang members, rape, and murder.

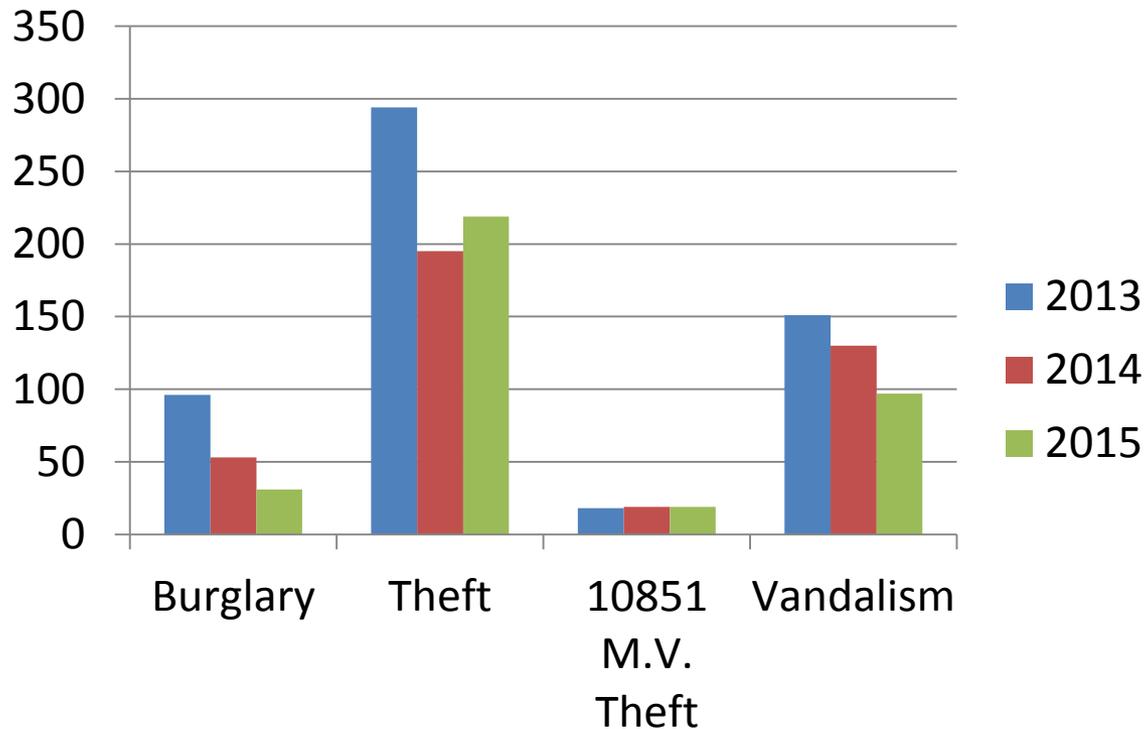
The Fort Bragg Police Department, in conjunction with local allied agencies participates in the Multi-Agency Gang Suppression Unit (MAGSU). Statistics of reports taken for gang related crimes in 2015 are as follows:





Property Crime

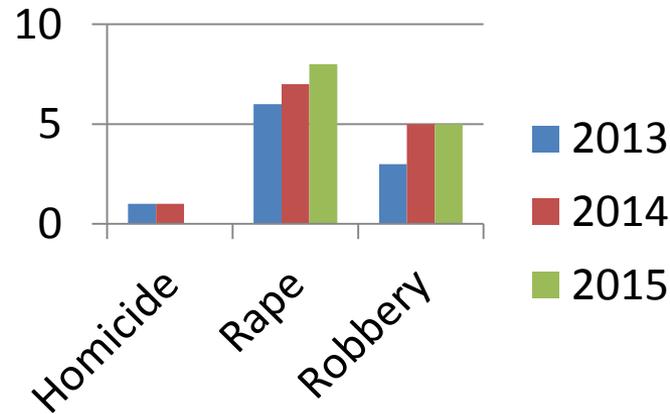
The Fort Bragg Police Department retains a list of problem areas where community members report activities or conditions that could lead to criminal activity. Fort Bragg Police Officers conduct frequent patrols of these areas throughout their shifts and whenever time permits. These “Extra Patrols” serve as a pro-active method for catching in-progress crimes and deterring would-be criminals. Reports taken for Burglaries, Thefts, and Vandalisms from years 2013 through 2015 are as follows:



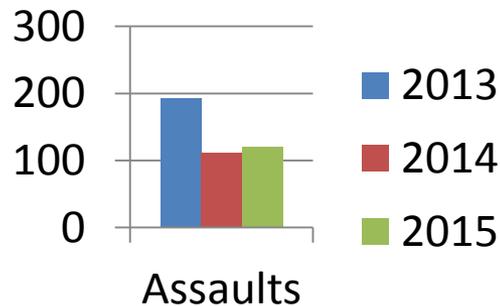


Crimes against Persons

Over the last three years, the City of Fort Bragg remained a safe place to live. The number of homicides dropped to zero while robberies remained at five. Reported rapes increased by one. Reports taken for Murder, Manslaughter, Rape, and Robbery from the 2013 through 2015 are as follows:



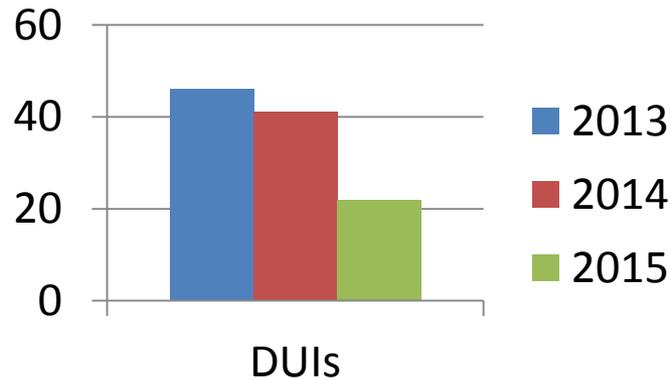
Assaults can refer to many different types of crimes against persons, including but not limited to gang fighting, simple or aggravated battery and domestic violence assaults. There was a slight increase in 2015. Reports taken for assaults from years 2013 through 2015 are as follows:





D.U.I. Arrests

The Fort Bragg Police Department initiates traffic stops on traffic safety violators with the purpose of education and enforcement. During these stops drivers are evaluated for the potential of being under the influence of alcohol or others substances while operating their vehicle. Below are statistics for arrests related to driving under the influence from years 2013 through 2015 :





END



City of Fort Bragg

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Text File

File Number: 16-336

Agenda Date: 8/22/2016

Version: 1

Status: Business

In Control: City Council

File Type: Staff Report

Agenda Number: 6B.

Receive Recommendation from Community Development Committee and Provide Direction to Staff Regarding an Update to the Inland Land Use and Development Code



AGENCY:	City Council
MEETING DATE:	August 22, 2016
DEPARTMENT:	CDD
PRESENTED BY:	S. Perkins/M. Jones

AGENDA ITEM SUMMARY REPORT

TITLE:

RECEIVE RECOMMENDATION FROM COMMUNITY DEVELOPMENT COMMITTEE AND PROVIDE DIRECTION TO STAFF REGARDING AN UPDATE TO THE INLAND LAND USE AND DEVELOPMENT CODE

ISSUE:

Every few years, the City updates the Inland Land Use and Development Code (ILUDC) to fix identified problems and to ensure that the ILUDC implements the policy goals of the City Council. Over the past year, City Council has provided new policy direction regarding the regulation of vacation rentals and cannabis manufacturing. Additionally, staff has reviewed the ILUDC in light of recent projects and requests from the community and identified the following issues for policy direction:

- Considering possible new regulations for “home sharing;”
- Providing for a combined “brewery/restaurant” business use in commercial and industrial districts;
- Permitting tattoo businesses in more commercial zoning districts;
- Permitting residential use in historic single-family residential structures located in commercial districts; and
- Revisiting the City’s animal-keeping regulations.

On the morning and evening of June 16, 2016, the Community Development Department held two Zoning Code Update Workshops, inviting community members to contribute their ordinance update ideas and concerns. See Attachment 2 for a complete review of community meetings that helped shape this report.

Additionally, staff anticipates updating the Coastal Land Use and Development Code (CLUDC) this fall/winter, so that the two ordinances are as similar as possible. The CLUDC, which regulates land use in the Coastal Zone, is updated at less frequent intervals than the ILUDC because the process with the Coastal Commission is time-intensive and lengthy. As the CLUDC has not been updated since 2008, staff will come back to City Council for direction this fall/winter regarding the applicability of ILUDC changes made in 2014 and 2016 to the CLUDC and will submit one Local Coastal Program Amendment to the Coastal Commission which includes all City Council approved changes. The CLUDC update will come forward to the City Council within the next few months and will take approximately 12 months to process with the Coastal Commission.

RECOMMENDED ACTION:

Provide direction to staff regarding proposed amendments to Fort Bragg Municipal Code Title 18, the Inland Land Use and Development Code (ILUDC).

ALTERNATIVE ACTION(S):

1. No action. Under this alternative, no further actions would be taken to update the Inland Land Use and Development Code.

2. Continue action on the matter and request additional information and/or analysis by staff.

ANALYSIS:

This analysis identifies recommendations, includes summary information regarding discussions of the issues, and includes a brief analysis of the pros and cons of each policy decision.

Vacation Home Rentals

City Council Policy Recommendation: Permit Ten Vacation Home Rentals in the Central Business District (CBD) on the second or third floor of existing buildings with Minor Use Permit approval. The policy goals of limited legalization of Vacation Home Rentals are to: 1) enhance the vitality of the CBD; 2) give property owners an additional revenue stream to make building upgrades and fire sprinkler installation more affordable; and 3) eliminate the negative impacts of vacation rentals on residential neighborhoods and rental rates by maintaining the prohibition in the residential districts.

The Fort Bragg City Council, Planning Commission and Community Development Committee (CDC) discussed the potential for allowing Vacation Home Rentals in parts of the City over several public meetings from June to August of 2015, and again at last month's CDC meeting. Community members also spoke on the topic at both Zoning Code Update Workshops.

City Council directed staff, in August of 2015, to draft an ordinance permitting Vacation Home Rentals under the following parameters:

1. Limit Vacation Home Rentals to CBD;
2. Limit Vacation Home Rentals to the second and third floors located over retail and commercial businesses;
3. Require a Minor Use Permit, allowing for administrative review;
4. Establish a mechanism to revoke permits, if requirements are not met or nuisance conditions persist. At previous Council and Committee meetings, a "three strikes" approach was proposed, where a permit could be revoked following three substantiated complaints of nuisance or acting beyond the terms of an approved permit; and
5. Limit the quantity of Vacation Home Rentals by resolution to ten permits for the first year, and consider expanding the quantity by resolution following review of the program in two years.

Since this direction was given, staff has identified the following additional considerations that the Council may choose to address through the Minor Use Permit process:

1. Require a property inspection (for Building Code compliance, etc.);
2. Limit the number of people permitted in each dwelling, per building and fire code; and
3. Outline penalties for non-compliance, including grounds for permit revocation.

Policy Considerations

1. The ILUDC designates the CBD as the City's pedestrian-oriented civic, cultural and commercial center. The civic, cultural and commercial uses established in the CBD rely on heavy pedestrian traffic from both local residents and tourists. There are presently numerous underutilized or vacant spaces on the second and third floors of downtown buildings that represent an opportunity to increase traffic and bolster the vivacity of the CBD.
2. Many travelers are looking for alternatives to hotels, motels and beds and breakfasts when planning their trips. Vacation Home Rentals are a popular substitute to hotels. They provide travelers with a greater variety of accommodation options.

3. Legalization of Vacation Home Rentals would provide an avenue to collect Transient Occupancy Tax.
4. Housing affordability is a significant challenge for many renting families in the City, and the Vacation Home Rental ordinance should not exacerbate housing affordability by creating additional demand for housing units and increased rental rates.
5. Existing residential units on the second and third floors of the CBD may currently serve the housing needs of some of the City's lower income residents. Converting these apartments to Vacation Home Rentals would increase their value to landowners, but may remove lower-income residential units from the City's housing stock.
6. Some upstairs spaces in the Central Business District are presently vacant, and would require extensive renovations to serve as either a Vacation Home Rental or a long-term apartment. The renovation and use of vacant spaces as Vacation Home Rentals would not affect the present housing supply. However, other units are currently used as long-term rentals, and if they are converted to short term Vacation Home Rentals, existing tenants will be displaced.
7. While permitting ten Vacation Home Rentals in the CBD could be perceived as placing a strain on downtown parking, most Vacation Home Rental customers would likely use downtown parking spaces at night when competition for parking spaces is less intense, and this impact is likely to be marginal. Additionally, much of downtown is limited to two-hour parking during the day; which would dissuade visitors from long term parking during the day.
8. Vacation Home Rentals can result in excessive noise and partying. An occupancy limit based on unit size or number of bedrooms might help to mitigate some of these impacts.
9. Permitting a limited number of legal Vacation Home Rentals in downtown could help meet the market demand for this vacation experience and thereby lower the instances of Vacation Home Rentals violations in other areas of town.

Attendees at both Zoning Code Update Workshops expressed interest in expanding the area where Vacation Home Rentals could be permitted. Some suggested allowing Vacation Home Rentals in the CBD and within one or two blocks from the CBD boundaries. Others advocated for allowing Vacation Home Rentals in the General Commercial and/or Highway Visitor Commercial zoning districts. Other workshop attendees were opposed to allowing Vacation Home Rentals anywhere in the City, citing the negative effects they could have on parking, noise, rental rates and housing costs. Previous City Council direction, and the CDC's recommendation on June 28, 2016, indicated that the ordinance should limit new Vacation Home Rentals to only the CBD. If City Council wishes to explore expanding the boundaries of where Vacation Home Rentals could be permitted, staff could analyze the policy approach and side effects of the expanded area.

The CDC discussed whether or not a limit on the maximum number of permits available would apply to individual units or whole properties. For example, would a building with three apartments used as Vacation Home Rentals require three permits, or would one permit apply to the property as a whole? Also, would there be a limit on the permits available per applicant, or could one owner hold multiple permits? The CDC recommends that these issues, in addition to the transferability of permits, be explicitly addressed in a Vacation Home Rental ordinance.

Detailed Recommendation

1. Limit Vacation Home Rentals to the CBD.
2. Limit Vacation Home Rentals to the second and third floors located over retail and commercial businesses.
3. Require a Minor Use Permit for each unit. Through the Minor Use Permit process, establish
 - a. Property inspections (for Building Code compliance, etc.); and

- b. Limit the number of people renting a unit to two people per room as required by the building code (bath and kitchen excluded).
 - c. Establish penalties and permit revocation process for violations.
- 4. Revoke permits if conditions are not met or nuisance conditions exist.
- 5. Limit the quantity of Vacation Home Rentals by resolution to ten permits for the first year, and consider expanding the quantity by resolution of City Council.
- 6. Require a separate Minor Use Permit for each unit. Alternatively, applicants may obtain a Use Permit for a Bed & Breakfast for multiple units, so long as they meet the other requirements of a B&B.
- 7. Allow for transferability of Minor Use Permit upon sale of a property.
- 8. Applicants must specify the platforms where the unit will be advertised (Airbnb, etc.).
- 9. Advertisements must clearly specify that the unit is rented with a valid City Permit and must include the permit number.

Home-Sharing

CDC Policy Recommendation: Permit a limited number of Home-Sharing businesses in residential districts with strict eligibility requirements and enforcement procedures.

Issue: Some travelers want to rent relatively affordable rooms in homes occupied by full-time residents. Home-sharing is a facet of the sharing economy and has become more commonplace in cities throughout California due to VRBO and Airbnb. Home-Sharing is when a resident rents out one or more rooms in their house to tourists, while also living in the house. In some ways Home-Sharing is most similar to a Bed & Breakfast, although the scale is typically smaller with just one or two rooms available for rent. Home-Sharing currently is not permitted in the City of Fort Bragg and the City engages in code enforcement activities against home-sharing businesses.

CDC and workshop discussions of Home-Sharing identified concerns about the impacts of home sharing tenants on the quality of life in residential neighborhoods. Concerns include noise, crowding and parking, and concerns about Home-Shares becoming de facto Vacation Home Rentals thereby diminishing the availability of rental housing and increasing housing costs. Parking was a concern to many, as visitors would park their vehicles at night just like full-time residents, and would thereby contribute to parking problems.

Policy Considerations

- 1. Like Vacation Home Rentals, Home-Sharing could give some property owners extra income to assist with mortgage payments and other expenses.
- 2. Legalization of Home-Sharing would provide an avenue to collect Transient Occupancy Tax.
- 3. Legalization of Home-Sharing would likely result in the conversion/loss of some bedrooms that are rented full-time to long-term housemates. Such conversion would remove needed low-cost housing options from the market, exacerbating the existing affordable housing shortage in Fort Bragg.
- 4. It would be difficult to keep Home-Sharing businesses in residential neighborhoods from morphing into Vacation Home Rentals, resulting in the additional negative impacts on residential neighborhoods described above. From a code enforcement standpoint, it will be difficult to differentiate a legal Home-Sharing business from a prohibited Vacation Home Rental, as the City would need to prove that the property owner does not reside at the residence.

5. Home-Sharing that involves the rental of multiple bedrooms would result in the property essentially being converted into a B&B in a residential neighborhood, which is not a permitted use.
6. Based on code enforcement complaints, inquiries to City staff, and online searches of Airbnb and VRBO, Home-Sharing activities are currently taking place around town in violation of City codes.
7. There are legitimate parking concerns, as Home Sharing would bring additional vehicles and trips to a neighborhood. The Home-Sharing ordinance could establish off-street parking requirements (for both guests and residents).
8. If the Council chooses to allow Home-Sharing, it should determine whether it should only be allowed in single-family residences, or could it also be allowed in units that are part of multi-family housing or part of mixed-use buildings.
9. If the Council chooses to allow Home-Sharing, it should determine whether to allow it in second units on an owner-occupied property. Home sharing in second units would effectively be a Vacation Home Rental.

Detailed Recommendation:

The CDC made the following recommendations:

1. Home-Sharing should be permitted with a Minor Use Permit which would allow notification of nearby property owners of the application; and for review of the project's compliance with established requirements.
2. The following requirements should apply to Home-Sharing businesses:
 1. Require that a resident be occupying the residence at all times when Home-Sharing is conducted;
 2. Allow Home-Sharing in all residential zoning districts and in legal residences in commercial districts;
 3. Allow Home-Sharing in a dwelling unit occupied by the owner, or a renter who obtains written permission from the owner;
 4. Home-Sharing should be limited to the primary dwelling unit (not allowed in second units);
 5. Limit guests to:
 - a. One "group" at a time;
 - b. Not more than two guests per guest bedroom; and
 - c. Not more than two bedrooms (four guests) per residence.
 6. Prohibit guests from parking travel trailers or motorhomes in residential districts.
 7. Require that off-street parking be provided for all guests and for the permanent residents.
 8. Minor Use Permit should be revocable after three or more substantiated complaints of a nuisance condition or a violation that is not corrected within a specified timeframe.
 9. The Minor Use Permit should be renewed on an annual basis and require:
 - a. Annual proof of residency by hosts;
 - b. The number of guests stays over the past year;
 - c. Payment of required TOT on a monthly basis;
 - d. Maintenance of a valid business license from the City of Fort Bragg; and
 - e. Submission of ad copy from Airbnb, etc.

If Council decides to allow Home-Sharing, staff recommends the following additional regulations:

1. Limit the number of Home-Sharing businesses licenses through resolution to ten for the first year, and consider modifications to the number of licenses based on community input in subsequent years.

2. Require Home-Sharing rentals to provide one off-street parking space for each bedroom proposed for Home-Sharing, in addition to the parking required for the on-site residents.
3. Require online listings of the Home-Share to include specific information so that the unit is not operated as a Vacation Home Rental, and to help enforcement officials identify Home-Shares operating beyond the scope of their permits. The following requirements for online advertisements of Home-Sharing operations are collected from other jurisdictions' ordinances:

Online listings of Home-Sharing businesses shall:

1. Be consistent with an approved business license and Minor Use Permit, including clear language specifying that unit as a shared space and the maximum number of guests allowed;
2. Include the City of Fort Bragg business license number and Minor Use Permit number approving the business;
3. Include the floor plan supplied with the application materials indicating the rooms for guests and full-time residents; and
4. Specify that trailers and motorhome parking is prohibited in association with the rental.

Single-Family Dwellings in Commercial Districts

CDC Policy Recommendation: Consider allowing the limited conversion of historically occupied single-family homes, located in commercial zoning districts, back to single-family residences in a way that will not result in multiple conversions and an increase in commercial lease rates.

Issue: Many structures in commercial zoning districts have the appearance of a single-family dwelling with craftsman-style architecture comparable to those in residential districts (see picture below). With the high demand for housing units and a high supply of vacant commercial spaces, an ordinance amendment could allow single-family residences in commercial districts to address the City's current economic situation. An ordinance amendment could: 1) allow property owners with long term vacancies the ability to rent their building as housing; and 2) allow back to a commercial use.



Properties zoned General Commercial on the 200 block of South Franklin Street

Multi-family dwellings are currently allowed in all commercial zoning districts, and live/work units are allowed in all except the Highway Visitor Commercial district. The ILUDC does not presently permit single-family residential uses in any commercial zoning district (mixed-use and multi-family housing is allowable in all commercial districts).

Policy Considerations

1. Allowing single-family residences in commercial zoning districts could add needed residential units to the City's housing stock.
2. Based on staff conversations with real estate professionals, the value of residential space in the City greatly exceeds the value of commercial space. An ordinance amendment allowing single-family residential uses in commercial districts could encourage land-owners to rent to residential tenants, thereby raising rental rates for existing commercial uses, or result in evictions of commercial tenants to convert the structure to a residential use. The housing market is currently very constrained and rental rates are high at about \$1.25 to \$1.75/SF. The commercial real estate market is marked by the high vacancies in all commercial zoning districts, with lease rates from \$0.50 to \$1.25/SF.
3. If significant areas of commercial zoning districts become populated with single-family residences, it could alter the character of those commercial districts.
4. Commercial uses are usually more viable when located near one-another. Customers of one business may be more inclined to visit other businesses. If a commercial district becomes saturated with residential uses, the success of existing and future commercial uses will be affected.
5. Commercial and residential uses are not always compatible. If a commercial district becomes heavily residential, a new business may no longer "fit" the new neighborhood and become a "nuisance" in the eyes of new neighbors.
6. Once commercially-zoned properties become single-family residences, they would likely remain residences until the real estate market encourages the land owner to rent to a commercial use. This could take numerous commercially-zoned properties off the market for businesses, reducing the variety of commercial spaces available for new businesses, and potentially increasing commercial rental rates in other locations.

Staff conducted an inventory of existing uses in the inland commercial zoning districts to determine the quantity of commercially-zoned properties that may be eligible for conversion to single-family uses and quantity of existing single-family residences. The results are as follows (numbers are accurate, but not exact):

General Commercial District

- 97 total properties
- 38 existing single-family residences (legally nonconforming or unpermitted)
- 12 potential single-family residences presently used for commercial purposes

Central Business District

- 161 total properties
- 17 existing single-family residences (legally nonconforming or unpermitted)
- 12 potential single-family residences presently used for commercial purposes

Highway Visitor Commercial District

- 20 total properties
- 4 existing single-family residences (legally nonconforming or unpermitted)
- 5 potential single-family residences presently used for commercial purposes

Detailed Policy Recommendation

1. Require that a structure, proposed for conversion to a single family home, be vacant for a period of six months prior to application. This is meant to discourage property owners

from evicting existing commercial tenants or turning away potential commercial tenants to pursue a Use Permit for conversion to a single-family residence.

2. Require Use Permit approval by the Planning Commission and payment of any applicable sewer and water capacity fees.
3. The following findings should be required for a Use Permit approval:
 1. The structure has the design/appearance of a single-family residence, as depicted in the Citywide Design Guidelines;
 2. The structure has been vacant for a period of six months or more prior to submittal of the application for a single-family use; and
 3. An inspection by the Building Department has certified that the unit meets Building Code requirements for a single-family residence.
4. Limit the quantity of conversion permits by resolution to ten.
5. Require off-street parking appropriate for a residential use.
6. Limit conversion to properties that are adjacent to existing residential districts.

Brewery-Restaurants

CDC Policy Recommendation: The CDC did not provide a policy recommendation on this issue as they had concerns about diluting the industrial zoning district by allowing restaurants even as part of a brewery.

Breweries are a trendy land use and, in many communities, breweries often operate in tandem with a restaurant. This allows a business to benefit from two revenue streams and to cross-market. Breweries and restaurants are not presently permitted in the same zoning districts in Fort Bragg. Breweries are only permitted in industrial districts, and restaurants are only permitted in commercial districts. The City has a very large brewery in its downtown that is a legal, non-conforming use and as such it cannot expand beyond its current footprint. The recently approved Overtime Brewery is located in the industrial zoning district and is allowed limited food sales as an accessory use, even though the owners would prefer to operate a restaurant as an accessory use to their brewery. Three policy approaches were discussed that could address this disconnect.

1. Allow brewery-restaurant combination in commercial districts. North Coast Brewing Company (NCBC) is located in the CBD, and is a legally non-conforming use. As a result of their non-conforming status, the business has been forced to expand upward, as non-conforming uses are not permitted to increase in footprint. Allowing breweries in commercial districts would make the existing NCBC a permitted use, and provide the business with more expansion flexibility. This change would also allow new brewery/restaurant businesses to locate on commercially-zoned properties throughout town.
2. Allow brewery-restaurants in industrial districts. Overtime Brewing proposed to open with a restaurant component, but restaurants are not permitted in industrial zoning districts. As a result, the size of the business' food-serving operation was greatly reduced and limitations were placed on their signage to reduce the use from a restaurant to accessory sales. The ILUDC could allow restaurants only as a permitted accessory uses to a brewery in industrial districts.
3. The ILUDC currently includes breweries as a part of the Food and Beverage Product Manufacturing definition, alongside other examples such as fruit and vegetable canning, dairy products manufacturing and catering services. In some cases, a brewery may be incidental and accessory to a primary restaurant use, whereas in other instances a restaurant may be incidental and accessory to a primary industrial brewing use. New uses could be added to the zoning ordinance as follows:

Brewery-restaurant. An establishment that produces ales, beers, meads, hard ciders, and/or similar beverages for commercial consumption, and may include secondary

restaurant uses provided the restaurant portion of the project occupies less than fifty percent (50%) of the floor space of the brewery.

Brewpub. A retail business selling ready-to-eat food and/or beverages for on- or off-premise consumption, and may include secondary brewery uses provided the brewery portion of the project occupies less than fifty percent (50%) of the floor space of the brewpub.

In this example, breweries would be allowable in industrial zoning districts, and brewpubs would be allowable in commercial zoning districts.

Policy Considerations

1. Allowing brewery/restaurants in the CBD might result in land-use incompatibilities that effect nearby commercial uses if a new brewery moves into the CBD. It also might allow NCBC to expand its operations beyond the current footprint.
2. Allowing restaurants as an accessory use to a brewery in the industrial zoning districts could impact land values and rental rates in the industrial zones if another brewery chooses to open in Fort Bragg and operate an accessory restaurant. There are ±56 acres zoned Heavy Industrial (±23 acres inland) and ±48 acres zoned Light Industrial (±43 acres inland) in the City.
3. Commercial and industrial uses can sometimes conflict, and unintended consequences could arise as a result of co-mingling more commercial and industrial uses. However, requiring a Use Permit would allow the Planning Commission to consider the impacts of future projects and to mitigate as necessary.

Detailed Policy Recommendation

None at this time

Second Residential Units

CDC Policy Recommendation: Encourage development of second residential units by revising the zoning ordinance to eliminate certain requirements that have constrained the development of second units in the past, especially the minimum lot size of 6,000 SF and the requirement that parcels have either an alley or a 36-foot wide street in order to have a second unit.

Second residential units (sometimes called granny units, guest houses or carriage houses) can provide affordable housing options for City residents. Most City lots with an existing single-family residence are eligible for the development of a second residence; however, some existing zoning requirements disqualify projects that may be otherwise appropriate or desirable. The CDC suggested that the City needs more rental housing, so incentivizing second units should be a priority. The following requirements for second residential unit development are the reason many lots do not qualify:

- A. Limitation on location. A second unit is not allowed on a parcel where access to the parking required for the second unit is from the same street as the access to the parking for the primary dwelling, and the curb-to-curb width of the street is less than 36 feet. Access from an alley may be approved only if the alley has adequate drainage facilities, and has adequate width and, in the case of a dead-end alley, adequate turnaround area for emergency vehicles.
- C. Minimum site area. A parcel proposed for a second unit shall be a minimum of 6,000 square feet.

The CDC and attendees of the Zoning Code Update Workshops agreed that it should be easier to build second residential units. The highlighted sections above are primary reasons some projects are denied.

The Limitation on Location policy was enacted to reduce the impacts second units have on on-street parking in residential neighborhoods. The requirement ensures that the street is wide enough to accommodate additional vehicle traffic and increased parking demands resulting from the second residence. Policy 18.42.170(F) requires new second residential units to provide one off-street parking space which makes the availability of on-street parking less of a concern. CDC recommended that the 36-foot wide street requirement should be removed from the ILUDC.

The Minimum Site Area policy affects property owners with parcels that are less than 6,000 square feet. While most City parcels are greater than 6,000 square feet, there are many that are smaller. As development on a parcel increases, so does the percentage of lot coverage. High lot coverages reduce areas for rainwater to infiltrate the ground, and can increase runoff and stress on the City's drainage system. The smaller a lot, the more likely a second unit would increase the lot coverage to a point that it could lead to negative stormwater impacts. However, each zoning district has prescribed lot coverage maximums. For most residential lots, these maximums are between forty (40) and fifty (50) percent. These requirements apply to lots of any size. The 6,000 square foot lot size minimum for second units is a redundant measure, as stormwater impacts are already reduced by the lot coverage maximums. A 5,000 square foot lot could develop a primary residence and secondary residence, and remain under the zoning district's maximum lot coverage requirements. Removal of this requirement would allow more City lots to qualify for second residential units.

Policy Considerations

1. The 36-foot minimum street width restriction for second units was enacted in response to concerns expressed by residents with narrow dead-end cul-de-sacs (primarily off of Chestnut Street). The Council may want to consider prohibiting second units where the primary access would be provided from dead-end cul-de-sacs and/or alleys with a width of less than 36-feet.
2. Roughly one-third of residential lots in the City have second residential units—some portion of which are unpermitted. Changing these regulations would provide a path for legalization for some of these unpermitted and occupied second units.
3. Revising the regulation would make more properties eligible for second units and may increase the number of second units in Fort Bragg.
4. Second units tend to be smaller than primary units and thus are rented at more affordable rents and could help with the high cost of rental housing in Fort Bragg.
5. If more second units are constructed as a consequence of the relaxed standard it would increase residential density, which can lead to noise and parking issues.
6. If the standards are relaxed, off-street parking should be required for new second units.
7. Density of development can be more effectively regulated through lot coverage ratio (the percent of the lot which is covered by building), than by parcel size.

Detailed Recommendation

1. Allow second units based on lot coverage ratio by zoning district rather than by parcel size. This would allow second units in all residential zoning districts so long as the parcel remains at least 60% undeveloped in low density residential zoning districts, 50% undeveloped in medium density residential districts, and 25% undeveloped in high density residential districts.
2. Allow second units on parcels without alley access and on streets with less than 36 feet in width, so long as all parking for the second unit is provided on the parcel.

3. Consider prohibiting second units on properties where access would be provided by a dead-end alley or a cul-de-sac that is less than 36 feet in width.

Signage

CDC Policy Recommendation: Consider revising signage regulations to: 1) limit the amount of in-window advertising; 2) revise multiple tenant signage requirements to allow for more signage flexibility.

The CDC discussed the growing quantity of window signs around town, particularly advertising alcohol and tobacco. The current requirements for window signs are in ILUDC Section 18.38.080(H):

1. Maximum sign area. Permanent window signs shall not occupy more than 20 percent of the total window area.
2. Sign location. Signs shall be allowed only on windows located on the ground level and second story of a structure frontage.
3. Sign materials. Signs shall consist of individual letters, logos, or symbols applied to, stenciled on, or etched into the glass surface; however, neon signs with transparent backgrounds may be hung inside the window glass.

At the Zoning Code Update Workshops, staff received some complaints about signs that are in violation of City code.

Additionally, some businesses are looking to have multiple subtenants within their retail establishments to reduce the cost of running a business and improve synergies between similar businesses. Currently, the City's sign ordinance reduces the amount of signage permissible per tenant if there are more than ten tenants within a building, as the maximum signage per building is 100 square feet. So with six tenants in a building, the total permissible signage would be 16 sf per tenant. Otherwise all businesses are allowed a minimum signage of 25 SF.

Policy Considerations

1. While the discussion on window signage applied largely to chain establishments, placing more strict requirements on window signage would affect small-businesses, as well.
2. Enforcement of the sign ordinance would remain complaint-driven, but small-businesses would be subject to the same standards as chain stores.
3. Allowing at least 25 sf per tenant in buildings with multiple tenants, could result in smaller buildings with lots of signage, which could add clutter to the downtown streetscape. On the other hand, this approach could provide support for the success of alternative forms of multi-tenant retailing.

Policy Approach

1. The maximum sign area for permanent window signs is 20% of the total window area. The policy does not address temporary window signs, which are commonly used by restaurants and other businesses to advertise sales and specials. This seems to be most prevalent in chain establishments that receive periodic marketing materials for seasonal products and sales. Removing the word "permanent" from the policy would give the City the ability to reduce window signs when complaints are received.
2. Allow a minimum of 20 SF of signage per tenant, no matter how many tenants are located within a building. This is a compromise amount yet still a nice large sign.

Miscellaneous Items

In addition to the more substantive changes to the ILUDC described above, the following items could also be addressed in the update to the code:

1. Tattoo Services

Tattoo services are presently defined as a Personal Services – Restricted. Other examples of Personal Services – Restricted include pawnshops, check cashing stores and fortune tellers. A tattoo services business recently attempted to open on North Main Street in the Highway Visitor Commercial zoning district. The business license application was denied, as Personal Services – Restricted uses are not allowed in that district. An ordinance update could define tattoo services as a Personal Services, and remove it from the Personal Services – Restricted definition. This would allow the business type in all commercial zoning districts, and reflects the growing cultural acceptance of tattoos.

2. Animal Keeping

Animal keeping is presently regulated by ILUDC Section 18.42.040. Some City properties may lend themselves to raising certain animals that their zoning districts do not allow. For example, there are large properties on the east side of the City with existing agricultural buildings where cows and horses are not permitted. An ordinance amendment could allow larger animals, including horses, cows and swine, in all zoning districts with an approved Minor Use Permit and a minimum lot size. The lot size standards would remain, requiring a maximum of 2 horses and/or cows per acre, with a minimum lot size of one acre. Hogs and swine would still require a minimum of two acres, with a maximum number of hogs and swine not to exceed one per acre.

3. Updates to Land Use Tables

The CDC and attendees of the Zoning Code Update Workshops agreed that the land use tables should be revised to be less restrictive. Staff will prepare a table of suggested revisions, for Council's consideration at a later City Council meeting.

4. Sign Ordinance Reorganization

The sign ordinance is poorly organized which makes it more difficult to understand. Staff would like to reorganize this code section, but the reorganization would not include substantive changes.

5. Rezoning of 471 South Whipple Street

471 South Whipple Street is presently zoned Neighborhood Commercial. This Neighborhood Commercial district extends along the north side of a portion of the 300 block and the entire 400 block of Chestnut Street (see Attachment 1). 471 North Whipple is the northeasternmost portion of the Neighborhood Commercial district, and was likely included due to its historical commercial use. The current owner seeks to permit the structure as a single-family residence, matching the rest of the uses along Whipple Street. This would require rezoning of the parcel to Low Density Residential. The ILUDC amendment could change the zoning map to reflect this rezoning.

6. Map Updates

There are a few errors on the City's zoning map that should be fixed, including the designation "Scenic Corridor" which has been replaced with Design Review Permits and Visual Impact Analysis in the Coastal Zone. Additionally some zoning map errors were identified during a recent digitizing of the zoning map, which will be brought forward for correction.

7. Other Maintenance Updates

In addition to these changes, staff will correct various errors, faulty references and inconsistencies identified in the Inland Land Use and Development Code since the last update. These revisions will be presented in a “track changes” format to City Council for review.

FISCAL IMPACT:

To the extent that the proposed amendments may affect potential development in the City, there may be impacts (positive or negative) to both property owners and the City.

IMPLEMENTATION/TIMEFRAMES:

Timeframes will depend on the direction provided by City Council. Processing of the Inland Land Use and Development Code amendments, its associated environmental review and required public readings will likely take a few more months to complete.

ATTACHMENTS:

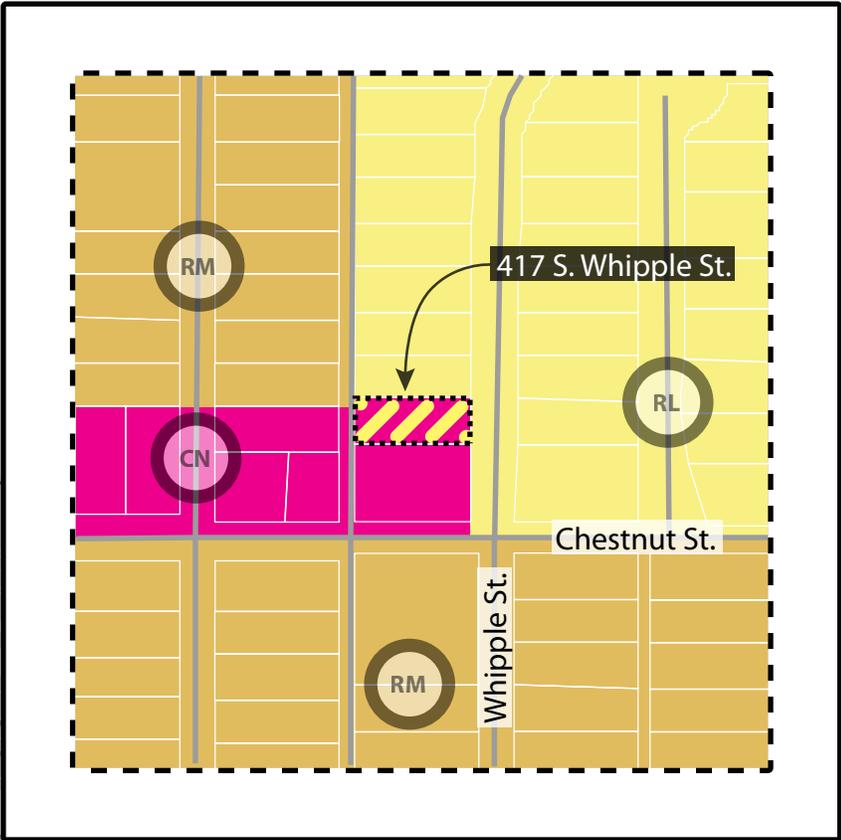
- 1. Attachment 1: 471 Whipple Street Rezoning
- 2. Attachment 2: Community Meeting Review

NOTIFICATIONS:

None.

City Clerk’s Office Use Only

Agency Action <input type="checkbox"/> Approved <input type="checkbox"/> Denied <input type="checkbox"/> Approved as Amended Resolution No.: _____ Ordinance No.: _____ Moved by: _____ Seconded by: _____ Vote: _____ <input type="checkbox"/> Deferred/Continued to meeting of: _____ <input type="checkbox"/> Referred to: _____
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Attachment 2 – Community Meeting Review

Community meetings for general ILUDC update discussion

Zoning Code Workshop Noticing: $\frac{1}{6}$ page ad in Advocate; flyers in kiosks (3), City Hall and library; "Notify Me" lists (473 people) Outcome: Received community input on the existing ordinance and potential changes	Jun. 23, 2016 9 a.m. Town Hall
Zoning Code Workshop Noticing: $\frac{1}{6}$ page ad in Advocate; flyers in kiosks (3), City Hall and library; "Notify Me" lists (473 people) Outcome: Received community input on the existing ordinance and potential changes	Jun. 23, 2016 5 p.m. Town Hall
Community Development Committee Noticing: City website (agenda center, calendar); Agendas in kiosk and City Hall Outcome: Committee reviewed community input and discussed policy alternatives	Jun. 28, 2016 3 p.m. City Hall
Community Development Committee Noticing: City website (agenda center, calendar); Agendas in kiosk and City Hall Outcome: Committee reviewed Inland Land Use and Development Code Article 2 "use tables"	Jul. 26, 2016 3 p.m. Town Hall

Community meetings for Cannabis Manufacturing component of ILUDC update

Public Safety Committee Noticing: City website (agenda center, calendar); City notice board; City Hall lobby; "Notify Me" list Outcome: Committee reviewed MMRSA and ramifications on City policies	Dec. 9, 2015 3 p.m. PD Conf Room
Public Safety Committee Noticing: City website (agenda center, calendar); City notice board; City Hall lobby; "Notify Me" list Outcome: Committee reviewed options for cannabis regulation and made recommendation to Council	Apr. 13, 2016 3 p.m. PD Conf Room
City Council Noticing: City website, City Hall lobby, City notice board, library, Advocate, Facebook Outcome: Council reviewed Committee recommendations and directed staff to draft ordinance	May 9, 2016 6 p.m. Town Hall
Public Safety Committee Noticing: City website (agenda center, calendar); City notice board; City Hall lobby; "Notify Me" list Outcome: Committee reviewed policy specifics and made recommendation to Council	Jun. 29, 2016 3 p.m. PD Conf Room
City Council Noticing: City website, City Hall lobby, City notice board, library, Advocate, Facebook, "Notify Me" list Outcome: Council reviewed Committee recommendations and directed staff to draft ordinance	Jul. 25, 2016 6 p.m. Town Hall

Community meetings for Vacation Home Rental / Home-sharing components of ILUDC update

Community Development Committee Noticing: City website (agenda center, calendar); Agendas in kiosk and City Hall Outcome: Discussed "new economy" lodging options, such as vacation home rentals and home-sharing	Jun. 23, 2015 3 p.m. City Hall
Planning Commission Noticing: City website, City Hall lobby, City notice board, library, Advocate, "Notify Me" list Outcome: Discussed the regulation of vacation home rentals and made recommendation to Council	Jul. 8, 2015 6 p.m. Town Hall
City Council Noticing: City website, City Hall lobby, City notice board, library, Advocate, "Notify Me" list Outcome: Discussed vacation home rentals, directed staff to draft ordinance based on recommendations	Aug. 10, 2015 6 p.m. Town Hall



City of Fort Bragg

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

Text File

File Number: 16-317

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In Control: City Council

File Type: Resolution

Agenda Number: 7A.

Adopt City Council Resolution Confirming the Continued Existence of a Local Drought
Emergency in the City of Fort Bragg

RESOLUTION NO. ____-2016

RESOLUTION OF THE FORT BRAGG CITY COUNCIL CONFIRMING THE CONTINUED EXISTENCE OF A LOCAL DROUGHT EMERGENCY IN THE CITY OF FORT BRAGG

WHEREAS, California Government Code section 8630 empowers the Fort Bragg City Council to proclaim the existence of a local emergency when the City is threatened or likely to be threatened by the conditions of extreme peril to the safety of persons and property that are or are likely to be beyond the control of the services, personnel, equipment, and facilities of this City; and

WHEREAS, California Government Code section 8558(c) states that a “local emergency” means the duly proclaimed existence of conditions of extreme peril to the safety of persons and property within the territorial limits of the City, including conditions caused by the drought; and

WHEREAS, on August 10, 2015, the Fort Bragg City Council adopted Resolution No. 3837-2015 declaring a Stage 1 Water Emergency and calling for immediate implementation of water conservation measures; and

WHEREAS, on September 30, 2015, the Fort Bragg City Council conducted an emergency meeting at which the City Manager reported that the City’s Noyo River diversion was not reliably providing water due to low flows and high salinity content, thus critically impairing the City’s ability to replenish water; and

WHEREAS, based on the aforementioned circumstances, the Fort Bragg City Council adopted Resolution No. 3856-2015, by which it declared a Stage 3 Water Emergency and instituted mandatory water conservation measures intended to reduce water use by 30% from the same period in the previous year as described in Title 14, Section 14.06 of the City of Fort Bragg Municipal Code; and

WHEREAS, at a regular meeting on October 13, 2015, the Fort Bragg City Council adopted Resolution No. 3857-2015, by which it reaffirmed Resolution No. 3856-2015 and its declaration of a Stage 3 Water Emergency; and

WHEREAS, at a regular meeting on October 13, 2015, the Fort Bragg City Council adopted Resolution No. 3858-2015, declaring a local drought emergency in the City of Fort Bragg; and

WHEREAS, at a regular meeting on November 9, 2015, the City Council of the City of Fort Bragg adopted Resolution No. 3865-2015, by which it continued the local drought emergency for an additional 30 days in accordance with California Government Code section 8630(c); and

WHEREAS, at a regular meeting on December 14, 2015, the City Council of the City of Fort Bragg adopted Resolution No. 3875-2015, by which it continued the local drought emergency for an additional 30 days in accordance with California Government Code section 8630(c); and

WHEREAS, at a regular meeting on December 14, 2015, the Fort Bragg City Council unanimously voted to reduce the Stage 3 Water Emergency to a Stage 1 Water Emergency; and

WHEREAS, at a regular meeting on January 11, 2016, the City Council of the City of Fort Bragg adopted Resolution No. 3883-2016, by which it continued the local drought emergency for an additional 30 days in accordance with California Government Code section 8630(c); and

WHEREAS, at a regular meeting on February 8, 2016, the City Council of the City of Fort Bragg adopted Resolution No. 3887-2016, by which it continued the local drought emergency for an additional 30 days in accordance with California Government Code section 8630(c); and

WHEREAS, at a regular meeting on March 14, 2016, the City Council of the City of Fort Bragg adopted Resolution No. 3890-2016, by which it continued the local drought emergency for an additional 30 days in accordance with California Government Code section 8630(c); and

WHEREAS, at a regular meeting on April 11, 2016, the City Council of the City of Fort Bragg adopted Resolution No. 3893-2016, by which it continued the local drought emergency for an additional 30 days in accordance with California Government Code section 8630(c); and

WHEREAS, at a regular meeting on May 9, 2016, the City Council of the City of Fort Bragg adopted Resolution No. 3900-2016, by which it continued the local drought emergency for an additional 30 days in accordance with California Government Code section 8630(c); and

WHEREAS, at a regular meeting on June 13, 2016, the City Council of the City of Fort Bragg adopted Resolution No. 3905-2016, by which it continued the local drought emergency for an additional 30 days in accordance with California Government Code section 8630(c); and

WHEREAS, at a regular meeting on July 11, 2016, the City Council of the City of Fort Bragg adopted Resolution No. 3918-2016, by which it continued the local drought emergency for an additional 30 days in accordance with California Government Code section 8630(c); and

WHEREAS, at a regular meeting on July 25, 2016, the City Council of the City of Fort Bragg adopted Resolution No. 3924-2016, by which it continued the local drought emergency for an additional 30 days in accordance with California Government Code section 8630(c); and

WHEREAS, while the immediate threat to the Noyo River diversion has receded as a result of recent precipitation, the City of Fort Bragg's water system remains imperiled unless and until the Summers Lane Reservoir is constructed, filled, and capable of providing supplemental water during periods of extreme low flows in the Noyo River;

NOW, THEREFORE, BE IT RESOLVED AND PROCLAIMED by the City Council of the City of Fort Bragg that for reasons set forth herein, said local emergency

shall be deemed to continue to exist until the City Council of the City of Fort Bragg, State of California, proclaims its termination; and

BE IT FURTHER RESOLVED that the City Council of the City of Fort Bragg will review the need for continuing the local drought emergency at least once every 30 days until the City Council terminates the local drought emergency; and

BE IT FURTHER RESOLVED that this resolution confirming the continued existence of a local drought emergency shall be forwarded to the Director of the Governor's Office of Emergency Services and the Governor of the State of California, as well as the Mendocino County Office of Emergency Services.

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 22th day of August 2016, by the following vote:

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

DAVE TURNER
Mayor

ATTEST:

June Lemos
City Clerk



City of Fort Bragg

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

Text File

File Number: 16-319

Agenda Date: 8/22/2016

Version: 1

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In Control: City Council

File Type: Resolution

Agenda Number: 7B.

Adopt City Council Resolution Amending the City of Fort Bragg Conflict of Interest Code Title 2, Division 6, of the California Code of Regulations (CCR) sets forth the State's Fair Political Practices Commission (FPPC) requirements for public agencies to establish a Conflict of Interest Code. The FPPC requires agencies to review their Conflict of Interest Code biennially during even-numbered years and to make any necessary changes/updates. On January 11, 2016, Council reviewed the Conflict of Interest Code and adopted Resolution 3882-2016. Since that time, Title 2, Division 6 of the Code of Regulations has been amended, and a designated employee's job title has changed.

The FPPC's regulations regarding adopting and amending conflict of interest codes state:

When determining whether to amend, an agency should carefully review its current conflict of interest code and consider the following:

Is the current code more than five years old?

Have there been any substantial changes to the agency's organizational structure since the current code was adopted?

Have any positions been eliminated or renamed since the current code was adopted?

Have any new positions been added since the current code was adopted?

Have there been any substantial changes in duties or responsibilities for any positions since the current code was adopted?

If an agency answers "yes" to any of the above questions, most likely its conflict of interest code will need to be amended.

[Emphasis added.

<http://www.fppc.ca.gov/learn/rules-on-conflict-of-interest-codes/local-government-agencies-adopting-amending-coi.html>]

On June 27, 2016, City Council approved reclassification of the position of Public Works Operations Manager to Assistant Director of Public Works effective July 1, 2016. Exhibit A to the attached Resolution reflects all changes to CCR §18730 and is current through July 22, 2016; Exhibit B to the attached Resolution reflects the change in job title for the Assistant Director of Public Works.

RESOLUTION NO. ____-2016

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL
AMENDING THE CITY OF FORT BRAGG CONFLICT OF INTEREST CODE**

WHEREAS, the City Council of the City of Fort Bragg adopted a Conflict of Interest Code on August 23, 1976 (Resolution 663-76) in accordance with the requirements of State Law, Title 2, Division 6, California Code of Regulations, Regulations of the Fair Political Practices Commission (FPPC); and

WHEREAS, the City Council is charged with reviewing the Conflict of Interest Code, adopting amendments and verifying the List of Designated Positions to which the Code applies; and

WHEREAS, the City Council has amended said Conflict of Interest Code from time to time since that date, most recently by Resolution 3882-2016 on January 11, 2016; and

WHEREAS, consistent with FPPC regulations, it is the desire of the City Council to incorporate by reference the terms of Title 2, Section 18730 of the California Code of Regulations (Exhibit "A"), in substitution for the terms of the Conflict of Interest Code already in effect; and

WHEREAS, further consistent with FPPC regulations, it is the desire of the City Council to replace the City's existing Conflict of Interest Code Exhibit "B" (Designated Employees and Disclosure Obligations for the City of Fort Bragg) with a new Exhibit "B."

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby incorporate by this reference the terms of Title 2, Section 18730 of the California Code of Regulations as set forth in Exhibit "A" and hereby replaces the existing Exhibit "B" (Designated Employees and Disclosure Obligations for the City of Fort Bragg) with a new Exhibit "B."

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 22nd day of August, 2016.

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

**DAVE TURNER,
Mayor**

ATTEST:

**June Lemos
City Clerk**

EXHIBIT "A"

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18730. Provisions of Conflict of Interest Codes.

- (a) Incorporation by reference of the terms of this regulation along with the designation of employees and the formulation of disclosure categories in the Appendix referred to below constitute the adoption and promulgation of a conflict of interest code within the meaning of Section 87300 or the amendment of a conflict of interest code within the meaning of Section 87306 if the terms of this regulation are substituted for terms of a conflict of interest code already in effect. A code so amended or adopted and promulgated requires the reporting of reportable items in a manner substantially equivalent to the requirements of article 2 of chapter 7 of the Political Reform Act, Sections 81000, et seq. The requirements of a conflict of interest code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest contained in Section 87100, and to other state or local laws pertaining to conflicts of interest.
- (b) The terms of a conflict of interest code amended or adopted and promulgated pursuant to this regulation are as follows:

(1) Section 1. Definitions.

The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (Regulations 18110, et seq.), and any amendments to the Act or regulations, are incorporated by reference into this conflict of interest code.

(2) Section 2. Designated Employees.

The persons holding positions listed in the Appendix (Exhibit "B") are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on economic interests.

(3) Section 3. Disclosure Categories.

This code does not establish any disclosure obligation for those designated employees who are also specified in Section 87200 if they are designated in this code in that same capacity or if the geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction in which those persons must report their economic interests pursuant to article 2 of chapter 7 of the Political Reform Act, Sections 87200, et seq.

In addition, this code does not establish any disclosure obligation for any designated employees who are designated in a conflict of interest code for another agency, if all of the following apply:

- (A) The geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction of the other agency;
- (B) The disclosure assigned in the code of the other agency is the same as that required under article 2 of chapter 7 of the Political Reform Act, Section 87200; and

(C) The filing officer is the same for both agencies.¹

Such persons are covered by this code for disqualification purposes only. With respect to all other designated employees, the disclosure categories set forth in the Appendix specify which kinds of economic interests are reportable. Such a designated employee shall disclose in his or her statement of economic interests those economic interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in the Appendix. It has been determined that the economic interests set forth in a designated employee's disclosure categories are the kinds of economic interests which he or she foreseeably can affect materially through the conduct of his or her office.

(4) Section 4. Statements of Economic Interests: Place of Filing.

The code reviewing body shall instruct all designated employees within its code to file statements of economic interests with the agency or with the code reviewing body, as provided by the code reviewing body in the agency's conflict of interest code.²

(5) Section 5. Statements of Economic Interests: Time of Filing.

(A) Initial Statements. All designated employees employed by the agency on the effective date of this code, as originally adopted, promulgated and approved by the code reviewing body, shall file statements within 30 days after the effective date of this code. Thereafter, each person already in a position when it is designated by an amendment to this code shall file an initial statement within 30 days after the effective date of the amendment.

(B) Assuming Office Statements. All persons assuming designated positions after the effective date of this code shall file statements within 30 days after assuming the designated positions, or if subject to State Senate confirmation, 30 days after being nominated or appointed.

(C) Annual Statements. All designated employees shall file statements no later than April 1. If a person reports for military service as defined in the Servicemember's Civil Relief Act, the deadline for the annual statement of economic interests is 30 days following his or her return to office, provided the person, or someone authorized to represent the person's interests, notifies the filing officer in writing prior to the applicable filing deadline that he or she is subject to that federal statute and is unable to meet the applicable deadline, and provides the filing officer verification of his or her military status.

(D) Leaving Office Statements. All persons who leave designated positions shall file statements within 30 days after leaving office.

¹ Designated employees who are required to file statements of economic interests under any other agency's conflict of interest code, or under article 2 for a different jurisdiction, may expand their statement of economic interests to cover reportable interests in both jurisdictions, and file copies of this expanded statement with both entities in lieu of filing separate and distinct statements, provided that each copy of such expanded statement filed in place of an original is signed and verified by the designated employee as if it were an original. See Section 81004.

² See Section 81010 and Regulation 18115 for the duties of filing officers and persons in agencies who make and retain copies of statements and forward the originals to the filing officer.

(5.5) Section 5.5. Statements for Persons Who Resign Prior to Assuming Office.

Any person who resigns within 12 months of initial appointment, or within 30 days of the date of notice provided by the filing officer to file an assuming office statement, is not deemed to have assumed office or left office, provided he or she did not make or participate in the making of, or use his or her position to influence any decision and did not receive or become entitled to receive any form of payment as a result of his or her appointment. Such persons shall not file either an assuming or leaving office statement.

(A) Any person who resigns a position within 30 days of the date of a notice from the filing officer shall do both of the following:

(1) File a written resignation with the appointing power; and

(2) File a written statement with the filing officer declaring under penalty of perjury that during the period between appointment and resignation he or she did not make, participate in the making, or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.

(6) Section 6. Contents of and Period Covered by Statements of Economic Interests.

(A) Contents of Initial Statements.

Initial statements shall disclose any reportable investments, interests in real property and business positions held on the effective date of the code and income received during the 12 months prior to the effective date of the code.

(B) Contents of Assuming Office Statements.

Assuming office statements shall disclose any reportable investments, interests in real property and business positions held on the date of assuming office or, if subject to State Senate confirmation or appointment, on the date of nomination, and income received during the 12 months prior to the date of assuming office or the date of being appointed or nominated, respectively.

(C) Contents of Annual Statements.

Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the code or the date of assuming office whichever is later, or for a board or commission member subject to Section 87302.6, the day after the closing date of the most recent statement filed by the member pursuant to Regulation 18754.

(D) Contents of Leaving Office Statements.

Leaving office statements shall disclose reportable investments, interests in real property, income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

(7) Section 7. Manner of Reporting.

Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the agency, and shall contain the following information:

(A) Investment and Real Property Disclosure. When an investment or an interest in real property³ is required to be reported,⁴ the statement shall contain the following:

1. A statement of the nature of the investment or interest;
2. The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;
3. The address or other precise location of the real property;
4. A statement whether the fair market value of the investment or interest in real property equals or exceeds \$2,000, exceeds \$10,000, exceeds \$100,000, or exceeds \$1,000,000.

(B) Personal Income Disclosure. When personal income is required to be reported,⁵ the statement shall contain:

1. The name and address of each source of income aggregating \$500 or more in value, or \$50 or more in value if the income was a gift, and a general description of the business activity, if any, of each source;
2. A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was \$1,000 or less, greater than \$1,000, greater than \$10,000, or greater than \$100,000;
3. A description of the consideration, if any, for which the income was received;
4. In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received;
5. In the case of a loan, the annual interest rate and the security, if any, given for the loan and the term of the loan.

(C) Business Entity Income Disclosure. When income of a business entity, including income of a sole proprietorship, is required to be reported,⁶ the statement shall contain:

³ For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer.

⁴ Investments and interests in real property which have a fair market value of less than \$2,000 are not investments and interests in real property within the meaning of the Political Reform Act. However, investments or interests in real property of an individual include those held by the individual's spouse and dependent children as well as a pro rata share of any investment or interest in real property of any business entity or trust in which the individual, spouse and dependent children own, in the aggregate, a direct, indirect or beneficial interest of 10 percent or greater.

⁵ A designated employee's income includes his or her community property interest in the income of his or her spouse but does not include salary or reimbursement for expenses received from a state, local or federal government agency.

⁶ Income of a business entity is reportable if the direct, indirect or beneficial interest of the filer and the filer's spouse in the business entity aggregates a 10 percent or greater interest. In addition, the disclosure of persons who are clients or customers of a business entity is required only if the clients or customers are within one of the disclosure categories of the filer.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87103(e), 87300-87302, 89501, 89502 and 89503, Government Code.

1. The name, address, and a general description of the business activity of the business entity;
2. The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than \$10,000.

(D) Business Position Disclosure. When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity.

(E) Acquisition or Disposal During Reporting Period. In the case of an annual or leaving office statement, if an investment or an interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

(8) Section 8. Prohibition on Receipt of Honoraria.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept any honorarium from any source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

Subdivisions (a), (b), and (c) of Section 89501 shall apply to the prohibitions in this section.

This section shall not limit or prohibit payments, advances, or reimbursements for travel and related lodging and subsistence authorized by Section 89506.

(8.1) Section 8.1. Prohibition on Receipt of Gifts in Excess of \$460.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept gifts with a total value of more than \$460 in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

Subdivisions (e), (f), and (g) of Section 89503 shall apply to the prohibitions in this section.

(8.2) Section 8.2. Loans to Public Officials.

(A) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the elected officer holds office or over which the elected officer's agency has direction and control.

- (B) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the public official holds office or over which the public official's agency has direction and control. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.
- (C) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status.
- (D) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.
- (E) This section shall not apply to the following:
1. Loans made to the campaign committee of an elected officer or candidate for elective office.
 2. Loans made by a public official's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such persons, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.
 3. Loans from a person which, in the aggregate, do not exceed \$500 at any given time.
 4. Loans made, or offered in writing, before January 1, 1998.

(8.3) Section 8.3. Loan Terms.

- (A) Except as set forth in subdivision (B), no elected officer of a state or local government agency shall, from the date of his or her election to office through the date he or she vacates office, receive a personal loan of \$500 or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, date of the loan, amount of the loan, term of the loan, date or dates when payments shall be due on the loan and the amount of the payments, and the rate of interest paid on the loan.

- (B) This section shall not apply to the following types of loans:
1. Loans made to the campaign committee of the elected officer.
 2. Loans made to the elected officer by his or her spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.
 3. Loans made, or offered in writing, before January 1, 1998.
- (C) Nothing in this section shall exempt any person from any other provision of Title 9 of the Government Code.

(8.4) Section 8.4. Personal Loans.

- (A) Except as set forth in subdivision (B), a personal loan received by any designated employee shall become a gift to the designated employee for the purposes of this section in the following circumstances:
1. If the loan has a defined date or dates for repayment, when the statute of limitations for filing an action for default has expired.
 2. If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:
 - a. The date the loan was made.
 - b. The date the last payment of \$100 or more was made on the loan.
 - c. The date upon which the debtor has made payments on the loan aggregating to less than \$250 during the previous 12 months.
- (B) This section shall not apply to the following types of loans:
1. A loan made to the campaign committee of an elected officer or a candidate for elective office.
 2. A loan that would otherwise not be a gift as defined in this title.
 3. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor has taken reasonable action to collect the balance due.
 4. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor, based on reasonable business considerations, has not undertaken collection action. Except in a criminal action, a creditor who claims that a loan is not a gift on the basis of this paragraph has the burden of proving that the decision for not taking collection action was based on reasonable business considerations.
 5. A loan made to a debtor who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.
- (C) Nothing in this section shall exempt any person from any other provisions of Title 9 of the Government Code.

(9) Section 9. Disqualification.

No designated employee shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

- (A) Any business entity in which the designated employee has a direct or indirect investment worth \$2,000 or more;
- (B) Any real property in which the designated employee has a direct or indirect interest worth \$2,000 or more;
- (C) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating \$500 or more in value provided to, received by or promised to the designated employee within 12 months prior to the time when the decision is made;
- (D) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management; or
- (E) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$460 or more provided to, received by, or promised to the designated employee within 12 months prior to the time when the decision is made.

(9.3) Section 9.3. Legally Required Participation.

No designated employee shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made. The fact that the vote of a designated employee who is on a voting body is needed to break a tie does not make his or her participation legally required for purposes of this section.

(9.5) Section 9.5. Disqualification of State Officers and Employees.

In addition to the general disqualification provisions of section 9, no state administrative official shall make, participate in making, or use his or her official position to influence any governmental decision directly relating to any contract where the state administrative official knows or has reason to know that any party to the contract is a person with whom the state administrative official, or any member of his or her immediate family has, within 12 months prior to the time when the official action is to be taken:

- (A) Engaged in a business transaction or transactions on terms not available to members of the public, regarding any investment or interest in real property; or
- (B) Engaged in a business transaction or transactions on terms not available to members of the public regarding the rendering of goods or services totaling in value \$1,000 or more.

- (10) Section 10. Disclosure of Disqualifying Interest.
When a designated employee determines that he or she should not make a governmental decision because he or she has a disqualifying interest in it, the determination not to act may be accompanied by disclosure of the disqualifying interest.
- (11) Section 11. Assistance of the Commission and Counsel.
Any designated employee who is unsure of his or her duties under this code may request assistance from the Fair Political Practices Commission pursuant to Section 83114 and Regulations 18329 and 18329.5 or from the attorney for his or her agency, provided that nothing in this section requires the attorney for the agency to issue any formal or informal opinion.
- (12) Section 12. Violations.
This code has the force and effect of law. Designated employees violating any provision of this code are subject to the administrative, criminal and civil sanctions provided in the Political Reform Act, Sections 81000-91014. In addition, a decision in relation to which a violation of the disqualification provisions of this code or of Section 87100 or 87450 has occurred may be set aside as void pursuant to Section 91003.

EXHIBIT "B"
**DESIGNATED EMPLOYEES AND DISCLOSURE OBLIGATIONS
FOR THE CITY OF FORT BRAGG**

Designated Employees Listed in Government Code Section 87200:

- City Attorney
- City Councilmembers
- City Manager
- Finance Director/City Treasurer
- Planning Commissioners

Other Designated Employees:

- Administrative Services Director
- Assistant City Attorney
- Assistant Director of Public Works
- Associate City Engineer
- Chief of Police
- City Clerk
- Community Development Director
- Consultants¹
- Police Lieutenant
- Public Works Director
- Senior Government Accountant

Obligations:

All designated employees listed above must disclose:

- Investments
- Interests in real property
- Interests in real property held by a trust or business entity
- Investments held by a trust or business entity
- Income, including loans received, gifts, and honoraria
- Commission income received by brokers, agents and salespersons
- Income and loans to business entities or trusts
- Income from rental property
- Interest in business property
- Business positions

¹ The City Manager, in consultation with the City Attorney, may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Manager's determination is public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.



City of Fort Bragg

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

Text File

File Number: 16-324

Agenda Date: 8/22/2016

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Resolution

Agenda Number: 7C.

Adopt City Council Resolution Approving a Project Agreement with Superior Pump and Drilling, Inc. to Construct and Complete Two New Water Wells (Amount Not to Exceed \$34,778; Account No. 615-6004-0731)

The City of Fort Bragg will construct and complete two water wells on City Property - one at the Water Treatment Plant and one at the Willow Street Pump Station. Based on drilling log records from previous test wells, City staff anticipates that the two wells will need to be bored to approximately 200 feet in order to achieve the best water yield. The project includes all the work to construct and complete the water wells, including drilling, casing and developing the well per drillers' discretion, testing and placing sand, gravel and cement necessary to complete the well. If one or both test wells do not demonstrate sufficient yield to merit plumbing them into the City's water system, the work to case and complete the well(s) will not be conducted. The project does not include pump installation, as more tests will be required before the City can begin using the wells. The City requested quotes in accordance with the Informal Bidding Process established by Ordinance No. 917-2015 and, after reviewing the quotes, staff recommends that the City enter into a Project Agreement with Superior Pump and Drilling, Inc. for the work.

RESOLUTION NO. _____-2016

RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING A PROJECT AGREEMENT WITH SUPERIOR PUMP AND DRILLING, INC. FOR THE CONSTRUCTION OF TWO NEW WATER WELLS (AMOUNT NOT TO EXCEED \$34,778; ACCOUNT NO. 615-6004-0731)

WHEREAS, at a regular meeting on March 14, 2016, City Council directed staff to move forward with drilling test wells at the Water Treatment Plant and Willow Pump Station; and

WHEREAS, in accordance with City Ordinance No. 917-2015, three firm quotes were obtained for the construction and completion of two water wells at the Water Treatment Plant and Willow Pump Station ("water wells project"); and

WHEREAS, City staff reviewed the submitted quotes and identified Superior Pump and Drilling, Inc. as the optimal firm to provide the services; and

WHEREAS, the funding to cover the expense of the water wells project will be provided by the New Groundwater Production Wells Capital Project Fund, and appropriations were made in the FY 2016-2017 Budget, Account No. 615-6004-0731; and

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

1. Superior Pump and Drilling, Inc. is qualified to complete this work based upon previous work and experience.
2. Sufficient funds are available through the appropriations made in the New Groundwater Production Wells Capital Project Fund to fully cover the expense of the proposed services.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby approve a Project Agreement with Superior Pump and Drilling, Inc. for the water wells project and authorizes the City Manager to execute the same upon execution by Contractor (Amount Not to Exceed \$34,778; Account 615-6004-0731).

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 22nd day of August, 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RECUSED:

DAVE TURNER
Mayor

ATTEST:

June Lemos
Acting City Clerk



CITY OF FORT BRAGG
416 N. Franklin Street Fort Bragg, CA 95437

**PROJECT AGREEMENT
FOR PROJECTS \$5,000-\$45,000
INFORMAL BIDS**

WATER WELL PROJECT

DATE: 8/5/2016

1. IDENTIFICATION OF CONTRACTOR.

SUPERIOR PUMP AND DRILLING, INC.
1251 N MAIN ST
FORT BRAGG, CA 95437
707-964-9511

LICENSE NO: 495399

- 2. SCOPE OF WORK.** Contractor is to perform the work as set forth in the Scope of Work attached as **Exhibit A**, the terms of which are incorporated herein except to the extent they are inconsistent with the terms of this Agreement.
- 3. COMPENSATION FOR WORK.** Contractor's total compensation for the work performed under this Agreement is \$34,778 to be paid after completion.
- 4. SCHEDULE OF PERFORMANCE FOR THE WORK.** Contractor shall commence the Work on or after September 1, 2016. The work will be completed by November 30, 2016.
- 5. TERMS AND CONDITIONS.**
 - 5.01** Contractor shall perform the Work in accordance with the attached General Terms and Conditions of this Agreement, **Exhibit B**. Contractor has read, negotiated and expressly accepts all terms on the attached.
 - 5.02** Contractor will send invoices to **City of Fort Bragg, 416 N. Franklin Street Fort Bragg, CA 95437, Attn: SERGIO FUENTES** immediately upon performance of Work agreed to herein.
 - 5.03** Changes made to printed Terms and Conditions on this Agreement are null and void unless approved in writing by City's counsel and the undersigned representative of the City of Fort Bragg. Any subsequent modifications to this Agreement must be approved in writing by all parties.
 - 5.04** To the extent required by the General Terms and Conditions, Contractor must comply with **Exhibit C – Insurance**.

CONTRACTOR: SUPERIOR PUMP AND DRILLING INC.

CITY: CITY OF FORT BRAGG

Signature

Signature

Print Name & Title

Print Name & Title

Date

Date

EXHIBIT A

The contractor shall furnish all materials and labor required to construct and complete two (2) wells at the Water Treatment Plant and C.V. Starr Community Center to an approximate depth of two hundred (200) feet. Completion of the well includes drilling, casing, perforated casing, well development (per drillers' discretion), water quantity testing, measuring the static level of the well and placing a well cover. The contractor will also obtain the required drilling permits from the appropriate agencies before construction begins.

EXHIBIT B

GENERAL TERMS AND CONDITIONS

ARTICLE 1 – TERMS OF PERFORMANCE

- 1.01 **Force and Effect.** This Agreement shall control over all inconsistent provisions in any proposal. The provisions of this Agreement (and any attachments) constitute the entire agreement between the Contractor and City regarding the Work described herein. No representation, term or covenant not expressly specified in this Agreement shall, whether oral or written, be a part of this Agreement. No modification of this Agreement shall be effective unless it is in writing. This Agreement shall govern the Work described herein (whenever performed), and shall supersede all other prior Agreements between Contractor and City with respect to the Work described herein. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by fully authorized representatives of City and Contractor. The headings in this Agreement are for convenience only and do not affect the construction of this Agreement.
- 1.02 **Performance of Work/No Assignment.** Time is of the essence in the performance of the Work. Contractor will perform the Work in a skillful and workmanlike manner; comply fully with criteria established by City, and with applicable laws, codes, and all applicable industry standards. Contractor shall maintain its work area in a clean and sanitary condition, clear debris and trash at the end of each work day, and shall not damage or disrupt any property unless specifically part of the scope of this Agreement. Contractor shall not contract any portion of the Work or otherwise assign this Agreement without prior written approval of City. (Contractor shall remain responsible for compliance with all terms of this Agreement, regardless of the terms of any such assignment.) The Contractor shall permit City (or its designees) access to the work area, Contractor's shop, or any other facility, to permit inspection of the Work at all times during construction and/or manufacture and fabrication. The granting of any progress payment, and any inspections, reviews, approvals or oral statements by any City representative, or certification by any governmental entity, shall in no way limit Contractor's obligations under this Agreement. Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require strict performance of any provision of this Agreement, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every provision hereof. City shall have, at all times, set-off rights with respect to any payment and Contractor's failure to perform the terms of this Agreement.

ARTICLE 2 – LEGAL AND MISCELLANEOUS

- 2.01 **Business License and Other Licenses/Permits.** Before the City will issue a notice to proceed with the Services, Contractor 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. Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions.
- 2.02 **Records and Payment Requests.** Contractor shall submit all billings to City with all necessary invoices or other appropriate evidence of proper performance. Contractor shall permit City to audit, examine and make copies, excerpts and transcripts from such records. The State of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred to City by this section. Such rights shall be specifically enforceable.
- 2.03 **Independent Contractor.** Contractor is an independent Contractor and does not act as City's agent in any capacity, whatsoever. Contractor is not entitled to any benefits that City provides to City employees, including, without limitation, insurance, worker's compensation benefits or payments, pension benefits, health benefits or insurance benefits. Terms within this Agreement regarding direction apply to and concern the result of the Contractor's provision of Work, not the means, methods, or scheduling of the Contractor's work. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures with respect to its provision of Work under this Agreement. Contractor shall pay all payroll taxes imposed by any governmental entity and will pay all other taxes not specifically identified in this Agreement as City's responsibility.
- 2.04 **Indemnity/Liability.** Contractor shall defend (with counsel reasonably acceptable to City), indemnify and save harmless, to the fullest extent permitted by law, the City and all of its officers, directors, representatives, agents and employees, against all loss, cost, damage expense and liability arising from or related to bodily injury to or death of any person or damage to any property, or resulting from any breach and/or Contractor's negligence in performing this Agreement. Notwithstanding any provision of this Agreement, City shall not be liable to Contractor or anyone claiming under it, in contract or tort, for any special, consequential, indirect or incidental damages arising out of or in connection with this Agreement or the Work. City's rights and remedies, whether under this Agreement or other applicable law, shall be cumulative and not subject to limitation.

- 2.05 **Compliance with Laws; Conflict of Interests; Confidentiality.** Contractor agrees to comply with all applicable federal and state laws, regulations and policies, as amended, including those regarding discrimination, unfair labor practices, anti-kick-back, collusion, and the provisions of the Americans with Disability Act. Contractor, its officer, partners, associates, agents, and employees, shall not make, participate in making, or in any way attempt to use the position afforded them by this Agreement to influence any governmental decision in which he or she knows or has reason to know that he or she has a financial interest under applicable state, federal and local conflict of interest regulations. Contractor warrants that no person or agency has been employed or retained to solicit or obtain this Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. Any information, whether proprietary or not, made known to or discovered by Contractor during the performance of or in connection with this Agreement, will be kept confidential and not be disclosed to any other person (except as necessary to perform the Work). Contractor will immediately notify City in writing if it is requested to disclose any such information. These confidentiality provisions and limitations shall remain fully effective indefinitely after completion of the Work or termination of this Agreement.
- 2.06 **Labor Compliance Monitoring and Enforcement.** The project is subject to compliance monitoring and enforcement by the Department of Industrial Relations pursuant to Labor Code Section 1771.4. Contractor shall furnish the records specified in Labor Code Section 1776 directly to the Labor Commissioner, in the following manner: 1) at least monthly; or 2) in a format prescribed by the Labor Commissioner. [Does not apply to projects of \$1000 or less, see Lab. Code 1771.]
- 2.07 **Job Site Notices.** Contractor shall post job site notices as prescribed by regulation.
- 2.08 **Contractor Registration Program.** Contractor acknowledges that it shall at all times remain registered and qualified to perform public work pursuant to Labor Code Section 1725.5.
- 2.09 **Termination; Suspension; Disputes.** City may direct Contractor to terminate, suspend, delay, interrupt or accelerate Work, in whole or in part, for such periods of time as City may determine in its sole discretion. City will issue such directives in writing, and may do so, in whole or in part, for its convenience or due to Contractor's fault. City will compensate Contractor for extra costs resulting from such directives only to the extent that City issues such directives for its convenience and not due to Contractor's fault (but City shall not compensate Contractor for costs, profit or overhead anticipated to be earned or incurred on Work terminated for City's convenience.) Contractor shall continue its work throughout the course of any dispute, and Contractor's failure to continue work during a dispute shall be a material breach of this Agreement. All claims by Contractor against City shall be submitted in writing to City, and shall be governed by Public Contract Code Sections 20104 – 20104.6, after which time the one year time period in Government Code Section 911.2 shall be, pursuant to Government Code Section 930.2, reduced to 90 days.
- 2.010 **Execution; Venue; Limitations.** This Agreement shall be deemed to have been executed in the City of Fort Bragg, California. Enforcement of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. The exclusive venue for all litigation arising from or relating to this Agreement shall be in Fort Bragg, California. Except as expressly provided in this Agreement, nothing in this Agreement shall operate to confer rights or benefits on persons or entities not party to this Agreement. As between the parties to this Agreement, any applicable statute of limitations for any act or failure to act shall commence to run on the date of City's issuance of the final Certificate for Payment, or termination of this Agreement, whichever is earlier, except for latent defects, for which the statute of limitation shall begin running upon discovery of the defect and its cause.
- 2.011 **Employee Wages; Records; Apprentices.** Contractor shall pay prevailing wages to its employees on any Agreement in excess of \$1,000.00 (one thousand dollars). Copies of the prevailing rate of per diem wages are on file at City's principal office. Contractor shall comply with the 8-hours per day/40 hours per week/overtime/working hours restrictions for all employees, pursuant to the California Labor Code. Contractor and all subcontractors shall keep and maintain accurate payroll records of employees working in relation to this Agreement, and certify these records upon request, pursuant to Labor Code Section 1776. Contractor shall comply fully with Labor Code Section 1777.5 in the hiring of apprentices for work relating to this Agreement. If this contract exceeds \$2,000.00 (two thousand dollars) and is funded with federal funds, then Contractor shall pay federal Davis Bacon wages and comply with applicable federal requirements.
- 2.012 **Worker's Compensation.** Pursuant to Labor Code Sections 1860 and 1861, in accordance with the provisions of Section 3700 of the Labor Code, every contractor will be required to secure the payment of compensation to his employees. Contractor represents that it is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the Work of this Agreement.

EXHIBIT C

INSURANCE

1. Commercial General Liability Insurance, written on an “occurrence” basis, which shall provide coverage for bodily injury, death and property damage resulting from operations, liability for slander, false arrest and invasion of privacy, blanket contractual liability, broad form endorsement, and completed operations, personal and advertising liability, with limits of not less than **\$1,000,000** general aggregate and **\$1,000,000** each occurrence, subject to a deductible of not more than **\$1,000** payable by Contractor.
2. Business Automobile Liability Insurance with limits not less than **\$1,000,000** each occurrence including coverage for owned, non-owned and hired vehicles, subject to a deductible of not more than **\$1,000** payable by Contractor.
3. Workers’ Compensation Employers’ Liability limits not less than **\$1,000,000** each accident, **\$1,000,000** per disease and **\$1,000,000** aggregate. Contractor’s Workers’ Compensation Insurance policy shall contain a Waiver of Subrogation against the City of Fort Bragg, its officers, directors, officials, agents, employees and volunteers. In the event Contractor is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations Administration of Self-Insurance, State of California.
4. Professional Liability Insurance with limits not less than **\$1,000,000** each claim and aggregate, all with respect to negligent acts, errors or omissions in connection with services to be provided under this Agreement, and any deductible not to exceed **\$10,000** for each claim, with no exclusion for claims of one insured against another insured and with tail coverage for a period of five (5) years after the completion of the Services. [Include this paragraph for professional services agreements; otherwise, delete.]
5. Builder’s Risk Insurance, including but not limited to coverage against loss or damage to the work by fire, lightning, wind, hail, aircraft, riot, vehicle damage, explosion, smoke, falling objects, vandalism, malicious mischief, collapse, and other such hazards as are normally covered by such coverage. Such insurance shall be in amount equal to the replacement cost (without deduction for depreciation and subject to stipulated value in lieu of average clause) of all construction constituting any part of the work, excluding the cost of excavations, of grading and filling of the land, and except that such insurance may be subject to deductible clauses not to exceed **\$10,000** for any one loss. Such insurance will not cover loss or damage to Contractor’s equipment, scaffolding or other materials not to be consumed in the construction of the work. The insurer shall waive all rights of subrogation against City.
6. Insurance policies shall contain an endorsement containing the following terms:
 - 6.01 The City of Fort Bragg, its officers, directors, officials, agents, employees, and volunteers, shall be named as additional insureds, but only with respect to liability arising out of the activities of the named insured, and there shall be a waiver of subrogation as to each named and additional insured.
 - 6.02 The policies shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company’s liability.
 - 6.03 Insurance shall be primary insurance and no other insurance or self-insured retention carried or held by any named or additional insureds other than Contractor shall be called upon to contribute to a loss covered by insurance for the named insured.
7. Certificates of Insurance and Endorsements shall have clearly typed thereon the Project Name, shall clearly describe the coverage and shall contain a provision requiring the mailing of written notices of cancellation described in clause 6.03 above.
8. All policies of insurance shall be placed with insurers acceptable to City. The insurance underwriter(s) must be duly licensed to do business in the State of California and (other than for workers’ compensation) must have an A. M. Best Company rating of **A-,VII** or better. Required minimum amounts of insurance may be increased should conditions of Work, in opinion of City, warrant such increase. Contractor shall increase required insurance amounts upon direction by City.



City of Fort Bragg

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

Text File

File Number: 16-326

Agenda Date: 8/22/2016

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Resolution

Agenda Number: 7D.

Adopt City Council Resolution Approving Budget Amendment No. 2017-01 Amending the FY 2016/17 Budget to Appropriate Funds in the Amount of \$25,000 from the General Fund Unallocated Fund Balance to Account No. 421-4957-0731 to Cover Costs for Removal and Replacement of the Noyo Headlands Park Visitors Center Roof

The City acquired the former Georgia-Pacific Visitor Center building (also known as the Noyo Center "Crow's Nest") for use as a visitor center for the Coastal Trail and the Noyo Center for Marine Science. The structure was moved to a location on Noyo Headlands Park property adjacent to the Noyo Center site. The structure is being used by the Noyo Center as a visitor center and for educational purposes in accordance with the Memorandum of Agreement between the City and the Noyo Center as approved by Resolution No. 3880-2015. The existing roofing material on the building has far exceeded its useful life and is in need of replacement. This budget amendment will allow for replacement of the roof and maintenance of a weathertight structure prior to the onset of winter rains.

RESOLUTION NO. ____-2016

RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING BUDGET AMENDMENT NO. 2017-01 AMENDING THE FY 2016/17 BUDGET TO APPROPRIATE FUNDS IN THE AMOUNT OF \$25,000 FROM THE GENERAL FUND UNALLOCATED FUND BALANCE TO ACCOUNT NO. 421-4957-0731 TO COVER COSTS FOR REPLACEMENT OF THE NOYO HEADLANDS PARK VISITOR CENTER ROOF

WHEREAS, the City of Fort Bragg owns and maintains the Noyo Headlands Park and facilities within; and

WHEREAS, the City acquired the Georgia-Pacific Visitor Center building and placed it within the Noyo Headlands Park boundary for use as a visitor center for the Coastal Trail and the Noyo Center for Marine Science; and

WHEREAS, the existing roofing material on the structure has exceeded its useful life and requires replacement; and

WHEREAS, the adopted FY 2016/17 Budget for the General Fund does not allocate funds for the Visitor Center Roof Replacement and therefore a budget amendment in an amount not to exceed \$25,000 is necessary; and

WHEREAS, sufficient revenues are available in the City's General Fund for the replacement of the Visitor Center roof;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby approve Budget Amendment No. 2017-01 amending the FY 2016/17 Budget to appropriate funds in the amount of \$25,000 from the General Fund unallocated fund balance to Account No. 421-4957-0731 to cover costs for replacement of the Noyo Headlands Park Visitor Center.

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 22nd day of August, 2016, by the following vote:

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

DAVE TURNER,
Mayor

ATTEST:

June Lemos
City Clerk



City of Fort Bragg

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

Text File

File Number: 16-333

Agenda Date: 8/22/2016

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Resolution

Agenda Number: 7E.

Adopt City Council Resolution Accepting the Bid of Southwest Pipeline & Trenchless Corp. as the Lowest Responsive Bid, Awarding the Contract for the 2016 Slip Line Project, City Project 2016-04, to Southwest Pipeline & Trenchless Corp. and Authorizing City Manager to Execute Contract (Amount Not to Exceed \$128,980; Account No. 714-4713-0751)

The 2016 Slip Line Project is generally described as slip line various sewer mains within the City and cut out lateral services. The project was advertised for bid on July 28, 2016 and August 4, 2016. One bid was received, in the amount of \$128,980. Sufficient funds are available through appropriations made in the Wastewater Fund to fully complete the project as advertised and bid.

RESOLUTION NO. _____-2016

RESOLUTION OF THE FORT BRAGG CITY COUNCIL ACCEPTING THE BID OF SOUTHWEST PIPELINE & TRENCHLESS CORP. AS THE LOWEST RESPONSIVE BID, AWARDING THE CONTRACT FOR THE 2016 SLIP LINE PROJECT, CITY PROJECT 2016-04, TO SOUTHWEST PIPELINE & TRENCHLESS CORP. (AMOUNT NOT TO EXCEED \$128,980; ACCOUNT NO. 714-4713-0751)

WHEREAS, the 2016 Slip Line Project (Project) to slip line various sewer mains and cut out lateral services; and

WHEREAS, in accordance with California Public Contract Code 20164 and other applicable laws, the Project was advertised for bid on July 28, 2016 and August 4, 2016 with bids due on August 12, 2016; and

WHEREAS, one bid was received, with the apparent low bid coming from Southwest Pipeline & Trenchless Corp. in the amount of \$128,980; and

WHEREAS, staff is satisfied that Southwest Pipeline & Trenchless Corp. has the proper license, experience and meets the necessary requirements to complete the project as bid; and

WHEREAS, the Project is funded by the Wastewater Fund, and appropriations were made in the FY 2016-17 Budget, Account No. 714-4713-0751; and

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

1. Southwest Pipeline & Trenchless Corp. bid meets the requirements of the Project bid documents and is considered responsive.
2. Sufficient funds are available through the appropriations made in the Wastewater Fund to fully complete the project as advertised and bid.
3. Southwest Pipeline & Trenchless Corp. has the proper licenses to complete the Project and based upon previous experience in completing similar projects, is a responsible bidder.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby approve a Project Agreement with Southwest Pipeline & Trenchless Corp. for the 2016 Slip Line Project and authorizes the City Manager to execute the same upon execution by Contractor (Amount Not to Exceed \$128,980; Account 714-4713-0751).

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 22nd day of August, 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RECUSED:

DAVE TURNER
Mayor

ATTEST:

June Lemos
City Clerk



CITY OF FORT BRAGG

Incorporated August 5, 1889
416 N. Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823

BID OPENING

2016 Slip Line Project
Project No. 2016-04

Bids were opened on **Friday, August 12, 2016**, at 2:00 p.m. by June Lemos, City Clerk. City staff present in addition to the City Clerk included: Public Works Director Tom Varga, Public Works Assistant Director John Smith, Public Works Project Analyst Crystal Prairie, Technology Support Technician Lynda Davis, and Engineering Technician Sergio Fuentes.

One (1) bid was received. Said bid was from:

- | | |
|---|-------------------|
| 1. Southwest Pipeline & Trenchless Corp.
22118 S. Vermont Avenue
Torrance, CA 90502 | Bid: \$128,980.00 |
|---|-------------------|

The bid contained bid security in accordance with the Notice Inviting Bids for this project.

The bid will be reviewed by City Staff and a recommendation will be made to the Fort Bragg Municipal Improvement District No. 1 at their regular meeting of August 22, 2016, at 6:00 p.m., or as soon thereafter as the matter may be heard.

Dated: August 12, 2016

June Lemos
City Clerk

cc: Planholders

FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT NO. 1
416 Franklin Street
Fort Bragg, California 95437

CONTRACT CHECK LIST

Complete, accurate, executed copies of the following documents must be submitted to the Fort Bragg Municipal Improvement District No. 1 in accordance with the bid package issued by the District for the 2016 Slip Line Project, Project No. 2016-04 within ten (10) working days of receiving written notice of award of the project. The bidder's security of any successful bidder that fails to do so will be forfeited to the District.

- _____ Contract Check List
- _____ Contract, Part 1
- _____ Contract, Part 2 – General Provisions
- _____ Contract, Part 3 – Special Provisions
- _____ Performance Bond
- _____ Payment Bond
- _____ Maintenance Bond
- _____ Certificates of Insurance and Endorsements
- _____ Escrow for Deposit Agreement, if applicable

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Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract Check List

FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT NO. 1
416 Franklin Street
Fort Bragg, California 95437

CONTRACT, PART 1

The Fort Bragg Municipal Improvement District No. 1, ("District") enters into this Contract, dated _____, 2016, for reference purposes only, with _____ ("Contractor").

RECITALS

- A. **NOTICE INVITING BIDS.** The District gave notice inviting bids to be submitted by August 12, 2016 for the 2016 Slip Line project ("Project") by published notice and/or posting in accordance with California Public Contract Code Section 20164 and other applicable law.
- B. **BID OPENING.** On August 12, 2016 District representatives opened the bids for the Project and read the bids aloud.
- C. **PROJECT AWARD.** On August 22, 2016 the District Council awarded the Project to the Contractor and directed District staff to send the Contractor written notice of award of the project. The District Council conditioned award of the project on the Contractor's providing executed copies of all documents specified in the contract check list included in the bid package within ten (10) working days of receiving written notice of award of the project.
- D. **REQUIRED DOCUMENTS.** The Contractor has provided the District executed copies of all documents specified in the contract check list included in the bid package within ten (10) working days of receiving written notice of award.

CONTRACT TERMS

The District and the Contractor agree as follows:

1. **THE WORK.** The Contractor shall furnish all equipment, tools, apparatus, facilities, material labor, and skill necessary to perform and complete in a good and workmanlike manner the 2016 Slip Line project ("Work") as shown in the Technical Specifications and Project Plans in accordance with the Contract Documents and applicable law.
2. **LOCATION OF WORK.** The Work will be performed at the following location: Various Locations in City.
3. **TIME FOR COMPLETION.** The Contractor must complete the Work in accordance with the Contract Documents within Thirty (30) working days from the date specified in the District's Notice to Proceed ("Time for Completion").
4. **REMEDIES FOR FAILURE TO TIMELY COMPLETE THE WORK.** If the Contractor fails to fully perform the Work in accordance with the Contract Documents by the Time for Completion, as such time may be amended by change order or other modification to this Contract in accordance with its terms, and/or if the Contractor fails, by the Time for Completion, to fully perform all of the Contractor's obligations under this Contract that

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-01
Contract, Part 1

have accrued by the Time for Completion, the Contractor will become liable to the District for all resulting loss and damage in accordance with the Contract Documents and applicable law. The District's remedies for the Contractor's failure to perform include, but are not limited to, assessment of liquidated damages of \$500 per day in accordance with California Government Code Section 53069.85 and the Contract Documents, and/or obtaining or providing for substitute performance in accordance with the Contract Documents.

5. CONTRACT PRICE AND PAYMENT. As full compensation in consideration of completion of the Work in accordance with the Contract Documents and in consideration of the fulfillment of all of the Contractor's obligations under the Contract Documents, the District will pay the Contractor in lawful money of the United States the total price of \$_____ (the "Contract Price") as specified in the Contractor's completed Bid Schedule dated _____, _____, and attached to and incorporated in this Contract. Payment to the Contractor under this Contract will be for Work actually performed in accordance with the Contract Documents and will be made in accordance with the requirements of the Contract Documents and applicable law. The District will have no obligation to pay the Contractor any amount in excess of the Contract Price unless this Contract is first modified in accordance with its terms. The District's obligation to pay the Contractor under this Contract is subject to and may be offset by charges that may apply to the Contractor under this Contract. Such charges include but are not limited to, charges for liquidated damages and/or substitute performance in accordance with the Contract Documents.
6. PREVAILING WAGES. 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 District 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 District Public Works Department and will be made available on request. Throughout the performance of the Work the Contractor must comply with all provisions of the Contract Documents and all applicable laws and regulations that apply to wages earned in performance of the Work.
7. THE CONTRACT DOCUMENTS. This Contract consists of the following documents ("Contract Documents"), all of which are incorporated into and made a part of this Contract as if set forth in full. In the event of a conflict between or among the Contract Documents, precedence will be in the following order:

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-01
Contract, Part 1

- 7.1 This Part 1 of the Contract and change orders and other amendments to this Contract signed by authorized representatives of the District and the Contractor.
- 7.2 The General Provisions, Part 2 of the Contract, and change orders and other amendments to the General Provisions signed by authorized representatives of the District and the Contractor.
- 7.3 The Special Provisions, Part 3 of the Contract, addenda to the Special Provisions signed by authorized representatives of the District and issued prior to bid opening, Equal Product Proposals accepted by the District and signed by authorized representatives prior to bid opening, and change orders and other amendments to the Special Provisions signed by authorized representatives of the District and the Contractor.
- 7.4 The Technical Specifications, addenda to the Technical Specifications signed by authorized representatives of the District and issued prior to bid opening, Equal Product Proposals accepted by the District and signed by authorized District representatives prior to bid opening, and change orders and other amendments to the Technical Specifications signed by authorized representatives of the District and the Contractor.
- 7.5 The Project Plans, addenda to the Project Plans signed by authorized representatives of the District and issued prior to bid opening, Equal Product Proposals accepted by the District and signed by authorized District representatives prior to bid opening, and change orders and other amendments to the Project Plans signed by authorized representatives of the District and the Contractor.
- 7.6 Notice Inviting Bids
- 7.7 Instructions to Bidders
- 7.8 The successful bidder's completed Proposal Cover Page and Bid Schedule
- 7.9 The successful bidder's completed Contractor License Information
- 7.10 The successful bidder's completed List of Proposed Subcontractors
- 7.11 The successful bidder's Workers Compensation Insurance Certification
- 7.12 The successful bidder's completed Non-collusion Affidavit
- 7.13 The successful bidder's Debarment Certification
- 7.14 The successful bidder's completed Certificates of Insurance and Endorsements
- 7.15 The successful bidder's executed Performance Bond
- 7.16 The successful bidder's executed Payment Bond
- 7.17 The Maintenance Bond form included in the bid package that the Contractor must execute prior to release of final payment under the Contract
- 7.18 The successful bidder's Qualification Statement, if any
- 7.19 The successful bidder's signed Signature Form

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-01
Contract, Part 1

8. PROVISIONS INCORPORATED BY REFERENCE. Provisions or parts of provisions that are incorporated by reference and not set forth at length in any of the Contract Documents will only form a part of this Contract to the extent the Contract Documents expressly make such provisions or parts of provisions a part of this Contract. For example, published public works agreement provisions, such as those of the State of California Department of Transportation Standard Specifications (known as the Standard Specifications) are only a part of this Contract to the extent expressly incorporated in the Contract by section number. When such published provisions are made a part of this Contract, references in the published provisions to other entities, such as the State, the Agency, or similar references, will be deemed references to the District as the context of this Contract may require.
9. INTERPRETATION OF CONTRACT DOCUMENTS. Any question concerning the intent or meaning of any provision of the Contract Documents, including, but not limited to, the Technical Specifications or Project Plans, must be submitted to the Public Works Director, or his/her designee, for issuance of an interpretation and/or decision by the authorized Public Works Director in accordance with the requirements of the Contract Documents. Interpretations or decisions by any other person concerning the Contract Documents will not be binding on the District. The decision of the Public Works Director, or his/her designee, shall be final.
10. ASSIGNMENT PROHIBITED. The Contractor may not assign part or all of this Contract, or any monies due or to become due under this Contract, or any other right or interest of the Contractor under this Contract, or delegate any obligation or duty of the Contractor under this Contract without the prior written approval of an official authorized to bind the District and an authorized representative of Contractor's surety or sureties. Any such purported assignment or delegation without such written approval on behalf of the District and the Contractor's sureties will be void and a material breach of this Contract subject to all available remedies under this Contract and at law and equity.
11. CERTIFICATION RE CONTRACTOR'S LICENSE. By signing this Contract the Contractor certifies that the Contractor holds a valid Type A license issued by the California State Contractors Licensing Board, and that the Contractor understands that failure to maintain its license in good standing throughout the performance of the Work may result in discipline and/or other penalties pursuant to the California Business and Professions Code, and may constitute a material breach of this Contract subject to all available remedies under this Contract and at law and equity.
12. SEVERABILITY. If any term or provision or portion of a term or provision of this Contract is declared invalid or unenforceable by any court of lawful jurisdiction, then the remaining terms and provisions or portions of terms or provisions will not be affected thereby and will remain in full force and effect.

Executed on _____, 2016 by

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-01
Contract, Part 1

CONTRACTOR

DISTRICT

By: _____
Title: _____

By: Linda Ruffing
Title: District Manager

[Attach Notary Page]

Attest:

Approved as to form:

By: _____
June Lemos
District Clerk

By: _____
Samantha W. Zutler
District Counsel

Rev: 01-01-2015

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Fort Bragg Municipal Improvement District No. 1
Project No. 2016-01
Contract, Part 1

FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT NO. 1
416 Franklin Street
Fort Bragg, California 95437

CONTRACT, PART 2
GENERAL PROVISIONS

1. DEFINITIONS:

The following terms as used in any agreement of which these General Provisions are a part are defined as follows:

- 1.1 Architect or Engineer: The person or persons so specified on the title sheet of the Technical Specifications and/or Project Plans.
- 1.2 ASTM: American Society for Testing and Materials, latest edition.
- 1.3 Bid Package: All of the documents listed as comprising the entire Bid Package as specified in the Instructions to Bidders and representing the full set of documents made available to bidders on the Project.
- 1.4 CalTrans Standard Specifications: CalTrans construction manual entitled, "State of California, Department of Transportation, Standard Specifications," latest edition.
- 1.5 District: Fort Bragg Municipal Improvement District No. 1
- 1.6 Construction Manager: The District's authorized representative for administration and overall management of the Project contract and Work. The Construction Manager is the official point of contact between the District, the Architect and/or Engineer, and the Contractor. The Construction Manager for this project shall be Assistant Public Works Director John Smith.
- 1.7 Contract: The agreement between the District and Contractor concerning the Project, as evidenced by and comprised of the Contract Documents.
- 1.8 Contract Documents: All those documents listed in the Project agreement as comprising the entire agreement between the District and the Contractor.
- 1.9 Contractor: The successful bidder for the Project and party to the Project agreement with the District as specified in the Project agreement.
- 1.10 Days: Unless otherwise specified in the Contract Documents, days mean working days.
- 1.11 Project: The 2016 Slip Line project as described in the Technical Specifications and Project Plans.
- 1.12 Project Inspector: The party or parties charged by the District with inspecting the Work for compliance with the requirements of the Contract Documents and applicable laws and regulations. The Project Inspector acts under the

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 2
General Provisions

direction of the District and shall coordinate with the Construction Manager and Architect as directed by the District in accordance with the Contract Documents.

- 1.13 Project Plans: The primarily graphic detailed requirements concerning the Project contained in Volume 3 of the Bid Package and any addenda to the Project Plans signed by authorized District representatives and issued prior to bid opening, Equal Product Proposals accepted by the District and signed by authorized District representatives prior to bid opening, and change orders and other amendments to the Project Plans signed by authorized representatives of the District and the Contractor in accordance with the requirements of the Contract Documents.
- 1.14 Subcontractor: A person, firm or corporation that is obligated as a party to a contract with the Contractor to perform part of the Project work. For purposes of these General Provisions Subcontractors include, but are not limited to, those that are obligated as parties to a contract with the Contractor to specially fabricate and install a portion of the Project Work according to the Technical Specifications and/or Project Plans.
- 1.15 Technical Specifications: The detailed Project requirements contained in Volume 3 of the Bid Package and any addenda to the Technical Specifications signed by authorized District representatives and issued prior to bid opening, Equal Product Proposals accepted by the District and signed by authorized District representatives prior to bid opening, and change orders and other amendments to the Technical Specifications signed by authorized representatives of the District and the Contractor in accordance with the requirements of the Contract Documents.
- 1.16 Work: The furnishing of all equipment, tools, apparatus, facilities, material, labor and skill necessary to perform and complete in a good and workmanlike manner the Project as shown in the Technical Specifications and Project Plans in accordance with the Contract Documents and applicable law.
- 1.17 Written Notice: Will be deemed to have been duly served for purposes of these General Provisions and any agreement of which they are a part if delivered in person to the individual or to a member of the firm or to any office of the corporation for whom the notice is intended, or if sent by registered or certified mail to the last known business address known to the party giving notice. Unless otherwise specified in the Contract Documents, the last known address of the Contractor shall be that listed in the Contractor's completed Proposal Cover Page and Bid Schedule.

2. SCOPE OF WORK

- 2.1 Documents Furnished by District. The District will furnish to the Contractor, free of charge, one (1) set of reproducible Project Plans and five (5) sets of prints of the Project Plans and Technical Specifications for execution of the

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 2
General Provisions

Work. Throughout the performance of the Work the Contractor must keep one copy of the Project Plans and Technical Specifications in good order and available for review by the Construction Manager, the Engineer, the Architect, and any other District contractors or representatives.

2.2 Ownership of Documents Furnished by District. All documents furnished by the District, including, but not limited to, the Technical Specifications, Project Plans, and any copies, are the property of the District. Documents furnished by the District may not to be used on any other work. All documents furnished by the District must be returned to District upon completion of the Work.

2.3 Technical Specifications and Project Plans.

2.3.1 The Technical Specifications and Project Plans are complementary and intended to mutually describe the Work necessary to complete the Project in accordance with the Contract Documents.

2.3.2 In general, the Project Plans indicate dimensions, position and kind of construction, and the Technical Specifications indicate qualities and methods. Any Work indicated on the Project Plans and not mentioned in the Technical Specifications or vice versa must be furnished as though fully set forth in both. Work that is not particularly detailed, marked or specified shall be the same as similar Work that is detailed, marked or specified. The Contractor must furnish items necessary for the operation of equipment depicted in the Project Plans or specified in the Technical Specifications that are suitable to allow such equipment to function properly at no extra charge.

2.3.3 The Contractor must notify the Construction Manager and the Architect as soon as possible of any apparent errors or inconsistencies, including, but not limited to, typographical or notational errors in the Project Plans, Technical Specifications, and/or in work done by others affecting the Work. The Construction Manager will issue instructions concerning any such apparent errors or inconsistencies. If the Contractor proceeds with Work impacted by apparent errors or inconsistencies without instructions from the Construction Manager, the Contractor shall do so at its sole risk and shall have all of the obligations and the District shall have all of the rights and remedies specified in Section 11 concerning any resulting damage or defect.

2.3.4 The General Provisions apply with equal force to all of the Work, including extra work authorized by the Construction Manager in accordance with the Contract Documents. The Contractor must submit any required shop diagrams and/or drawings by the times and in the quantities indicated in the Technical Specifications. Any such shop diagrams and/or drawings must show completely the Work to be done, expanding on the Project Plans concerning details not previously shown, field conditions and the condition of the Work. Architect or

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 2
General Provisions

Engineer review of such shop diagrams and/or drawings will concern conformance with the requirements of the Contract Documents only. The Architect or Engineer assumes no responsibility for the correctness or accuracy of the dimensions or any other contents of any shop diagrams and/or drawings submitted by the Contractor. The Contractor must check all dimensions at the Work site. Shop diagrams and/or drawings must be clearly marked with the name of the Project and the name of the Contractor, subcontractor or supplier making the submittal, and must be stamped and signed by the Contractor and submitted under a signed transmittal letter from the Contractor certifying that all dimensions have been checked at the Work site. These requirements are mandatory. The Architect or Engineer will not review shop diagrams and/or drawings that do not satisfy these requirements. The Contractor will be responsible for any and all discrepancies between dimensions of the actual Project site and/or Work and those shown on shop diagram and/or drawings submitted by the Contractor, and for any other errors contained in or resulting from such shop diagrams and/or drawings, including, but not limited to, errors in material and/or equipment quantities and any resulting errors, delays or additional cost in the performance of the Work. The Contractor will have all of the obligations and the District will have all of the rights and remedies that are specified in Section 11 concerning any discrepancies or errors in shop diagrams and/or drawings submitted by the Contractor, and concerning any resulting errors, delays or additional costs in the performance of the Work.

3. CONTROL OF WORK AND MATERIAL

- 3.1 Construction Manager's Status. The Construction Manager will administer the Project in accordance with the Contract Documents. After execution of the agreement and issuance of the Notice to Proceed, all correspondence and/or instructions concerning the Project between the Contractor and/or District shall be forwarded through the Construction Manager. Except as otherwise provided in the Contract Documents, the Construction Manager will not be responsible for and will not have control or charge of construction means, methods, techniques, or procedures or for safety precautions in connection with the Work. The Construction Manager, however, will have authority to reject materials and/or workmanship that do not conform to the requirements of the Contract Documents. The Construction Manager will also have the authority to require inspection or testing of the Work.
- 3.2 Architect or Engineer's Status. The Architect or Engineer will advise the Construction Manager concerning decisions on all claims of the Contractor and all other matters relating to the execution and progress of the Work or the interpretation of the Contract Documents. The Architect or Engineer will also advise the Construction Manger concerning Work that does not conform to the

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 2
General Provisions

Contract Documents. Whenever, in the Architect's or Engineer's opinion, it is necessary or advisable in accordance with the Contract Documents, the Architect or Engineer may recommend to the Construction Manager inspection or testing of the Work, whether or not such Work is then fabricated, installed or completed.

3.3 Inspection and Testing of Work and Material.

3.3.1 The District, the Construction Manager, the Architect or Engineer and their representatives will have access to the Work at all times wherever it is in preparation or progress. The Contractor must provide proper facilities for such access and for inspection.

3.3.2 The Contractor must inspect all materials as delivered and promptly return all defective materials without waiting for their rejection by the Construction Manager or Architect or Engineer.

3.3.3 If the Construction Manager, the Technical Specifications, or any laws, ordinances, or any public authority require any Work to be tested or approved, the Contractor must give the Construction Manager timely notice of the Contractor's readiness for inspection. Inspections will be promptly made, and where practicable, at the source of supply. Any work subject to such testing that is covered up without timely notice to the Construction Manager or without the approval or consent of the Construction Manager must, if required by the Construction Manager, be uncovered for examination at the Contractor's expense. The Contractor will have all of the obligations and the District will have all of the rights and remedies that are specified in Section 11 concerning any work subject to testing that is covered up without timely notice to the Construction Manager and that is not uncovered for examination at the Contractor's Expense if required by the Construction Manager.

3.3.4 Tests of materials or qualification tests required by the Contract Documents must be made in accordance with the Technical Specifications and the requirements of the California Building Standards Code as adopted by the District and other applicable law. Copies of all testing reports shall be distributed as required in the Technical Specifications.

3.3.5 The District or its representatives may order re-examination of questioned Work. If ordered to do so, the Contractor must uncover such Work. If such Work is found to be according to the Contract Documents, the District shall pay the cost of uncovering and restoring the Work, unless such Work was subject to testing and covered up without timely notice to or approval of the Construction Manager. If re-examined Work is found not in accordance with the Contract Documents, the Contractor must pay the cost of uncovering and restoring the Work. The Contractor will have all of the obligations and

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 2
General Provisions

the District will have all of the rights and remedies that are specified in Section 11 concerning any re-examined Work not in accordance with the Contract Documents that the Contractor fails to uncover and restore at the Contractor's expense.

- 3.3.6 The Contractor must replace or correct without charge any material or workmanship found not to conform to the requirements of the Contract Documents, unless the District consents to accept such material or workmanship with an appropriate adjustment in the Contract Price. The Contractor must promptly segregate and remove non-conforming material from the Work site. The Contractor will have all of the obligations and the District will have all of the rights and remedies that are specified in Section 11 concerning any failure by the Contractor to replace or correct without charge any material or workmanship that does not conform to the requirements of the Contract Documents and that the District has not consented to accept.
- 3.4 Samples Furnished by the Contractor. The Contractor must furnish all samples for approval as directed in sufficient time to permit the Architect or Engineer to examine, approve and select samples before they are required by the progress of the Work. Portions of the Work for which samples are required and for which the Architect or Engineer has selected samples must be in accordance with such approved samples. Samples must be sent prepaid to the office of the Construction Manager or to such place as the Construction Manager may direct.
- 3.5 Materials and Substitutions.
- 3.5.1 Materials used for the Work must be new and of the quality specified. When not particularly specified, materials must be the best of their class or kind. The Contractor must, if required, submit satisfactory evidence as to the kind and quality of materials.
- 3.5.2 If the Contractor submitted complete information to the Public Works Department for products proposed as equals in accordance with the Bid Package, and the District approved such products proposed as equals in writing, the Contractor may either furnish such products approved as equals, or furnish the products listed by manufacturer name, brand or model number in the Technical Specifications or Project Plans. The District retains the right, in its sole discretion, to accept or reject any other proposed substitution. To be considered, proposals concerning products proposed as equals must include sufficient information to permit the District to determine whether the products proposed as equals will satisfy the same performance requirements as products listed by manufacturer's name, brand or model number. Such performance requirements may include, but are not limited to, size, strength, function, appearance, ease of maintenance and repair, and

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 2
General Provisions

useful life requirements. If the District does not accept a proposed substitution, the Contractor must furnish the product specified in the Technical Specifications or Project Plans for the Contract Price, regardless of whether the product is specified by manufacturer's name, brand or model number, or otherwise.

- 3.5.3. During the performance of the Work, all materials must be neatly stacked, properly protected from the weather and other adverse impacts, and placed so as to avoid interference with efficient progress of the Work, with other activities of the District, or with the use of existing District facilities by the public. All materials must be delivered so as to ensure efficient and uninterrupted progress of the Work. Materials must be stored so as to cause no obstruction and so as to prevent overloading of any portion of the Work. The Contractor will be responsible for damage or loss of materials delivered to and/or stored at the Work site due to weather or other causes. The Contractor must promptly remove from the Work site all materials rejected by the District or its representatives as failing to conform to the requirements of the Contract Documents, whether such non-conforming materials have been incorporated in the Work or not. If the District or its representatives so direct, the Contractor must promptly replace and re-execute Work performed by the Contractor and order the replacement and re-execution of Work performed by subcontractors using non-conforming materials with materials that satisfy the requirements of the Contract Documents without expense to the District. The Contractor will bear the expense of making good all Work destroyed or damaged by such removal. The Contractor will have all of the obligations and the District will have all of the rights and remedies that are specified in Section 11 concerning any failure by the Contractor to replace or re-execute Work using non-conforming materials, and/or to make good all work destroyed or damaged by such removal and/or execution.
- 3.6 Audit and Examination of Records. The District may examine and audit at no additional cost to the District all books, estimates, records, contracts, documents, bid documents, bid cost data, subcontract job cost reports and other Project related data of the Contractor, subcontractors engaged in performance of the Work, and suppliers providing supplies, equipment and other materials required for the Work, including computations and projections related to bidding, negotiating, pricing or performing the Work or contract modifications and other materials concerning the Work, including, but not limited to, Contractor daily logs, in order to evaluate the accuracy, completeness, and currency of cost, pricing, scheduling and any other project related data. The Contractor will make available all such Project related data at all reasonable times for examination, audit, or reproduction at the Contractor's business office at or near the Work site, and at any other location where such Project related data may be kept until three years after final

Fort Bragg Municipal Improvement District No. 1

Project No. 2016-04

Contract, Part 2

General Provisions

payment under the Agreement. Pursuant to California Government Code Section 8546.7, if the amount of public funds to be expended is in excess of \$10,000, this Contract shall be subject to the examination and audit of the State Auditor, at the request of the District, or as part of any audit of the District, for a period of three (3) years after final payment under the Agreement.

- 3.7 Advertising. No advertising signs of any kind may be displayed on the Work site, or on fences, offices or elsewhere adjacent to the Work site.
- 3.8 Project Schedule. Prior to the pre-construction meeting, the Contractor shall submit a schedule showing each task of Work, the sequence of each task, the number of days required to complete each task, and the critical path controlling the completion of the entire Work. The schedule shall allow for the completion of the entire Work within the Time for Completion.
 - 3.8.1 District Review of Schedule. The District may review the Contractor's submitted schedule and may note any exceptions. The Contractor shall correct any exceptions noted by the District within five (5) working days of being notified of the exceptions.
 - 3.8.2 Update of Schedule. After submission of a schedule to which the District has taken no exceptions, the Contractor shall submit an updated schedule on a biweekly basis until completion of the Work. The updated schedule shall show the progress of Work as of the date specified in the updated schedule.
 - 3.8.3 Float. The schedule shall show early and late completion dates for each task. The number of days between these dates shall be designated as "float". The Float shall be designated to the Project and shall be available to both the District and the Contractor as needed to complete the Work in accordance with the Contract.
 - 3.8.4 Failure to Submit Schedule. If the Contractor fails to submit the schedule within the time period specified in this section or submit a schedule to which the District has taken uncorrected exceptions, the District may withhold payments to the Contractor until such schedules are submitted and/or corrected in accordance with the Contract documents.
 - 3.8.5 Responsibility for Schedule. The Contractor will be solely and exclusively responsible for creating the schedule and properly updating it. The District may note exceptions to any schedule submitted by the Contractor. However, the Contractor will be solely responsible for determining the proper method of addressing such exceptions, and the District's review of the schedule will not create scheduling obligations for the District.

3.9 Construction Staking. All Work done under this Contract must be in conformance with the Project Plans and staked by the Engineer in the field. The Contractor must inform the Engineer, forty-eight (48) hours in advance, of the time and places at which he or she wishes to do work, in order that lines and grades may be furnished and necessary measurements for record and payment made, with the minimum of inconvenience to the Engineer and delay to the Contractor.

3.10 Materials Testing. Materials will be tested by the Fort Bragg Municipal Improvement District No. 1 or its authorized agent, following State of California Test Methods. Statistical testing may not be used. All individual samples must meet the specified test results. Each material used must meet the specified requirements.

The Contractor must request and coordinate all testing. All tests must occur in the presence of the Project Inspector. The District will, at its sole discretion, have the right to reject any and/or all test results that do not meet this requirement, and to order a retest in the presence of the Project Inspector. The costs for all retests so ordered will be the responsibility of the Contractor. The cost of all retests will be charged to the Contractor at the actual cost plus 30 percent, with a minimum charge of \$150.00 per test to cover staff and administrative costs.

The District, at its sole expense, will provide all initial material and compaction tests. Sampling and testing will comply with Chapter 3 of the CalTrans Construction Manual, at a minimum. Where conditions vary, the District may perform additional testing. Cost for testing of materials offered in lieu of the specified materials will be the responsibility of the Contractor. Cost for R-value tests when required by the Standard Specifications will be the responsibility of the Contractor.

Testing will only be performed on normal District working days between the hours of 8:00 a.m. and 4:00 p.m. unless other arrangements are made in advance. Tests performed outside of these hours may be subject to increased charges.

The Contractor must request all tests in writing a minimum of two (2) working days in advance of the time desired. A minimum of one working day must be allowed for compilation and reporting of data and test results after tests have been performed. No subsequent layer of material may be placed until a passing test is obtained and acknowledged by the District.

Concrete and asphalt may be supplied only from suppliers approved and certified by the State Department of Transportation. Proposed mix designs for all concrete and asphalt concrete to be placed within the Fort Bragg Municipal Improvement District No. 1 must be provided to and approved by the District, prior to placement.

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 2
General Provisions

The Contractor must coordinate with the District concerning any additional testing as required.

4. CHANGES IN WORK

- 4.1 District Directed Change Orders. The District may at any time during the progress of the Work direct any amendments to the Work or any of the Contract Documents, including, but not limited to the Technical Specifications, or Project Plans. Such amendments will in no way void the agreement, but will be applied to amend the Contract Price, if such amendments affect the Contract Price, the Project schedule, if such amendments affect the Project schedule, or any other provision of the Contract Documents based on a fair and reasonable valuation of the amendment in accordance with this Section 4.
- 4.2 Writing Requirement. Change orders and other amendments to the Technical Specifications, the Project Plans, or other Contract Documents may be made only by a writing executed by authorized representatives of the District and the Contractor.
- 4.3 Contractor Proposed Change Orders. Unless the Construction Manager otherwise authorizes or the District and the Contractor otherwise agree, change order proposals submitted by the Contractor must be submitted to the Construction Manager no later than the time of the proposed change.
- 4.4 All Change Orders. All change order proposals must be submitted on completed Change Order forms provided by the District. All such change order proposals must itemize all cost impacts of the proposed change order and include a total price for that change order and the amended Contract Price that would become effective upon execution of the change order. All change order proposals must specify any change in the Project schedule, or in any project milestone including, but not limited to, the Time for Completion, under the change order. It is understood that change orders that do not specify a change in any milestone, including, but not limited to, the Time for Completion, may be accomplished by the Time for Completion then in effect.
- 4.5 Change Order Pricing. Change order pricing will be governed by the following:
 - 4.5.1 Unit prices specified in the Contract Documents will apply to cost impacts involving items for which the Contract Documents specify unit prices.
 - 4.5.2 Cost impacts involving items for which no unit prices are specified will be calculated by adding the itemized actual direct cost that would be added or reduced under the change order and an allowance for indirect costs in accordance with this Section. Itemization for direct costs for required labor must include the classifications of labor required, the total hours required for each classification, the hourly rate for each classification and other labor related costs such as liability and workers compensation insurance, social security, retirement and unemployment

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 2
General Provisions

insurance. All other cost impacts for which no unit prices are specified must be itemized as appropriate, including the cost of tools, vehicles, phones and other equipment, and the cost of all required materials or supplies. Indirect costs added under a change order may not exceed an allowance of fifteen (15) percent of the total of combined Contractor and subcontractor direct costs added under the change order. Such allowance covers Contractor overhead and profit under the change order and includes the cost of insurance in addition to that required pursuant to Section 8.8, bond premiums, superintendent labor, clerical labor, home office expenses, worksite office expenses, and utility costs under the change order. Such costs may not be itemized as direct costs under a change order. Indirect costs deducted under a change order will be calculated in exactly the same way as indirect costs added under a change order, except indirect costs deducted under a change order may not exceed an allowance of seven and a half (7.5) percent of the total of combined Contractor and subcontractor direct costs deducted under the change order.

- 4.6 Liability Under Unapproved Change Orders. The Contractor shall be solely responsible for any and all losses, costs, or liabilities of any kind incurred by the Contractor, any subcontractor engaged in the performance of the Work, any party supplying material or equipment for the Work or any third party that are incurred pursuant to Contractor-proposed change orders prior to issuance of an approved change order executed in accordance with this Section 4. The Contractor will have all of the obligations and the District will have all of the rights and remedies that are specified in Section 11 concerning any work or resulting losses, costs, or liabilities pursuant to a Contractor proposed change order before issuance of an approved change order executed in accordance with this Section 4.
- 4.7 Changes Subject to Contract Documents. Any changes in the Work and/or the Contract Documents pursuant to change orders and any other amendments issued in accordance with the Contract Documents, including this Section 4, will in all respects be subject to all provisions of the Contract Documents, including, but not limited to, the Technical Specifications and the Project Plans, except as modified by such change orders or amendments.
- 4.8 Change Order Disputes.
 - 4.8.1 Disputed District Directed Change Orders. If the Contractor disputes a District directed change order following a reasonable effort by the and the Contractor to resolve the dispute including, at a minimum, a meeting between appropriate representatives of the Contractor and the District, the Contractor must commence performing the Work consistent with the disputed change order within five (5) working days of the last meeting between representatives of the Contractor and the District to resolve the dispute, or within the time specified in the disputed District

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 2
General Provisions

directed change order, whichever is later. In performing Work consistent with a disputed District-directed change order pursuant to this provision the Contractor will have all of the Contractor's rights concerning claims pursuant to the Contract Documents and applicable law.

- 4.8.2 Disputed Contractor Proposed Change Orders. If the District disputes a Contractor proposed change order, the District and the Contractor will use reasonable efforts to resolve the dispute including, at a minimum, holding a meeting between appropriate representatives of the Contractor and the District. Regardless of and throughout any such efforts to resolve the dispute the Contractor must continue performing the Work irrespective of and unmodified by the disputed change order. In continuing to perform the Work, the Contractor will retain all of the Contractor's rights under contract or law pertaining to resolution of disputes and protests between contracting parties. Disputes between the District and the Contractor concerning any Contractor-proposed change order or other amendment do not excuse the Contractor's obligation to perform the Work in accordance with the Contract Documents excluding such Contractor-proposed change order or other amendment by the Time for Completion or waive any other Project milestone or other requirement of the Contract Documents.

5. TRENCHING AND UTILITIES

- 5.1 Excavation More Than Four Feet Deep. In accordance with California Public Contract Code Section 7104, if the Work involves excavation more than four feet deep the Contractor must promptly notify the District in writing before disturbing: any material that the Contractor believes may be hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law; any subsurface or latent physical conditions at the Work site differing from those indicated; or any unknown physical conditions at the Work site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents. The District will promptly investigate any such conditions for which notice is given. If the District finds that the conditions do materially differ, or involve hazardous waste, and would cause a decrease or increase in the cost or time of performance of the Work, the District will issue a change order pursuant to Section 4 of these General Provisions. If a dispute arises between the District and the Contractor concerning whether the conditions materially differ, or involve hazardous waste, or cause a decrease of increase in the cost or time of performance, the Contractor will not be excused from any completion date provided in the Contract Documents, but shall proceed with all Work to be performed. The

Contractor will retain all rights under contract or law pertaining to resolution of disputes and protests between contracting parties.

5.2 Excavation of Five Feet or More. In accordance with California Labor Code Section 6705, contractors performing contracts exceeding \$25,000 in cost and involving excavation five or more feet deep must submit for the District's acceptance, prior to excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during excavation. If the plan varies from the shoring system standards, it must be prepared by a registered civil or structural engineer.

5.3 Utility Relocation Costs.

5.3.1 In accordance with California Government Code Section 4215, the District assumes the responsibility for the timely removal, relocation or protection of existing main or trunkline utility facilities located on the Work site if such utilities are not identified by the District in the Technical Specifications and/or Project Plans. The District will compensate the Contractor for the costs of locating, repairing damage not due to the Contractor's failure to exercise reasonable care, and removing or relocating existing main or trunkline utility facilities located at the Work site and not identified with reasonable accuracy in the Technical Specifications and/or Project Plans. The District will also compensate the Contractor for the cost of equipment on the Project necessarily idled during such work. The Contractor will not be assessed liquidated damages for Work completion delays caused by the District's failure to provide for removal or relocation of such main or trunkline utility facilities.

5.3.2 Nothing in this provision or the Contract Documents will be deemed to require the District to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Work site can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the Work site; provided, however, that nothing in this provision or the Contract Documents shall relieve the District from identifying main or trunklines in the Technical Specifications and/or Project Plans.

5.3.3. Nothing in this provision or the Contract Documents will preclude the District from pursuing any appropriate remedy against the utility for delays which are the responsibility of the utility.

5.3.4 Nothing in this provision or the Contract Documents will be construed to relieve the utility from any obligation as required either by law or by contract to pay the cost of removal or relocation of existing utility facilities.

5.3.5 If the Contractor while performing the Work discovers utility facilities not identified by the District in the Technical Specifications and/or Project Plans, the Contractor must immediately notify the District and utility in writing.

5.3.6 Either the District or the utility, whichever owns existing main or trunkline utility facilities located on the Work site, shall have sole discretion to effect repairs or relocation work or to permit the Contractor to perform such repairs or relocation work at a reasonable price.

6. PROJECT FACILITIES

6.1 Work Site Offices. Any Work site office facilities used by the Contractor and/or its privities must conform to all applicable codes, ordinances and regulations. The cost of such Work site office facilities shall be paid from the included in the Contract Price.

6.2 District Rights of Access and Ownership. The District and its authorized representatives will at all reasonable times while such office facilities are located at the Work site (including, at a minimum, all times during which the Work is performed), have access to any such Work site office facilities used by the Contractor and/or its privities. With respect to the right of access of the District and its authorized representatives, neither the Contractor nor its privities shall have a reasonable expectation of privacy pursuant to the Fourth Amendment to the Unites States Constitution or other applicable law concerning such Work site office facilities used by the Contractor and/or its privities. Without exception, any and all Project related materials located at such Work site facilities will be deemed at all times to be District property subject to inspection and copying by the District and its authorized representatives at all reasonable times while such facilities are located at the Work site (including, at a minimum, all times during which the Work is performed). Any interference by the Contractor or its privities with the District's rights of access and/or ownership pursuant to this Section 6 will constitute a material breach of the Agreement subject to any and all remedies available pursuant to the Contract Documents and at law and equity.

7. PROSECUTION AND PROGRESS OF THE WORK

7.1 Liquidated Damages. Time is of the essence in the Agreement. The District and the Contractor agree that it will be difficult and/or impossible to determine the actual damage which the District will sustain in the event of the Contractor's failure to fully perform the Work or to fully perform all of the Contractor's obligations that have accrued pursuant to the Agreement by the Time for Completion. Accordingly, the District and the Contractor agree in accordance with California Government Code Section 53069.85 that the Contractor will forfeit and pay to the District liquidated damages in the sum of \$500 per day for each and every calendar day completion of the Work and/or

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 2
General Provisions

performance of all of the Contractor's obligations that have accrued pursuant to the Agreement is delayed beyond the Time for Completion. The District and the Contractor further agree in accordance with California Government Code Section 53069.85 that the liquidated damages sum specified in this provision is not manifestly unreasonable under the circumstances existing at the time the Agreement was made, and that the District may deduct liquidated damages sums in accordance with this provision from any payments due or that may become due the Contractor under the Agreement.

- 7.2 No Damage for Avoidable Delays. All delays in the Work that might have been avoided by the exercise of care, prudence, foresight and diligence of the Contractor or any privities of the Contractor will be deemed avoidable delays. Delays in the Work that may be unavoidable but that do not necessarily affect other portions of the Work or prevent completion of all Work within the Time for Completion, including, but not limited to, reasonable delays in Engineer approval of shop drawings, placement of construction survey stakes, measurements and inspection, and such interruption as may occur in prosecution of the Work due to reasonable interference of other contractors of the District, will be deemed avoidable delays. The Contractor will not be awarded a change in the Project schedule, the Time for Completion, and/or additional compensation in excess of the contract price for avoidable delays.
- 7.3 Unavoidable Delays. All delays in the Work that result from causes beyond the control of the Contractor and that the Contractor could not have avoided through exercise of care, prudence, foresight, and diligence will be deemed unavoidable delays. Orders issued by the District changing the amount of Work to be done, the quantity of materials to be furnished, or the manner in which the work is to be prosecuted, and unforeseen delays in the prosecution of the Work due to causes beyond the Contractor's control, such as strikes, lockouts, labor disturbances, fires, epidemics, earthquakes, acts of God, neglect by utility owners or other contractors that are not privities of the Contractor will be deemed unavoidable delays to the extent they actually delay the Contractor's completion of the Work. The Contractor will be awarded a change in the Project schedule, the Time for Completion, and/or additional compensation in excess of the Contract Price for unavoidable delays to the extent such delays actually delay the Contractor's completion of the Work and/or result in the Contractor incurring additional costs in excess of the Contract Price.
- 7.4 No Damage for Contractor Caused Delay. Contractor shall not be entitled to additional compensation for extended field or home office overhead, field supervision, costs of capital, interest, escalation charges, acceleration costs or other impacts for any delays to the extent such delays are caused by the failure of the Contractor or any subcontractor or other entity engaged in performance of the Work to perform the Work in accordance with the Contract

Documents. Contractor may be eligible for additional compensation in excess of the Contract Price for delays caused by the District and/or its privities.

7.5 No Damage for Other Delay. Contractor will not be entitled to damages for delay to the Work caused by the following, which the District and Contractor agree will be deemed for purposes of California Public Contract Code Section 7102 either not caused by the District, and/or within the contemplation of the District and the Contractor, and/or reasonable under the circumstances:

7.5.1 Exercise of the District's right to sequence the Work in a manner that would avoid disruption to the District and other contractors based on: the failure of the Contractor or any subcontractor or other entity engaged in the performance of the Work to perform the Work in accordance with the Contract Documents, enforcement by the District or any other governmental agency of competent jurisdiction of any government act or regulation, or enforcement by the District of any provisions of the Agreement.

7.5.2 Requests for clarification or information concerning the Contract Documents or proposed change orders or modifications to the Contract Documents, including extensive and/or numerous such requests for clarification or information or proposed change orders or modifications, provided such clarifications or information or proposed change orders or modifications are processed by the District or its representatives in a reasonable time in accordance with the Contract Documents.

7.6 Delays Caused by the District and/or Its Privities. Delay caused by the District and/or other Contractors of the District will be deemed unavoidable delays. Either the District or the Contractor may propose a change in the Time for Completion for delays that are purported to be caused by the District and/or its privities and that are not reasonable under the circumstances involved and/or that are not within the contemplation of the District and the Contractor. Such proposed changes in the Time for Completion will constitute change order proposals subject to Section 4. In accordance with Section 4, the District and the Contractor may agree upon pricing for the cost impacts, if any, resulting from such delays. If such pricing is in anticipation of cost impacts that may, but have not yet occurred, the District will be obligated to pay the Contractor for such anticipated impacts in accordance with the Agreement and any applicable, approved change orders only to the extent the Contractor actually incurs the anticipated cost impacts. Notwithstanding anything to the contrary in Section 4.5.2, the District and the Contractor may agree to a daily rate or cap or lump sum that will apply to the cost impacts, if any, resulting from delay purportedly caused by the District and/or its privities subject to this provision. However, if such daily rate or cap or lump sum is in anticipation of cost impacts that have not yet occurred, the District will be obligated to pay such daily rate or cap or lump sum only to the extent the Contractor actually incurs such cost impacts.

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 2
General Provisions

- 7.7 Weather Delays. Extensions of the Time for Completion will not be allowed for weather conditions that are consistent with the following list of anticipated rain days based on historical weather data of the National Oceanographic and Atmospheric Administration of the U.S. Department of Commerce for the record station that is nearest or most applicable to the Work site. Extensions of the Time for Completion for delays due to adverse weather will be allowed only if the number of rain days exceeds those listed in the following table and the Contractor can verify to the District's reasonable satisfaction that such adverse weather caused actual delay in the timely completion of the Work. No extensions of the Time for Completion will be granted for rain days in addition to those listed in the following table that merely result in delays that do not or would not, themselves, result in failure to complete the Work by the Time for Completion. Anticipated rain days are as follows: January, [2]; February, [6]; March, [2]; April, [0]; May, [0]; June, [0]; July, [0]; August, [0]; September, [0]; October, [1]; November, [2]; December, [3].
- 7.8 Delay Claims. Whenever the Contractor claims a delay for which the Time for Completion may be extended, the Contractor must request an extension of time within five (5) days of the start of the delay. The request must be in writing and describe in detail the cause for the delay, and, if possible, the foreseeable extent of the delay.
- 7.9 Contractor Coordination of the Work.
- 7.9.1 The District reserves the right to do other work in connection with or in the vicinity of the Project by contract or otherwise, and Contractor shall at all times conduct the Work so as to impose no hardship on the District, others engaged in the Work or other contractors working at the Work site. The Contractor will adjust, correct and coordinate the Work with the work of others so that no delays result in the Work or other work at or near the Work site.
- 7.9.2 If any part of the Work depends for proper execution or results upon the work of the District or any other contractor, the Contractor will, before proceeding with such Work, promptly report to the District any apparent discrepancies or defects in such other Work. Failure of the Contractor to promptly report any apparent discrepancy or defect will be deemed an acceptance of the District's or other contractor's Work as fit and proper.
- 7.9.3 The Contractor will anticipate the relations of the various trades to the progress of the Work and will ensure that required anchorage or blocking is furnished and set at proper times. Anchorage and blocking necessary for each trade shall be part of the Work except where stated otherwise.
- 7.9.4 The Contractor will provide proper facilities at all times for access of the District, the Construction Manager, Architect or Engineer, and other

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 2
General Provisions

authorized District representatives to conveniently examine and inspect the Work.

8. CONTRACTOR RESPONSIBILITIES

- 8.1. Eligibility. By executing the Agreement, the Contractor certifies that the Contractor is not ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7. In accordance with California Public Contract Code Section 6109(a), contractors who are ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7 may neither bid on, be awarded or perform the Work. To the fullest extent permitted by law, the Contractor shall hold harmless and indemnify the District from and against any and all damages, costs, and liability arising from or as a consequence of any violation of Public Contract Code Section 6109.
- 8.2 Supervision of the Work. The Contractor will be solely responsible for the performance of the Work, including portions of the Work to be performed by subcontractors. The Contractor is charged with ensuring that all orders or instructions from the District, Construction Manager or Architect are disseminated to and followed by all subcontractors engaged in performance of the Work. The Contractor will supervise the Work using the Contractor's best skill and attention. At any time during the progress of the Work, the District, the Construction Manager, or the Architect may require the Contractor and/or subcontractors engaged in performance of the Work to attend a project meeting and the Contractor will attend, and ensure the attendance of any subcontractors whose attendance is required by the District and/or advisable in light of the matters to be addressed at the meeting.
- 8.3 Contractor's Superintendent. The Contractor will keep on the Work, throughout its progress, a competent superintendent and any necessary assistants, all satisfactory to the District. The superintendent may not be changed without the consent of the District. The superintendent will represent the Contractor and all directions given by the District to the superintendent will bind the Contractor in accordance with the Agreement. Superintendent time included in Contractor's completed bid schedule and/or in approved change orders, if any, must be included in Contractor's approved overhead rate and may not be charged as a direct cost.
- 8.4 Competent Employees. The Contractor must at all times enforce strict discipline and good order among the Contractor's employees and may not employ on the Work any unfit person or anyone not skilled in the Work assigned, or anyone incompetent or unfit for the duties of that person. When the District determines that a Contractor employee does not satisfy the requirements of this provision, upon notice from the District, the Contractor must ensure that employee performs no further Work and is no longer present

at the Work site. Any such Contractor employee may not again be employed on the Work without District approval.

- 8.5 Items Necessary for Proper Completion of the Work. Except as otherwise noted in the Contract Documents, the Contractor will provide and pay for all labor, materials, equipment, permits, fees, licenses, facilities and services necessary for the proper execution and timely completion of the Work in accordance with the Contract Documents.
- 8.6 Construction Reports. The Contractor must submit daily construction reports detailing the daily progress of the Work to the Construction Manager on a weekly basis.
- 8.7 Subcontracting. The Contractor must perform with his or her own organization, a value of work amounting to not less than fifty percent (50%) of the Contract amount, except that the bid amount for subcontracted "Specialty Items" so designated in the Special Provisions may be eliminated from the Contract amount and not considered as sub-contracted for the purposes of calculating the value of work to be performed by the Contractor. For the purposes of determining the value of work to be performed by the Contractor pursuant to this provision, materials, equipment, incidentals, etc., shall be considered to have been purchased by the Contractor or Subcontractor that is to install them. Where a portion of an item is subcontracted, the value of work subcontracted will be based on the estimated cost of such portion of the subcontracted item, as determined from information submitted by the Contractor, subject to approval by the Engineer.
 - 8.7.1 By executing the Contract, the Contractor certifies that no subcontractor included on the list of proposed subcontractors submitted with the Contractor's bid is ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7. In accordance with California Public Contract Code Section 6109(a), subcontractors who are ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7 may neither bid on, be awarded or perform as a subcontractor on the Work. In accordance with California Public Contract Code Section 6109(b), any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. The Contractor will ensure that no debarred subcontractor receives any public money for performing the Work, and any public money that may have been paid to a debarred subcontractor for the Work is returned to the District. The Contractor will be responsible for payment of wages to workers of a debarred subcontractor who has been allowed to perform the Work.
 - 8.7.2 The Agreement and the performance of the Work are subject to the requirements of the Subletting and Subcontracting Fair Practices Act

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 2
General Provisions

codified at California Public Contract Code Section 4100 and following. If the Contractor fails to specify a subcontractor or specifies more than one subcontractor for the same portion of the Work in excess of one-half of 1 percent of the Contractor's total bid, the Contractor agrees that the Contractor is fully qualified to perform that portion of the Work with the Contractor's own forces, and that the Contractor will perform that portion of the Work with the Contractor's own forces. If after award of the Agreement the Contractor subcontracts, except as provided for in California Public Contract Code Sections 4107 or 4109, any such portion of the Work, the Contractor will be subject to the penalties set forth in California Public Contract Code Sections 4110 and 4111, including cancellation of the Agreement, assessment of a penalty of up to 10 percent of the amount of the subcontract, and disciplinary action by the Contractors State License Board.

- 8.7.3. No contractual relationship exists between the District and any subcontractor engaged in performance of the Work.
- 8.7.4 Incorporation of Contract Documents. The Contractor must incorporate the Contract Documents in each contract with a subcontractor engaged in the performance of the Work including the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. The Contractor shall be solely responsible for any delay or additional costs incurred as a result of its failure to provide adequate or accurate project information to a subcontractor that results in improper submittals and/or work, or time or other impacts is the sole responsibility of the Contractor. The Contractor will have all of the obligations and the District will have all of the remedies that are specified in Section 11.
- 8.7.5 Subcontractor agrees to be bound to General Contractor and District in the same manner and to the same extent as General Contractor is bound to District under the Contract Documents. 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 District's Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request. The Contractor shall require all subcontractors to provide a valid certificate of insurance with the required endorsements included in the agreement prior to commencement of any work and General Contractor will provide proof of compliance to the District.
- 8.7.6 Coordination of Subcontract Work: The Contractor is responsible for scheduling the Work of subcontractors so as to avoid delay or injury to either Work or materials.

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 2
General Provisions

8.8 Insurance.

- 8.8.1 All required insurance shall be provided in the form of “occurrence”-type policies underwritten by admitted insurers in the State of California with a rating of A or better from the current year Best Rating Guide. All policies must be issued at the expense of the Contractor and must be maintained at the Contractor’s expense throughout the performance of the Work.
- 8.8.2 The Contractor and any subcontractors engaged in performance of the Work must secure payment of workers compensation in accordance with California Labor Code Section 3700 and other applicable law. The Contractor must verify that all Subcontractors comply with this requirement.
- 8.8.3 Within ten (10) working days following notice of award the Contractor must submit to the District along with executed copies of all other documents specified in the Contract Check List certificates of insurance and endorsements evidencing that the Contractor has in effect and will maintain throughout the performance of the Work the following kinds and amounts of insurance:
- 8.8.3.1 Worker’s Compensation Insurance. Workers Compensation and Employers Liability insurance as required by any applicable law, regulation or statute, including the provisions of Division IV of the Labor Code of the State of California, and any act or acts amending it. Worker’s Compensation insurance must be for Statutory Limits and must cover the full liability of the Contractor. The Contractor’s Employer’s Liability Insurance must be in an amount no less than \$1,000,000.00 per occurrence. The insurance must be endorsed to waive all rights of subrogation against District and its officials, officers, employees, and volunteers for loss arising from or related to the work performed under this agreement.
- 8.8.3.2 Commercial General Liability and Automobile Liability Insurance. Coverage for liability because of Bodily Injury and Property Damage including, but not limited to the following coverage:
- Completed Operations and Products Liability
 - Bodily Injury
 - Personal Injury
 - Broad Form Property Damage Liability
 - Contractual Liability insuring the obligations assumed by the Contractor under the Contract Documents

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 2
General Provisions

- Automobile Liability, including owned, non-owned and hired automobiles
- Coverage for the XCU hazards of Explosion, Collapse and Underground

8.8.3.3 Commercial General Liability Self-Insured Retentions:

- All self-insured retentions (SIR) must be disclosed to District 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 District.
- Public Entity 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.

8.8.3.4 Commercial Umbrella Policy. The limits of insurance required in these Contract Documents 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 District (if agreed to in a written contract or agreement) before the District's own Insurance or self-insurance shall be called upon to protect it as a named insured.

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

8.8.5 The limits of the insurance required above will be at least:

Comprehensive General Liability

Bodily Injury Liability	\$2,000,000	each occurrence
	\$4,000,000	each aggregate
Property Damage Liability	\$2,000,000	each occurrence
	\$4,000,000	each aggregate

Comprehensive Automobile Liability

Bodily Injury Liability	\$2,000,000	each person
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Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 2
General Provisions

	\$2,000,000	each occurrence
Property Damage Liability	\$2,000,000	each occurrence

8.8.6 For each insurance policy required under the Agreement except for the required workers compensation insurance policy, the Contractor must provide endorsements that add the District, its officials, officers, employees, agents and volunteers as an additional insured (“Additional Insured”). Such endorsements must: provide that the insurance required to be furnished by the Contractor will be primary as regards the District, and that the District’s insurance will be excess of and not contribute to the insurance required to be furnished by the Contractor; that the District will receive 30 day written notice of any reduction or cancellation of such insurance required to be furnished by the Contractor; and include a severability of interest clause acceptable to the District. Said endorsement shall be at least as broad as Insurance Services Office form number CG2010 (Ed. 11/85).

8.8.7 It shall be a requirement under these Contract Documents 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.

8.8.8 Contractor shall maintain insurance as required by these Contract Documents to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following the completion of this project. In the event contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the District at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

8.9 Indemnities.

8.9.1 The Contractor will take all responsibility for the Work, and will bear all losses and damages directly or indirectly resulting to the Contractor, any subcontractors engaged in performance of the Work, the District, its officials, officers, employees, agents, volunteers and consultants, and to third parties on account of the performance or character of the Work, unforeseen difficulties, accidents, or occurrences of other causes predicated on active or passive negligence of the Contractor or of any subcontractor engaged in performance of the Work. To the fullest extent permitted by law the Contractor will indemnify, defend and hold

harmless the District, its officials, officers, employees, agents, volunteers and consultants from and against any or all loss, liability, expense, claims, costs (including costs of defense), suits, and damages of every kind, nature and description (including, but not limited to, penalties resulting from exposure to hazards in violation of the California Labor Code) directly or indirectly arising from the performance of the Work ("Claims").

- 8.9.2 The Contractor will indemnify, defend and hold harmless the District, the District's officials, officers, employees, volunteers, agents and the Construction Manager and Architect for all liability on account of any patent rights, copyrights, trade names or other intellectual property rights that may apply to the Contractor's performance of the Work. The Contractor will pay all royalties or other charges as a result of intellectual property rights that may apply to methods, types of construction, processes, materials, or equipment used in the performance of the Work, and will furnish written assurance satisfactory to the District that any such charges have been paid.
- 8.9.3 The Contractor assumes all liability for any accident or accidents resulting to any person or property as a result of inadequate protective devices for the prevention of accidents in connection with the performance of the Work. The Contractor will indemnify, defend, and hold harmless the District and its officials, officers, employees, agents, volunteers and consultants from such liability.
- 8.9.4 Approval of the Contractor's certificates of insurance and/or endorsements does not relieve the Contractor of liability under this Section 8.9. The Contractor will defend, with legal counsel reasonably acceptable to the District, any action or actions filed in connection with any Claims and will pay all related costs and expenses, including attorney's fees incurred. The Contractor will promptly pay any judgment rendered against the District, its officials, officers, employees, agents, volunteers or consultants for any Claims. In the event the District, its officials, officers, employees, agents, volunteers or consultants is made a party to any action or proceeding filed or prosecuted against Contractor for any Claims, Contractor agrees to pay the District, its officials, officers, employees, agents, volunteers and consultants any and all costs and expenses incurred in such action or proceeding, including but not limited to, reasonable attorneys' fees.
- 8.9.5 Subject to the requirements of Section 5 of the General Provisions, the Contractor will indemnify, hold harmless and defend, with legal counsel reasonably acceptable to the District, the District and its officials, officers, employees, agents and volunteers from and against any and all claims related to damage to surface or underground facilities caused by the Contractor or any of the Contractor's privities or agents.

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 2
General Provisions

- 8.9.6 The Contractor will indemnify, hold harmless and defend, with legal counsel reasonably acceptable to the District, the District and its officials, officers, employees, agents and volunteers from and against any and all claims, including any fines or other penalties, related to failure of the Contractor and/or privities or agents of the Contractor to comply with the requirements of the General Permit, or to implement the Stormwater Pollution Prevention Plan ("SWPPP") in accordance with provision 12 of the Special Provisions. The District may withhold from amounts due or that may become due to the Contractor under this Contract amounts that equal or are estimated to equal the amount of claims, including fines, resulting from failure of the Contractor and/or privities or agents of the Contractor to comply with the requirements of the General Permit, or to implement the SWPPP in accordance with provision 12 of the Special Provisions.
- 8.9.7 In accordance with California Civil Code Section 2782(a), nothing in the Contract will be construed to indemnify the District for its sole negligence, willful misconduct, or for defects in design furnished by the District. In accordance with California Civil Code Section 2782(b), nothing in the Contract will be construed to impose on the Contractor or to relieve the District from liability for the District's active negligence. By execution of the Contract Documents the Contractor acknowledges and agrees that the Contractor has read and understands the insurance and indemnity requirements of the Contract Documents, which are material elements of consideration.
- 8.9.8 The defense and indemnification obligations of these Contract Documents are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in these Contract Documents.
- 8.9.9 Contractor/Subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of these Contract Documents for the full period of time allowed by law.
- 8.10 Licenses/Permits. The Contractor must, without additional expense to the District, obtain all licenses, permits and other approvals required for the performance of the Work.
- 8.11 California Labor Code Requirements.
- 8.11.1 In accordance with California Labor Code Section 1771.1, this Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR). The Contractor and subcontractors engaged in performance of the Work must comply with Labor Code Section 1771.1.

- 8.11.2 In accordance with California Labor Code Section 1810, eight (8) hours of labor in performance of the Work shall constitute a legal day's work under the Agreement.
- 8.11.3 In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the Work is limited to eight hours during any one calendar day, and forty hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of eight hours during any one calendar day and forty hours during any one calendar week is permitted upon compensation for all hours worked in excess of eight hours during any one calendar day and forty hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.
- 8.11.4 The Contractor and its subcontractors will forfeit as a penalty to the District \$25 for each worker employed in the performance of the Work for each calendar day during which the worker is required or permitted to work more than eight (8) hours in any one calendar day, or more than forty (40) hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 et seq.
- 8.11.5 In accordance with California Labor Code Section 1773.2, the District has determined the general prevailing wages in the locality in which the Work is to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the Public Works Department and shall be made available on request. The Contractor and subcontractors engaged in the performance of the Work shall pay no less than these rates to all persons engaged in performance of the Work.
- 8.11.6 In accordance with California Labor Code Section 1775, the Contractor and any subcontractors engaged in performance of the Work must comply Labor Code Section 1775 which establishes a penalty of up to \$50 per day for each worker engaged in the performance of the Work that the Contractor or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner. The Contractor or subcontractor shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in performance of the Work is not paid the general prevailing per diem wages by the subcontractor, the Contractor is not liable for any penalties therefore unless the Contractor had knowledge of that failure or unless the Contractor fails to comply with all of the following requirements:

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 2
General Provisions

- 8.11.6.1 The contract executed between the Contractor and the subcontractor for the performance of part of the Work must include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
 - 8.11.6.2 The Contractor must monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.
 - 8.11.6.3 Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Contractor must diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the Work.
 - 8.11.6.4 Prior to making final payment to the subcontractor, the Contractor must obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages employees engaged in the performance of the Work and any amounts due pursuant to California Labor Code Section 1813.
- 8.11.7 In accordance with California Labor Code Section 1776, the Contractor and each subcontractor engaged in performance of the Work, 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 in performance of the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating that the information contained in the payroll record is true and correct and that the employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project. The payroll records required pursuant to California Labor Code Section 1776 must be certified and must be available for inspection by the District and its authorized representatives, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations and must otherwise be available for inspection in accordance with California Labor Code Section 1776.
- 8.11.8 In accordance with California Labor Code Section 1777.5, the Contractor, on behalf of the Contractor and any subcontractors engaged in performance of the Work, will be responsible for ensuring

compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.

8.11.9 In case it becomes necessary for the Contractor or any subcontractor engaged in performance of the Work to employ on the Work any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Contractor must pay the minimum rate of wages specified therein for the classification which most nearly corresponds to Work to be performed by that person. The minimum rate thus furnished will be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

8.12 Laws and Ordinances. The Contractor and all subcontractors engaged in the performance of the Work must conform to the following specific rules and regulations as well as all other laws, ordinances, rules and regulations that apply to the Work. Nothing in the Technical Specifications or Project Plans is to be construed to permit Work not conforming to these codes:

- National Electrical Safety Code, U. S. Department of Commerce
- National Board of Fire Underwriters' Regulations
- California Building Standards Code as adopted by the District
- Manual of Accident Prevention in Construction, latest edition, published by A.G.C. of America
- Industrial Accident Commission's Safety Orders, State of California
- Regulations of the State Fire Marshall (Title 19, California Code of Regulation) and Applicable Local Fire Safety Codes
- Labor Code of the State of California - Division 2, Part 7, Public Works and Public Agencies.
- Federal, state, and local air pollution control laws and regulations applicable to the Contractor and/or Work.

8.13 Guaranty. The Contractor guarantees all of the Work for one year from the date the District accepts the Work. Upon receiving written notice of a need for repairs which are directly attributable to defective materials or workmanship the Contractor must make good any defects arising or discovered in any part of the Work by diligently commencing the necessary repairs within seven (7) days from the date of notice from the District. If the Contractor fails to make good any defects in the Work in accordance with this provision, in addition to any other available remedy under the contract or at law or equity, the District may make good or have made good such defects in the Work and deduct the cost from amounts that may be due or become due the Contractor, and/or call on the Contractor's maintenance bond for the cost of making good such defects and for the District's reasonable legal costs, if any, of recovering

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 2
General Provisions

against the bond. The Contractor shall remain responsible for repairing any Work found to be defective regardless of when such defect is discovered by the District.

8.14 Safety.

8.14.1 In accordance with generally accepted construction practices and applicable law, the Contractor will be solely and completely responsible for conditions of the Work site, including safety of all persons and property during performance of the Work. This requirement will apply continuously and not be limited to normal working hours. For purposes of California Labor Code Section 6400 and related provisions of law, the Contractor and the Contractor's privities and any other entities engaged in the performance of the Work will be "employers" responsible for furnishing employment and a place of employment that is safe and healthful for the employees, if any, of such entities engaged in the performance of the Work. Neither the District nor its officials, officers, employees, agents, volunteers or consultants will be "employers" pursuant to California Labor Code Section 6400 and related provisions of law with respect to the Contractor, the Contractor's privities or other entities engaged in the performance of the Work. The Contractor agrees that neither the District, the Construction Manager, the Architect, nor the Engineer will be responsible for having hazards corrected and/or removed at the Work site. The Contractor agrees that the District will not be responsible for taking steps to protect the Contractor's employees from such hazards, or for instructing the Contractor's employees to recognize such hazards or to avoid the associated dangers. The Contractor agrees with respect to the Work and the Work site, the Contractor will be responsible for not creating hazards and for having hazards corrected and/or removed, for taking appropriate, feasible steps to protect the Contractor's employees from such hazards and that the Contractor has instructed and/or will instruct its employees to recognize such hazards and how to avoid the associated dangers.

8.14.2 Review and inspection by the District, the Construction Manager, the Architect or Engineer, and/or other representatives of the District of the Contractor's performance of the Work will not constitute review of the adequacy of the Contractor's safety measures in, on, or near the Work site. Such reviews and inspections do not relieve the Contractor of any of the Contractor's obligations under the Contract Documents and applicable law to ensure that the Work site is maintained and the Work is performed in a safe manner.

8.14.3 The Contractor will be solely responsible for the implementation and maintenance of safety programs to ensure that the Work site is

maintained and the Work is performed in a safe manner in accordance with the Contract Documents and applicable law.

8.14.4 Within ten (10) working days following notice of award the Contractor must submit to the District a copy of the Contractor's Safety Plan.

8.14.5 The Contractor must furnish and place proper guards and systems for the prevention of accidents, including, but not limited to, those systems required pursuant to Title 8, Section 1670 and following of the California Code of Regulations concerning safety belts and nets. The Contractor must provide and maintain any other necessary systems or devices required to secure safety of life or property at the Work site in accordance with accepted standards of the industry and applicable law. The Contractor must maintain during all night hours sufficient lights to prevent accident or damage to life or property.

8.15 Assignment of Unfair Business Practice Claims. In accordance with California Public Contract Code Section 7103.5, the Contractor and any subcontractors offer and agree to assign to the District all rights, title, and interest in and to all causes of action the Contractor or any subcontractors may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to this contract. This assignment shall be made and become effective at the time the District tenders final payment to the Contractor, without further acknowledgement by the parties.

8.16 Contractor shall be responsible for properly notifying residents and property owners impacted by this project in accordance with District standards. Specific notification procedures vary with the type of work and shall be coordinated with the District before work begins. The District will furnish a list of impacted property owners.

9. MEASUREMENT AND PAYMENT

9.1 F.O.B. All shipments must be F.O.B. destination to the Work site and/or other sites indicated in the Contract Documents. The Contract Price is all-inclusive (including sales tax). There shall be no additional compensation paid for containers, packing, unpacking, drayage or insurance.

9.2 Payment

9.2.1 On or about the first day of each calendar month the Contractor will submit to the Construction Manager a verified application for payment and schedule of values supported by a statement showing all materials actually installed during the preceding month and the cost of labor actually expended in the performance of the Work. **Billing must be received on a monthly basis, at a minimum.** Unless otherwise

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 2
General Provisions

provided in the Contract Documents, no allowances or payments will be made for material or equipment not placed at the Work site.

- 9.2.2 To be eligible for payment the Contractor's applications for payment must include certified payroll reports prepared in accordance with California Labor Code Section 1776 and the Agreement for each employee of the Contractor and any subcontractors engaged in the performance of the Work during the preceding months, applications for payment will not be processed without certified payroll reports.
- 9.2.3 In accordance with California Public Contract Code Section 20104.50, the District will review applications for payment as soon as practicable after receipt. Any application or part of an application that is determined to be improper will be returned to the Contractor as soon as practicable, but no later than seven (7) days after receipt by the District, along with a written description of the reasons why the application is improper. The Contractor's failure to submit a schedule in the time specified in Section 3.8, or its submission of a schedule to which the District has taken any uncorrected exception, shall serve as a basis for returning an application for payment in its entirety.
- 9.2.4 Unless the Contractor has elected to post securities in lieu of retention in accordance with California Public Contract Code Section 22300 and the Agreement, and the Contractor and the District have executed an escrow agreement in accordance with the Public Contract Code and the Agreement, the District will make progress payments to the Contractor in accordance with applicable law in the amount of ninety five (95) percent of the value of the labor actually performed and the material incorporated in the Work as specified in Contractor's verified application for payment upon approval by the District's authorized representative(s). Payment of progress payments will not be construed as acceptance of the Work performed. If the Contractor has elected to post securities in lieu of retention in accordance with Public Contract Code Section 22300 and the Agreement and the Contractor and the District have executed an escrow agreement in accordance with the Public Contract Code and the Agreement, the District will make payments to the Contractor or the Contractor's escrow agent in accordance with such escrow agreement.
- 9.2.5 The District will pay the Contractor's final invoice in accordance with applicable law and this Section 9 following acceptance of the Work provided that:
 - 9.2.5.1 The Contractor has furnished evidence satisfactory to the District that all claims for labor and material have been paid, or the time for filing valid stop notices has passed and no stop notices have been filed, or all stop notices filed have

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 2
General Provisions

been released by valid release or release bond acceptable to the District.

9.2.5.2 No claim has been presented to the District by any person based upon any acts or omissions of the Contractor or any subcontractor engaged in the performance of the Work.

9.2.5.3 No other claim or dispute exists under the Agreement or applicable law concerning payment of the Contractor's final invoice and/or release of the Agreement retention.

9.2.5.4 The Contractor has filed with the District the Maintenance Bond provided in the Contract Documents with duly notarized signatures of an authorized representative of the Contractor and an attorney-in-fact of an admitted surety insurer acceptable to the District and such Maintenance Bond binds the Contractor as Principal and the Surety in accordance with its terms in the amount of 10% of the final Contract Price.

9.2.6 In accordance with California Public Contract Code Section 20104.50, if the District fails to make a progress payment within thirty (30) days of receipt of an undisputed, properly submitted application for payment, the District will pay the Contractor interest equivalent to the legal rate set forth in subdivision (a) of California Code of Civil Procedure Section 685.010. The number of days available to the District to make a payment without incurring an interest obligation pursuant to this provision and California Public Contract Code Section 20104.50 will be reduced by the number of days, if any, by which the District has delayed return of an application for payment beyond the seven day return requirement set forth in Section 9.2.5.

9.3 Non-Allowable Direct Charges. The following costs are not allowable direct charges under the Agreement. The following costs may only be paid under the Agreement, if at all, as part of any allowance for contractor overhead and/or profit established under the Agreement.

9.3.1 Labor costs in excess of applicable prevailing wages pursuant to the Agreement and applicable law, liability and workers compensation insurance, social security, retirement and unemployment insurance and other employee compensation and benefits pursuant to bona fide compensation plans in effect at the time specified for the opening of Project bids for contractor and subcontractor employees engaged in the performance of the Work or in excess of the labor costs specified in Section 4.5 of this Contract in the case of cost impacts involving items for which the Contract Documents do not specify prices and for which no lump sum amount has been approved by the District. However, in no event will allowable direct labor charges under the agreement

Fort Bragg Municipal Improvement District No. 1

Project No. 2016-04

Contract, Part 2

General Provisions

include employee bonuses, employee vehicles or vehicle allowances, employee telephones or telephone allowances, or employee housing or housing allowances, whether or not such benefits are part of a bona fide compensation plan in effect at the time specified for the opening of Project bids.

- 9.3.2 Superintendent labor and clerical labor.
- 9.3.3 Bond premiums
- 9.3.4 Insurance in excess of that required under Section 8.8
- 9.3.5 Utility costs
- 9.3.6 Work Site office expenses
- 9.3.7 Home office expenses.
- 9.3.8 Permit or license costs
- 9.4 Retention. The District or its agent may, in accordance with the Contract Documents and applicable law, withhold any payment of monies due or that may become due the Contractor because of:
 - 9.4.1 Defective work not remedied or uncompleted work.
 - 9.4.2 Claims filed or reasonable evidence indicating probable filing of claims.
 - 9.4.3 Failure to properly pay subcontractors or to pay for material or labor.
 - 9.4.4 Reasonable doubt that the Work can be completed for the balance then unpaid.
 - 9.4.5 Damage to another contractor.
 - 9.4.6 Damage to the District.
 - 9.4.7 Damage to a third party.
 - 9.4.8 Delay in the progress of the Work, which, in the District's judgment, is due to the failure of the Contractor to properly expedite the Work.
 - 9.4.9 Liquidated damages or other charges that apply to the Contractor under the Agreement.
 - 9.4.10 Any other lawful basis for withholding payment under the contract.
- 9.5 Securities in Lieu of Retention.
 - 9.5.1 In accordance with Public Contract Code Section 22300, except where federal regulations or polices do not permit substitution of securities, the Contractor may substitute securities for any moneys withheld by the District to ensure performance of the Work. At the Contractor's request and expense, securities equivalent to the amount withheld will be deposited with the District, or with a state or federally chartered bank in

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 2
General Provisions

California as the escrow agent, who will then pay those moneys to the Contractor under the terms of an Escrow for Security Deposit agreement. The Escrow for Security Deposit agreement is provided in the Contract Documents. Upon satisfactory completion of the Work, the securities will be returned to the Contractor.

9.5.2 Alternatively, at the Contractor's request and expense, the District will pay retentions earned directly to the escrow agent. At the Contractor's expense, the Contractor may direct investment of the payments into securities. Upon satisfactory completion of the Work, the Contractor will receive from the escrow agent all securities, interest, and payments received by the escrow agent from the District pursuant to this provision and the terms of the Escrow for Security Deposit agreement. The Contractor will, within 20 days of receipt of payment, pay to each subcontractor the respective amount of interest earned, less costs of retention withheld from each Subcontractor, on monies withheld to ensure the Contractor's performance of the Work.

9.5.3 Securities eligible for investment in accordance with this provision include those listed in Government Code Section 16430, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the District.

9.5.4 The Contractor will be the beneficial owner of any securities substituted for moneys withheld and will receive any interest thereon.

10. PROJECT ACCEPTANCE AND CLOSEOUT

10.1 Occupancy. The District reserves the right to occupy or use any part or parts or the entire of the Work before the Work is fully performed. Subject to applicable law, exercising this right will in no way constitute acceptance of any part of the Work so occupied or used or acceptance of the entire Work, nor will such occupancy or use in any way affect the times when payments will become due the Contractor, nor will such occupancy or use in any way prejudice the District's rights under the Agreement, any Agreement bonds, or at law or equity. Occupancy or use shall not waive the District's rights to assess liquidated damages in accordance with Section 7 after the date of such occupancy or use.

10.2 Work Completion and Final Inspection. When the Contractor considers the Work is completed, the Contractor will submit written certification to the Construction Manager specifying that: the Contract Documents have been reviewed; the Work has been inspected for compliance with the Contract Documents; the Work has been completed in accordance with the Contract Documents; and that equipment and systems have been tested in the presence of the District's representative and are operational. The District and/or the District's authorized representatives will make an inspection to

Fort Bragg Municipal Improvement District No. 1

Project No. 2016-04

Contract, Part 2

General Provisions

verify that the Work is complete and will notify the Contractor in writing of any incomplete or deficient Work. The Contractor will take immediate steps to remedy the stated deficiencies and give notice of correction to the Construction Manager. Upon receiving a notice of correction, the District or the District's authorized representatives will re-inspect the Work. The Contractor must correct all punch list items within 15 working days after the issuance of the punch list. Before acceptance of the Work the Contractor must submit: one set of reproducible mylars of the Project Record Drawings (As-Builts), and any equipment operating and maintenance instructions and data, warranties.

10.3 Work Acceptance.

10.3.1 All finished Work will be subject to inspection and acceptance or rejection by the District, the Construction Manager, and the Architect or Engineer and other government agencies having jurisdiction over the Work. Final acceptance of the Work will be at the discretion of the District.

10.3.2 The District will accept the Work in writing only when the Work has been completed to the District's reasonable satisfaction. Progress payments will in no way be construed as acceptance of any part of the Work.

10.3.3 In evaluating the Work, no allowance will be made for deviations from the Technical Specifications, Project Plans or other Contract Documents unless already approved in writing in accordance with the requirements of Section 4, above.

10.3.4 The fact that the Work and materials have been inspected from time to time and that progress payments have been made does not relieve the Contractor of the responsibility of replacing and making good any defective or omitted work or materials in accordance with the requirements of the Contract Documents.

11. REMEDIES AND DISPUTES

11.1 Failure to Correct Work. Within ten (10) working days of receiving written notice from the District describing Work that is defective or that is otherwise not in accordance with the requirements of the Agreement and/or applicable law and directing that such Work be corrected, the Contractor and/or the Contractor's sureties must give the District written notice of the intent of the Contractor and/or the Contractor's sureties to correct such Work and commence correction of such Work in accordance with the District's notice and the Agreement. If the Contractor and/or the Contractor's sureties do not give the District written notice of intent to correct such Work and commence correction of such Work within ten (10) working days of receipt of the District's notice, then the District may correct such work and/or have such work

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 2
General Provisions

corrected for the account and at the expense of the Contractor and/or its sureties, and the Contractor and/or its sureties will be liable to the District for any resulting excess cost. The District may, in addition to all other remedies that the District may have under the Agreement and at law or equity, deduct any such excess cost of completing the Work from amounts that are due or that may become due the Contractor.

11.2 Termination.

11.2.1 In accordance with California Public Contract Code Section 7105, in addition to all other available remedies that the District may have under the Agreement, and at law or equity, the District may terminate the Contractor's control of the Work:

- 11.2.1.1 If the Contractor or any of its subcontractors engaged in the performance of the Work fails to timely perform the Work and/or any of the Contractor's material obligations under the Contract Documents, including but not limited to submission of an acceptable schedule, that have accrued except for due to reasons beyond the control of the Contractor pursuant to the Contract Documents.
- 11.2.1.2 If the Contractor is adjudged bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of its creditors.
- 11.2.1.3 If the Contractor or any of the subcontractors engaged in the performance of the Work persistently or repeatedly refuses or fails to supply enough properly skilled workmen or proper materials for the timely completion of the Work.
- 11.2.1.4 If the Contractor fails to make prompt payment to subcontractors engaged in the performance of the Work or for material or labor used in the performance of the Work in accordance with the Contract Documents and applicable law.
- 11.2.1.5 If the Contractor or any subcontractors engaged in the performance of the Work persistently disregards laws or ordinances applicable to the performance of the Work, or the instructions of the District, the Construction Manager, the Architect, or other authorized representatives of the District.
- 11.2.1.6 For any reason or for no reason, at the District's sole discretion.

11.2.2 If the District intends to terminate the Contractor's control of the Work for any of the reasons specified in Sections 11.2.1.1 through 11.2.1.5, above, the District will immediately serve written notice to the

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 2
General Provisions

Contractor and its sureties in accordance with the Contract Documents. Notice of the District's intent to terminate the Contractor's control of the Work will be given by registered or certified mail and specify the grounds for termination, the required cure and the time by which the cure must be effected. Upon receipt of notice of the District's intent to terminate the Contractor's control of the Work for any of the reasons specified in provisions 11.2.1.1 through 11.2.1.5, above, the Contractor will have ten (10) days from receipt of the notice or a longer time specified in the notice to cure its default. If the Contractor does not effect the required cure by the time specified in the notice, the District will issue a written notice of termination to the Contractor and its sureties by registered or certified mail. The notice of termination will specify: that upon receipt of the notice the Contractor's right to perform or complete the Work, including on behalf of the Contractor's sureties, is terminated; that the Contractor's sureties will have the right to take over and complete the Work and perform all of the Contractor's remaining obligations that have accrued under the Agreement; and that if the Contractor's sureties do not both give the District written notice of their intention to take over and perform the Agreement and commence completion of the Work and performance of all of the Contractor's remaining obligations that have accrued under the Agreement within ten (10) days after receipt of notice of termination that the District may declare the Contractor's sureties in default and take over the completion of the Work or have the Work completed for the account and at the expense of the Contractor and its sureties, and the Contractor and its sureties will be liable to the District for any resulting excess cost. The District may, in addition to all other available remedies that the District may have under the Contract Documents and at law or equity, deduct any such excess cost of completing the Work from amounts that are due or that may become due the Contractor.

11.2.3 Upon termination of the Contractor's control of the Work for any of the reasons specified in Sections 11.1.2.1 - 11.2.1.5, the Contractor will, if so directed by the District, immediately remove from the Work site any and all materials and personal property belonging to the Contractor which have not been incorporated in the Work and the Contractor and its sureties will be liable upon their bond for all damages caused the District by reason of the Contractor's failure to complete the Work.

11.2.4 Upon termination of the Contractor's control of the Work for any of the reasons specified in provisions 11.2.1.1 through 11.2.1.5, above, the District reserves the right to refuse tender of the Contractor by any surety to complete the Work.

11.2.5 If the District completes or has completed any portion of, or the whole of the Work, following termination of the Contractor's control of the Work

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 2
General Provisions

for any of the reasons specified in Sections 11.2.1.1 through 11.2.1.5, above, the District will neither be liable for nor account to the Contractor or the Contractor's sureties in any way for the time within which, or the manner in which such Work is performed, or for any changes made in such Work or for the money expended in satisfying claims and/or suits and/or other obligations in connection with completing the Work. If, following termination of the Contractor's control of the Work for any of the reasons specified in Sections 11.2.1.1 through 11.2.1.5, above, the unpaid balance of the Contract Price exceeds the expense of completing the Work, including compensation for additional legal, managerial and administrative services and all other amounts due for the completion of the Work and/or satisfaction of claims of the District and/or others arising out of the Agreement and any other charges that apply to the Contractor under the Agreement, the difference will be paid to the Contractor. If such expenses of completing the Work exceed the unpaid balance of the Contract Price, the Contractor or its sureties will pay the difference to the District.

11.2.6 If the Agreement or Contractor's control of the Work is terminated for any reason, no allowances or compensation will be granted for the loss of any anticipated profit by the Contractor.

11.2.7 In accordance with California Government Code Section 4410, in the event a national emergency occurs, and public work being performed by contract is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment or labor, as the result of an order or a proclamation of the President of the United States, or of an order of any federal authority, and the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work, then the District and the Contractor may, by written agreement, terminate the Agreement. In accordance with California Government Code Section 4411, such an agreement will include the terms and conditions of the termination of the contract and provision for the payment of compensation or money, if any, which either party will pay to the other or any other person, under the facts and circumstances in the case. Compensation to the Contractor will be determined on the basis of the reasonable value of the work done, including preparatory work. As an exception to the foregoing, in the case of any fully completed separate item or portion of the Work for which there is a separate contract price, the contract price shall control. The parties may in any other case adopt the contract price as the reasonable value of the work or any portion of the work done.

11.3 Disputes.

11.3.1 In accordance with California Public Contract Code Section 20104.2, the following procedures apply to claims of \$375,000 or less between the Contractor and the District:

11.3.1.1 The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

11.3.1.2 For claims of less than fifty thousand dollars (\$50,000), the District shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the District may have against the Contractor.

11.3.1.2.1 If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the District and the Contractor.

11.3.1.2.2 The District's written response to the claim, as further documented, shall be submitted to the Contractor within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the Contractor in producing the additional information, whichever is greater.

11.3.1.3 For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the District shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the District may have against the Contractor.

11.3.1.3.1 If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the District and the Contractor.

11.3.1.3.2 The District's written response to the claim, as further documented, shall be submitted to the Contractor within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

11.3.1.4 If the Contractor disputes the District's written response, or the District fails to respond within the time prescribed, the Contractor may so notify the District, in writing, either within 15 days of receipt of the District's response or within 15 days of the District's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the District shall schedule a meet and confer conference within 30 days for settlement of the dispute.

11.3.1.5 Following the meet and confer conference, if the claim or any portion remains in dispute, the Contractor may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

11.3.1.6 This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

11.3.2 In accordance with California Public Contract Code Section 20104.4, the following procedures apply to civil actions to resolve claims of \$375,000 or less between the District and the Contractor:

11.3.2.1 Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 2
General Provisions

within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

11.3.2.2 If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

11.3.2.2.1 Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

11.3.2.2.2 In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

11.3.2.3 The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

11.3.3 In accordance with California Public Contract Code Section 20104.6:

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 2
General Provisions

- 11.3.3.1 The District shall not fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.
- 11.3.3.2 In any suit filed under Public Contract Code Section 20104.4 concerning this contract, the District shall pay interest at the legal rate on any arbitration award or judgment. Such interest shall accrue from date the suit was filed.

FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT NO. 1
416 Franklin Street
Fort Bragg, California 95437

CONTRACT, PART 3

SPECIAL PROVISIONS

SECTION 12 GENERAL

12.1.01 Description of Work.

The Work in general consists of slip line various sewer mains and cut out lateral services, and other such items of work as are required to complete the project in accordance with this Contract, the Project Plans and Technical Specifications.

The estimate of the quantities of work to be done is approximate only, being as a basis for the comparison of bids, and the District does not expressly or by implication agree that the actual amount of work will correspond therewith, but reserves the right to increase or decrease the amount or any portion of the work as directed by the Construction Manager.

Incidental items of construction necessary to complete the whole Work in a satisfactory and acceptable manner as shown on the Project Plans and as provided for in the Technical Specifications and not specifically referred to in this section, will be understood to be furnished by the Contractor.

12.1.02 Construction Limitations.

The Contractor will be expected to conduct his or her operations in a manner that creates a minimum of damage to the natural vegetation and landscape. Ingress and egress must be via the existing driveways. Care must be exercised to avoid hazards that may cause injury to persons, animals or property either during working hours or after work hours, which will include dust control, backfilling trenches immediately following pipe laying and temporary fencing as required. Excavation made under this Contract must be backfilled before leaving the Work for the night.

The Contractor will be responsible for obtaining permission from the property owners for any construction outside of the Work site or easements as shown on the plans. Equipment will be restricted to the immediate area of construction, pipe trenches will be backfilled as soon as possible.

Receptacles for construction residue, including oil, cleaning fluids, and litter, must be covered. Such residues must be disposed of in a proper manner.

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 3
Special Provisions

Construction activity within the existing right-of-way must be scheduled to minimize traffic inconvenience and safety hazards to motorists, pedestrians and cyclists.

12.1.03 Order of Work.

Order of Work must be in accordance with Section 5-1.05, "Order of Work", of the CalTrans Standard Specifications, which section is made a part of this Contract, and these Special Provisions.

12.1.04 Storm Water Pollution Prevention.

The Contractor must perform the Work in compliance with all applicable requirements of the California State Water Resources Control Board pursuant to Order No. 2013-0001-DWQ- National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000004 ("Municipal General Permit") adopted pursuant to regulations adopted by the U.S. Environmental Protection Agency (USEPA) on February 5, 2013 and codified in 40 Code of Federal Regulations Parts 122, 123, 124. The National Pollutant Discharge Elimination System (NPDES) ("Construction General Permit) applies to storm water discharges from construction sites that disturb land equal to or greater than one acre, and to construction activity that results in soil disturbances of less than one acre if the construction activity is part of a larger common plan of development that encompasses one or more acre of soil disturbance or if there is significant water quality impairment resulting from the activity. The General Permit requirements that may apply to the Contractor's performance of the Work include, but are not limited to:

Development and implementation of a Storm Water Pollution Prevention Plan ("SWPPP") or Water Pollution Control Plan that specifies Best Management Practices ("BMPs") that includes Erosion and Sediment Control BMPs that prevent all construction pollutants from contacting storm water and with the intent of keeping all products of erosion and other construction related pollutants from moving off site into receiving waters which is required for all projects that disturb soil in any quantity. In the event a Construction General Permit is not required (disturbed soil area <43560 square feet) then an Erosion and Sediment Control Plan or Water Pollution Control Plan would be required which follows guidelines in Section 13 of the Caltrans Standard Specifications.

A copy of the Project Plans must be used as a base plan, with the pertinent stage of construction shown as an overlay to accurately reflect Project Site conditions at various phases of construction. Conditions of Section 13 of the Caltrans Standard Specifications that may apply to the Contractor's performance of the Work include, but are not limited to:

- a. Development and implementation of a Water Pollution Control Program ("WPCP") that includes erosion and sediment control and specifies Best Management Practices ("BMPs") that will prevent all construction pollutants from

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 3
Special Provisions

- contacting storm water and with the intent of keeping all products of erosion from moving off site into receiving waters.
- b. Elimination or reduction of non-storm water discharges to storm sewer systems and other waters of the nation.
 - c. Implementation and inspection of all BMPs.

Portions of the Work that may be subject to the General Permit include, but are not limited to clearing, grading, stockpiling and excavation, and Good Housekeeping.

Prior to commencing performance of the Work, the Contractor must prepare an SWPPP/Water Pollution Control Plan in accordance with all applicable requirements of the General Permit and Caltrans and submit the document to the Construction Manager for approval.

The SWPPP or Water Pollution Control Plan must include a Project site map with BMPs, Staging Location, and Spill Kit locations be presented at a minimum. Relevant calculations including a rationale for all BMPs must be included Geometric equations, notes, details, and all data not related to water pollution control work shall be removed to provide clarity. A copy of the Project Plans must be used as a base plan, with the pertinent stage of construction shown as an overlay to accurately reflect Project Site conditions at various phases of construction.

The Contractor must revise and update the SWPPP whenever there is a change in construction operations that may affect the site drainage patterns or discharge of pollutants to surface waters, groundwater, or a separate municipal storm sewer system.

Any fines, damages, Work delays or other impacts that result from failure of the Contractor or agents of the Contractor to fully comply with the requirements of the General Permit or to fully implement the SWPPP/Water Pollution Control Plan will be solely the responsibility of the Contractor.

The Contractor must keep a copy of the SWPPP/Water Pollution Control Plan, together with updates and revisions, at the Project Site and provide copies of that document at the request of the City or State Representative.

12.1.05 Maintaining Traffic and Pedestrian Operations.

The Contractor must conduct his or her operations so as to cause the least possible obstruction and inconvenience to public traffic. Unless otherwise approved by the Construction Manager, all traffic must be permitted to pass through the Work.

Due to the need to accommodate and minimize inconvenience to the public, unless expressly specified or approved in writing by the Construction Manager, no road closures will be permitted. Public vehicular and pedestrian traffic must be allowed to travel through the Work area with an absolute minimum of interruption or impedance

unless otherwise provided for in the Special Provisions or approved in writing by the Construction Manager. The Contractor must make provisions for the safe passage of pedestrians around the area of Work at all times.

Residents affected by construction must be provided passage and access through the Work area to the maximum extent possible. Where existing driveways occur on the street, the Contractor must make provisions for the trench crossings at these points, either by means of backfill or by temporary bridges acceptable to the Construction Manager, so that the length of shut-down of any driveway is kept to a minimum. In addition, all driveways must be accessible at the end of each workday, and no driveway or property access may be closed for more than four (4) hours during the workday. Access to driveways, houses, and buildings along the road or street must be as convenient as possible and well maintained, and all temporary crossings must be maintained in good condition. To minimize the need for and complexity of detours, not more than one crossing or street intersection or road may be closed at any one time without the written approval of the Construction Manager.

The Contractor must provide multiple, advance written notices of closures to all affected property owners in a form approved by the Construction Manager.

Except as otherwise approved by the Construction Manager, the stockpiling or storing of material in District streets or rights of way shall be prohibited. Where this is unavoidable, all such materials must be piled or stored in a manner that will not obstruct sidewalks, driveways, or pedestrian crossings. Gutters and drainage channels must be kept clear and unobstructed at all times. All such materials shall be stored and handled in a manner that protects District streets, sidewalks, or other facilities from damage.

Where approved in advance by the Construction Manager, the Contractor must construct and maintain detours for the use of public traffic at his or her own expense. Failure or refusal of the Contractor to construct and maintain detours so approved at the proper time will be a material breach of the Contract subject to any and all remedies available pursuant to the Contract Documents and at law and equity. Such remedies include, but are not limited to, termination pursuant to Section 11.

Throughout performance of the Work, the Contractor must construct and adequately maintain suitable and safe crossings over trenches and such detours as are necessary to care for the public and private traffic at all times including Saturdays, Sundays and holidays.

The Contractor will be responsible for keeping all emergency services, including the Fort Bragg police and fire departments informed of obstructions to, or detours around any public or private roads caused by reasons of his or her operations.

The Contractor must comply with the State of California, Department of Transportation Manual of warning signs, lights, and devices for use and performance of work within the job site.

The fact that rain or other causes, either within or beyond the control of the Contractor, may force suspension or delay of the Work, shall in no way relieve the Contractor of his or her responsibility of maintaining traffic through the Project and providing local access as specified in this section. The Contractor must, at all times, keep on the job such materials, force and equipment as may be necessary to keep roads, streets and driveways within the Project open to traffic and in good repair and shall expedite the passage of such traffic, using such force and equipment as may be necessary.

Full compensation for conforming to the requirements of this section will be deemed included in the prices paid or the various Contract items of Work, and no additional allowances will be made therefore.

12.1.06 Public Safety.

The Contractor must at all times conduct the Work in accordance with Construction Safety Orders of the Division of Industrial Safety, State of California, to ensure the least possible obstruction to traffic and inconvenience to the general public, and adequate protection of persons and property in the vicinity of the Work.

No pedestrian or vehicle access way may be closed to the public without first obtaining permission of the Construction Manager.

Should the Contractor fail to provide public safety as specified or if, in the opinion of the Construction Manager, the warning devices furnished by the Contractor are not adequate, the District may place any warning lights or barricades or take any necessary action to protect or warn the public of any dangerous condition connected with the Contractor's operations, and the Contractor will be liable to the District for, and the District may deduct from amounts due or that may become due to the Contractor under the Contract, all costs incurred including, but not limited to, administrative costs.

Nothing in this section will be construed to impose tort liability on the District or Construction Manager.

12.1.07 Protection of Existing Facilities and Property.

The Contractor must notify Underground Service Alert (USA) for marking the locations of existing underground facilities.

Subject to Section 5 of the General Provisions, the Contractor must take all necessary measures to avoid injury to existing surface and underground utility facilities in and near

the Work site. Subject to Section 5 of the General Provisions, no error or omission of utility markouts will be construed to relieve the Contractor from his responsibility to protect all underground pipes, conduits, cables or other structures affected by the Work.

The existing underground facilities in the area of Work may include telephone, television and electrical cables, gas mains, water mains, sewer pipe and drainage pipe. The various utility companies must be notified before trenching begins and at such other times as required to protect their facilities. Subject to Section 5 of the General Provisions, all underground facilities must be located and exposed ahead of trenching to prevent damage to the facilities, and to determine the depth and character of all facilities that cross or infringe on the trench prism. The Contractor must immediately notify the Construction Manager of any facilities found. If damage should occur to the existing facilities, the utility company and the District must be notified immediately and, subject to Section 5 of the General Provisions, repairs acceptable to the utility company must be made at the Contractor's expense.

The Project Plans show the underground utilities on the site of the construction insofar as they are known to the District. The drawings may not show facilities apparent from visual inspection of the site or service laterals or appurtenances, the existence of which can be inferred from the presence of other visible facilities such as buildings, meters, junction boxes, etc. on or adjacent to the construction site.

If in the performance of the Work an existing utility is encountered that is not shown on the Project Plans and is not apparent or inferable from visual inspection of the Project site, the Project Inspector must be notified immediately. The Construction Manager will determine, subject to Section 5 of the General Provisions, whether the Project Plans or Technical Specifications should be modified, or whether the existing utility should be relocated or whether the Contractor must work around the existing utility. Subject to Section 5 of the General Provisions, the Contractor must replace, at his or her own expense, in as good condition as they were prior to the start of construction, all existing improvements and surroundings damaged by his or her operation. Reconstruction of all existing improvements must conform to Fort Bragg Municipal Improvement District No. 1 Public Works Standard Specifications and Details under the direction of and subject to the acceptance by the Construction Manager.

Subject to Section 5 of the General Provisions, should the Contractor fail to take adequate measures to avoid injury or damage to the facilities described above, the District may take any actions necessary to protect such facilities from the Contractor's operations. Subject to Section 5 of the General Provisions, the District may withhold the cost of injury to existing surface and underground utility facilities in and near the Work site from amounts due or that may become due the Contractor.

12.1.08 Preconstruction Conference.

A pre-construction conference will be scheduled, at which time the Contractor must present his or her proposed work schedule in accordance with Section 3.8 of the General Provisions, information concerning offsite yards, Subcontractors, location of disposal and stock pile areas, and traffic control plans. All such schedules will be subject to the approval of the Construction Manager and the applicable agencies.

12.1.09 Owner Notification.

The Contractor must notify all property owners and businesses affected by the Work at least 48 hours before Work is to begin. The notice must be in writing in the form of a door hangar, and must indicate the Contractor's name and phone number, type of work, day(s) and time when Work will occur. Notices must be reviewed in advance and approved by the Construction Manager.

12.1.10 Emergency Service Providers Notifications.

The Contractor must furnish the name and phone number of a representative that can be contacted in the event of an emergency. Said information must be reported to the District Police Department dispatcher, and updated as required to provide 24-hour phone access.

12.1.11 Clean up.

Attention is directed to Section 4-1.02 of the CalTrans Standard Specifications, which section is made a part of this Contract.

Before final inspection of the Work, the Contractor must clean the construction site and all ground occupied by him in connection with the Work, of all rubbish, excess material, falsework, temporary structures and equipment. All parts of the Work shall be left in a neat and presentable condition.

Nothing herein shall require the Contractor to remove warning, regulatory, and guide signs prior to formal acceptance by the Construction Manager.

12.1.12 Payment.

Payment for all work and work requirements specified in these Special Provisions shall be considered as included in the Contract Price and no additional allowances shall be made therefore.

12.1.13 Construction Staking.

Attention is directed to Section 3.9 of the General Provisions for information on Construction Staking.

12.1.14 Materials Testing Allowance.

Attention is directed to Section 3.10 of the General Provisions for information on Materials Testing Allowance.

12.1.15 Obstructions.

Attention is directed to Section 15, "Existing Highway Facilities," of the CalTrans Standard Specifications, which section is made a part of this Contract; except that references to the following sections of the Standard Specifications are hereby deleted; such sections are not a part of this Contract: 9-1.03, "Force Account Payment," 15-3.03, "Measurement," 15-3.04, "Payment," and 16-1.07, "Adjustment of Lump Sum Item."

Attention is directed to the existence of overhead and underground power, telephone, and television cable poles, underground sewer mains and laterals, underground gas mains, and underground water mains and laterals within the area in which construction is to be performed.

Prior to starting the Work, the Contractor must (a minimum of 2 working days in advance) call Underground Service Alert (USA), toll free, at (800) 642-2444 and provide USA with all necessary data relative to the proposed work. USA will accept calls and process information to participating agencies who have underground facilities in the area between the hours of 7:30 a.m. and 5:00 p.m. daily, except Saturdays, Sundays, and holidays. Between the hours of 5:00 p.m. and 7:30 a.m. calls will be recorded and then processed after 7:30 a.m. For emergency situations, after hours and on Saturdays, Sundays and holidays, the Contractor shall contact the organization owning the affected facility. Upon notification, agencies having facilities in the area of the proposed excavation will mark their locations in the field using USA standard colors and codes to identify the facility.

The Contractor will be required to work around public and private utility facilities and other improvements that are to remain in place within the construction area, and he will be held liable to the owners of such facilities for interference with service resulting from his operations.

12.1.16 Hours of Work.

Unless otherwise specified herein, all construction activity, except for emergency situations, will be confined to Monday through Friday between the hours of 7:30 a.m.

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 3
Special Provisions

and 6:00 p.m., to minimize nuisances to local residents. Mufflers and/or baffles will be required on all construction equipment to control and minimize noise. The Contractor must comply with all applicable noise regulations in the District's Zoning Ordinance.

Saturdays, Sundays, holidays and overtime shall not be regarded as working days. Work shall not be allowed on non-working days without the expressed approval of the Construction Manager. The Contractor shall make a request for approval in writing with the stipulation (implied or expressed) that the Contractor shall pay for all overtime labor charges at the rate of \$65 per hour per inspector and/or resident engineer. All overtime labor charges shall be deducted from the final payment along with any liquidated damages.

Work necessary for the proper care and protection of work already performed or in case of emergency may be allowed without permission of the Construction Manager.

12.1.17 Dust Control.

The Contractor must furnish all labor, equipment, and means required and carry out effective measures wherever and as often as necessary to prevent its operation from producing dust in amounts damaging to property, cultivated vegetation, or domestic animals, or causing a nuisance. The Contractor will be responsible for any damage resulting from any dust originating from the performance of the Work. The use of water resulting in mud on streets, sidewalks, or driveways, will not be permitted as a substitute for sweeping or other methods of dust control. The Contractor may not discharge smoke, dust, or any other air contaminants into the atmosphere in such quantity as will violate the regulations of any legally constituted authority.

Dust control must conform to the provisions in Section 10, "Dust Control," of the CalTrans Standard Specifications, which section is made a part of this Contract, except that references to Section 7 of the Standard Specifications are hereby deleted. Except as otherwise expressly provided in this Contract, Section 7 of the Standard Specifications is not a part of this Contract.

In lieu of the provisions of the second paragraph in Section 10-1.04, "Payment," of the CalTrans Standard Specifications, no separate payment will be made to the Contractor for controlling dust, whether caused by construction traffic or by public traffic only. Full compensation for dust control will be considered as included in the Contract Price, and no additional compensation will be allowed therefore.

12.1.18 Water For Construction and Dust Control.

Unless otherwise provided, the Contractor will be responsible for applying to the District's Utility Department to establish utility accounts for all water necessary to perform the Work. The Contractor must comply with all District requirements for

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 3
Special Provisions

construction water, including provision of deposits and provision of backflow prevention devices. In accordance with State law, backflow prevention devices for construction water connections must be re-tested when relocated. The Contractor will be responsible for the cost of any re-testing.

The Contractor is prohibited from operating gate valves, fire hydrants, pumps or any other components of the District water system. The Contractor must contact the District's utilities staff, a minimum of twenty-four (24) hours in advance, to operate these or any other components on the District water system.

12.1.19 Protection and Restoration of Vegetation.

Trees, lawns, shrubbery and vegetation that are not to be removed must be protected from damage or injury. Existing trees, shrubs, and other plants, that are not to be removed and are injured or damaged by reason of the Contractor's operations, must be replaced by the Contractor in accordance with the requirements in Section 20-4.07, "Replacement," of the CalTrans Standard Specifications. Section 20-4.07 of the CalTrans Standard Specifications is made a part of this Contract.

When it is necessary to excavate adjacent to existing trees, shrubs, or hedges, the Contractor must use all possible care to avoid injury to the trees, shrubs, or hedges and their roots. No roots or limbs two inches (2") or larger in diameter may be cut without the express approval of the Construction Manager.

All roots two inches (2") in diameter and larger left in place must be wrapped with burlap to prevent scarring or excessive drying. When it is necessary to cut limbs and branches of trees to provide clearance for equipment used in construction, the Contractor must repair the damaged areas by properly painting with an emulsified asphalt type seal. All cuts through 1/2" or larger roots and limbs must be hand trimmed and cleanly cut before being repaired.

12.1.20 Surplus Material.

All material removed or excavated during the course of construction will be surplus. All surplus material will be the property of the Contractor and be disposed of outside the right-of-way, unless the District elects to salvage certain objects that are determined to be of historical interest. The District reserves the right of ownership of all objects that it elects to salvage, and the Contractor must protect such objects from subsequent damage until delivered unto the care of the owner.

12.1.21 Cultural Resources.

In accordance with the National Historic Preservation Act of 1966 (16 U.S.C. 470), the following procedures are implemented to insure historic preservation and fair

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 3
Special Provisions

compensation to the Contractor for delays attendant to the cultural resources investigation. The Contractor hereby agrees to comply with these procedures.

12.1.22 Historical Finds.

In the event potential historical, architectural, archeological, or cultural resources (hereinafter called cultural resources) are discovered during subsurface excavations at the site of construction, the following procedures will apply:

1. The Contractor must immediately notify the Construction Manager and stop any Work that may jeopardize the find pending an investigation of its significance;
2. The Construction Manager will select a qualified archeologist (such as through the Northwest Information Center at Sonoma State University or other official contact) and wait for an archaeologist to complete an evaluation of significance before continuing Work in that area.
3. The Construction Manager will supply the Contractor with a "Stop Work Order" directing the Contractor to cease all portions of the Work that the Construction Manager determines may impact the find. The "Stop Work Order" will be effective until a qualified archaeologist assesses the value of the potential cultural resources. The "Stop Work Order" will contain the following:
 - a. A clear description of the Work to be suspended;
 - b. Any instructions regarding issuance of further orders by the Contractor for materials services;
 - c. Guidance as to action to be taken regarding Subcontractors;
 - d. Any direction to the Contractor to minimize costs; and
 - e. Estimated duration of the temporary suspension.
4. If the archaeologist determines the potential find is a bona fide cultural resource, the Construction Manager may extend the duration of the "Stop Work Order" in writing, and if so the "Stop Work Order" will remain in effect and Work subject to the "Stop Work Order" may not resume until authorized by the Construction Manager.

12.1.23 Cultural Resources Defined.

Possible indicators that a cultural resource has been found include, but are not limited to the following:

1. Prehistoric-era archaeological site indicators: obsidian tools, tool manufacture waste flakes, grinding and other implements, dwelling sites, animal or human bones, fossils, and/or locally darkened soil containing dietary debris such as bone fragments and shellfish remains;

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Contract, Part 3
Special Provisions

2. Historic-era site indicators: ceramic, glass, and/or metal.

12.1.24 Construction Manager's Discretion.

Once possible cultural resources are found at the Work site, the Construction Manager may use discretion to continue the Work, regardless of the cultural resource find, if the Construction Manager determines that there are overriding considerations such as the instability of the excavation site, the existence of adverse weather or other conditions that would preclude leaving the site exposed, or if the site would be unsafe to workers who would retrieve cultural resource items from therein.

FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT NO. 1
416 Franklin Street
Fort Bragg, California 95437

PERFORMANCE BOND

(Note: The successful bidder must use this form. Use of any other bond form may prevent a contract from forming and/or result in forfeiture of the successful bidder's bid bond.)

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS the District Council of the Fort Bragg Municipal Improvement District No. 1 has awarded to _____, (designated as the "PRINCIPAL") a contract for the 2016 Slip Line Project, Project No. 2016-04, which contract and all of the contract documents as defined therein (designated as the "Contract") are hereby made a part hereof; and

WHEREAS, said PRINCIPAL is required under the terms of the Contract to furnish a bond for the faithful performance of the Contract;

NOW, THEREFORE, WE, the PRINCIPAL and _____ as surety (designated as "SURETY"), an admitted surety insurer authorized to do business in the State of California, are held and firmly bound unto the District (designated as "OBLIGEE"), in the penal sum of _____ dollars (\$_____), lawful money of the United States for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, and administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that, if the above bound PRINCIPAL, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract and any alteration thereof made as therein provided, on his or their part to be kept and performed at the time and in the manner therein specified and in all respects according to their true intent and meaning, and shall defend, indemnify and save harmless the OBLIGEE, it's officials, officers, employees, volunteers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

And the said SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or to the specifications or the plans accompanying the same or to any other part of the contract documents, as defined therein, shall in any way affect said SURETY's obligation on this bond, and the SURETY does hereby waive notice of any such change, extension of time, alteration or addition.

And the said SURETY, for value received, hereby stipulates and agrees that upon

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Performance Bond

termination of the Contract for cause, the OBLIGEE reserves the right to refuse tender of the PRINCIPAL by the SURETY to complete the Contract work.

If any action shall be brought by the OBLIGEE upon this bond, a reasonable attorney's fee, to be fixed by the court, shall be and become a part of the OBLIGEE's judgment in any such action.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals this ____ day of _____, _____, the name and corporate seals of each corporate party being hereto affixed and these presents duly signed by their undersigned representatives, pursuant to authority of their governing bodies.

(Corporate Seal)

PRINCIPAL

By: _____

(Acknowledgement)

Title: _____

(Corporate Seal)

SURETY

By: _____
(Attorney-in-fact)

(Acknowledgement)

Title: _____

(NOTE TO SURETY COMPANY: A certified copy of unrevoked resolution of authority for the attorney-in-fact must be submitted with and attached to the executed bid bond.)

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Performance Bond

FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT NO. 1
416 Franklin Street
Fort Bragg, California 95437

PAYMENT/LABOR AND MATERIALS BOND

(Note: The successful bidder must use this form. Use of any other bond form may prevent a contract from forming and/or result in forfeiture of the successful bidder's bid bond.)

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS the District Council of the Fort Bragg Municipal Improvement District No. 1 has awarded to _____, (designated as the "PRINCIPAL") a contract for the 2016 Slip Line Project, Project No. 2016-04, which contract and all of the contract documents as defined therein (designated as the "Contract") are hereby made a part hereof; and

WHEREAS, pursuant to California Civil Code Section 3247, the PRINCIPAL is required, before entering upon the performance of the Contract, to file a payment bond with and have such bond approved by the officer or public entity by whom the Contract is awarded; and

WHEREAS, pursuant to California Civil Code Section 3248, such payment bond must be in a sum not less than one hundred percent (100%) of the total amount payable by the terms of the Contract, and must satisfy the other requirements specified in that section; and

WHEREAS, the PRINCIPAL is required in accordance with the Contract to furnish a payment bond in connection with the Contract to secure payment of claims of laborers, mechanics and materialmen employed on work under the Contract in accordance with applicable law;

NOW, THEREFORE, THESE PRESENTS WITNESSETH:

That the PRINCIPAL and the undersigned _____, as surety (designated as "SURETY"), an admitted surety insurer authorized to do business in the State of California are held and firmly bound unto all laborers, material men, and all other persons named in California Civil Code Section 3181 in the sum of _____ Dollars (\$_____), lawful money of the United States, being a sum not less than one hundred percent of the total amount payable by the terms of the Contract, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the PRINCIPAL or any of the PRINCIPAL's subcontractors, or the heirs, executors, administrators, successors, or assigns of any, all, or either of them, shall fail to pay any persons named in California Civil Code Section 3181, or fail to pay for any labor, materials, provisions, provender, or other supplies used in, upon, for or about the performance of the work contracted to be

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Payment Bond

done, or for any work or labor thereon of any kind, or fail to pay amounts due under the Unemployment Insurance Code with respect to such work or labor, or fail to pay for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the PRINCIPAL or any subcontractors of the PRINCIPAL pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work or labor, that the SURETY will pay for the same in an amount not exceeding the amount herein above set forth, and also, in case suit is brought upon this bond, will pay a reasonable attorney's fee to be awarded and fixed by the Court; otherwise this obligation shall be void.

It is hereby expressly stipulated and agreed by the said Surety, for value received, that this bond shall inure to the benefit of any and all of the persons named in Section 3181 of the California Civil Code so as to give a right of action to them or their assigns in any suit brought upon this bond.

It is hereby further expressly stipulated and agreed by the said Surety, for value received, that no change, extension of time, alteration or addition to the terms of the Contract or the specifications or drawings accompanying the same or to any other part of the contract documents, as defined therein, shall in any manner affect the obligations of the SURETY on this bond, and SURETY does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals this ____ day of _____, _____, the name and corporate seals of each corporate party being hereto affixed and these presents duly signed by their undersigned representatives, pursuant to authority of their governing bodies.

(Corporate Seal)

PRINCIPAL

By: _____

(Acknowledgement)

Title: _____

(Corporate Seal)

SURETY

By: _____
(Attorney-in-fact)

(Acknowledgement)

Title: _____

(NOTE TO SURETY COMPANY: A certified copy of unrevoked resolution of authority for the attorney-in-fact must be submitted with and attached to the executed bid bond.)

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Payment Bond

FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT NO. 1
416 Franklin Street
Fort Bragg, California 95437

MAINTENANCE BOND

(Note: The successful bidder must use this form. Use of any other bond form may prevent a contract from forming and/or result in forfeiture of the successful bidder's bid bond.)

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS the District Council of the Fort Bragg Municipal Improvement District No. 1 has awarded to _____, (designated as the "PRINCIPAL") a contract for the 2016 Slip Line Project, Project No. 2016-04, which contract and all of the contract documents as defined therein (designated as the "Contract") are hereby made a part hereof; and

WHEREAS, the PRINCIPAL is required under the terms of the Contract to furnish a bond for the correction of any defects due to defective materials or workmanship in the work performed under the Contract.

NOW, THEREFORE, we the PRINCIPAL and the undersigned _____, as surety (designated as "SURETY"), an admitted surety insurer authorized to do business in the State of California, are held and firmly bound unto the Fort Bragg Municipal Improvement District No. 1, (designated as the "OBLIGEE"), in the penal sum of _____ Dollars (\$_____), lawful money of the United States, being a sum not less than ten percent (10%) of the final Contract price, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH that if, during a maintenance period of one (1) year from the date of acceptance by the OBLIGEE of the contracted work, the PRINCIPAL upon receiving written notice of a need for repairs which are directly attributable to defective materials or workmanship, shall diligently take the necessary steps to correct said defects within seven (7) days from the date of said notice, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

If any action shall be brought by the OBLIGEE upon this bond, a reasonable attorney's fee, to be fixed by the Court, shall be and become a part of OBLIGEE's judgment in any such action.

No right of action shall accrue on this bond to, or for the use of, any person or corporation other than the OBLIGEE named herein or the heirs, executors, administrator or successor of the OBLIGEE.

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their seals this ____ day of _____, _____ the name and corporate seals

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Maintenance Bond

of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Corporate Seal)

PRINCIPAL

By: _____

(Acknowledgement)

Title: _____

(Corporate Seal)

SURETY

By: _____
(Attorney-in-fact)

(Acknowledgement)

Title: _____

(NOTE TO SURETY COMPANY: A certified copy of unrevoked resolution of authority for the attorney-in-fact must be submitted with and attached to the executed bid bond.)

FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT NO. 1
416 Franklin Street
Fort Bragg, California 95437

**ESCROW AGREEMENT FOR
SECURITY DEPOSITS IN LIEU OF RETENTION**

This Escrow Agreement is made and entered into by and between the Fort Bragg Municipal Improvement District No. 1, whose address is 416 North Franklin Street, Fort Bragg, California 95437, hereinafter called "District",

_____, whose address is _____,
_____, hereinafter called "Contractor",
and _____, whose address is _____,
_____, hereinafter called "Escrow Agent"

For consideration hereinafter set forth, the District, Contractor, and Escrow Agent agree as follows:

1. Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by District pursuant to the Construction Contract entered into between the District and Contractor for the project entitled 2016 Slip Line Project in the amount of _____ dated _____ (hereinafter referred to as the "Contract"). Alternatively, on written request of the Contractor, the District shall make payments of the retention earnings directly to the Escrow Agent. When Contractor deposits the securities as substitute for Contract earnings, the Escrow Agent shall notify the District within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the District and Contractor. Securities shall be held in the name of _____ and shall designate the Contractor as the beneficial owner.
2. The District shall make progress payments to the Contractor for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.
3. When the District makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until such time as the escrow created under this contract is terminated. The Contractor may direct the investments of the payments into securities. All terms and conditions of this Contract and the rights and responsibilities of the parties shall be equally applicable and binding when the District pays the escrow agent directly.

Fort Bragg Municipal Improvement District No. 1
Project No. 2016-04
Escrow Agreement for Security Deposits

4. Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the District. These expenses and payment terms shall be determined by the District, Contractor and Escrow Agent.
5. The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of the Contractor and shall be subject to withdrawal by contractor at any time and from time to time without notice to the District.
6. Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from District to the Escrow Agent that District consents to the withdrawal of the amount sought to be withdrawn by Contractor.
7. The District shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven day's written notice to the Escrow Agent from the District of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the District.
8. Upon receipt of written notification from the District certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all monies and securities on deposit and payments of fees and charges.
9. Escrow Agent shall rely on the written notifications from the District and the Contractor pursuant to Sections (5) to (8) inclusive, of this Contract and the District and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.
10. The names of the persons who are authorized to give written notice or to receive written notice on behalf of the District and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures, are as follows:

On behalf of District:

On Behalf of Contractor

Title

Title

Name

Name

On behalf of Escrow Agent:

Title

Name

Signature

Address

At the time the Escrow Account is opened, the District and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Contract.

IN WITNESS WHEREOF, the parties have executed this Contract by their proper officers on the date first set forth above.

District:

Contractor:

Title

Title

Name

Name

Signature

Signature

Address

Address



City of Fort Bragg

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

Text File

File Number: 16-325

Agenda Date: 8/22/2016

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Resolution

Agenda Number: 7F.

Adopt Fort Bragg Municipal Improvement District Resolution Accepting Quote of Applied Marine Sciences, Awarding the Contract for Biological Survey and Outfall Inspection Project (Project); to Applied Marine Sciences and Authorizing District Manager to Execute Contract (Amount Not to Exceed \$32,756; Account #710-4712-0319)

The Monitoring and Reporting Program (MRP No. R1-2015-0024) for the Fort Bragg Municipal Improvement District No.1 (District) requires receiving water monitoring and inspection of the outfall from the District's wastewater treatment facility. The primary objective of these activities is to document that the District's outfall is operating correctly and that the wastewater discharge is not impairing beneficial uses in the receiving water.

Protection of beneficial uses involves not only achievement of numerical objectives, but also documentation that narrative objectives are being met. For example, protection of the marine habitat beneficial use can be inferred through achievement of numerical water quality objectives, as well as through sampling to show whether biological communities in the vicinity of the discharge have been degraded. This proposal was developed to include elements that document the concentrations of contaminants in the water and the condition of flora and fauna on the seafloor in the vicinity of the outfall, and to provide a video record of the outfall condition.

RESOLUTION NO. ID _____-2016

RESOLUTION OF THE FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT BOARD ACCEPTING QUOTE OF APPLIED MARINE SCIENCES, AWARDING THE CONTRACT FOR THE BIOLOGICAL SURVEY AND OUTFALL INSPECTION PROJECT (PROJECT); TO APPLIED MARINE SCIENCES AND AUTHORIZING DISTRICT MANAGER TO EXECUTE CONTRACT (AMOUNT NOT TO EXCEED \$32,756; ACCOUNT NO. 710-4712-0319)

WHEREAS, the Municipal Improvement District No. 1 (FBMID) operates and maintains the City of Fort Bragg wastewater facility; and

WHEREAS, in accordance with the Monitoring and Reporting Program (MRP No. R1-2015-0024) a Biological Survey and Outfall Inspection is required once per permit period; and

WHEREAS, staff is satisfied that Applied Marine Sciences has the proper experience and meets the necessary requirements to complete the project as quoted; and

WHEREAS, the Project is funded by the Wastewater Enterprise Fund, and appropriations were made in the FY 2016-17 Budget, Account No. 710-4712-0319; and

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

1. The Applied Marine Sciences quote meets the requirements of this Project.
2. Sufficient funds are available through the appropriations made in the Wastewater Enterprise Fund to fully complete the project as quoted.
3. Applied Marine Sciences has the proper experience to complete the Project and based upon previous experience in completing similar projects, is a responsible contactor.

NOW, THEREFORE, BE IT RESOLVED that the District Board of the Fort Bragg Municipal Improvement District No. 1 does hereby accept the quote of Applied Marine Sciences and awards the contract for the Biological Survey and Outfall Inspection Project to Applied Marine Sciences and authorizes the District Manager to execute the same. (Amount not to exceed \$32,756; Account No. 710-4712-0319)

The above and foregoing Resolution was introduced by Board Member _____, seconded by Board Member _____, and passed and adopted at a regular meeting of the District Board of the Fort Bragg Municipal Improvement District No. 1 held on the 22nd day of August, 2016, by the following vote:

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

**DAVE TURNER,
Chair**

ATTEST:

**June Lemos
District Clerk**

PROFESSIONAL SERVICES AGREEMENT

AGREEMENT

This Agreement is made and entered into this _____ day of _____, 2016 by and between the Fort Bragg Municipal Improvement District No. 1, a California Municipal Corporation, 416 N. Franklin Street, Fort Bragg, California, 95437 ("District"), and Applied Marine Sciences, 911 Center Street, Santa Cruz, California, 95060, a California corporation ("Consultant").

RECITALS

WHEREAS, District has determined that it requires the following professional services from a consultant: to provide water biological survey and outfall inspection services; 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 District on August 22, 2016, by Resolution No. _____-2016 authorized execution of this Agreement on behalf of the District in accordance with Chapter 3.20 of the City Municipal Code and/or other applicable law;

NOW, THEREFORE, District 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: Provide the Fort Bragg Municipal Improvement District No. 1 with water monitoring services and inspection of the outfall from District's wastewater treatment facility. 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 August 26, 2016 and expire on March 31, 2017 unless the Agreement term is amended or the Agreement is terminated in accordance with its terms.

3. PAYMENT TERMS AND NOT TO EXCEED AMOUNT

District 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 District 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 District's obligation to pay the Consultant under this Agreement exceed THIRTY-TWO THOUSAND SEVEN HUNDRED FIFTY-SIX DOLLARS (\$32,756.00) (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 District 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 District or as part of any audit of the District, 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 District. 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 December 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 District agree that the Consultant will perform the Services as an independent contractor and not as an employee or agent of the District. Persons employed or utilized by Consultant in the performance of the Services will not be employees or agents of the District. 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 District. 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 District.

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 District, 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 District, 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 District of such desire of District, 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 District 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 District, (which acceptance will not be unreasonably withheld), and hold harmless District 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 District, unless the time for responding is extended by an authorized representative of the District 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 District, may be retained by the District 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 District, Consultant shall indemnify, defend, and hold harmless District 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 District.

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 District 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 District.

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 District.

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 District 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) District 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 District 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 District'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 District (if agreed to in a written contract or agreement) before the District'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 District 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 District.

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 District.

j. The District 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 District's interests are otherwise fully protected.

k. All self-insured retentions (SIR) must be disclosed to District 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 District. District 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 District 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 District will issue a notice to proceed with the Services, Consultant and any subcontractors must acquire, at their expense, a business license from the City of Fort Bragg 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 District 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

All plans, specifications, reports, designs and other documents prepared by Consultant pursuant to this Agreement shall be and remain the property of the District. Any modification or reuse of such documents by the District without Consultant's prior written consent will be at the District'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 District.

15. TERMINATION AND REMEDIES

a. District 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. District 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 District may have at law or equity, the District 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 District, 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 District, Consultant, and their successors. Except as otherwise provided herein, neither District 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. District representative for purposes of this Agreement will be John Smith, Assistant Director of Public Works. Consultant representative for purposes of this Agreement will be Dane Hardin, Senior Marine Biologist. 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:

Dane Hardin
Senior Marine Biologist
Applied Marine Sciences
911 Center Street
Santa Cruz, CA 95060

Any written notice to District shall be sent to:

John Smith
Assistant Director of Public Works
Fort Bragg Municipal Improvement District
416 N. Franklin Street
Fort Bragg, California 95437

18. INTEGRATION AND AMENDMENT

This Agreement represents the entire and integrated agreement between District 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 District.

19. CONFLICT OF INTEREST PROHIBITION

District and Consultant will comply with the requirements of the District'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 District Clerk a completed Form 700 before commencing performance of the Services unless the District Clerk determines that completion of a Form 700 is not required, pursuant to District's Conflict of Interest Code. Form 700 forms are available from the District 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 District and to provide any necessary and appropriate information requested by District or any authorized representative concerning potential conflicts of interest or prohibitions concerning Consultant's obligations pursuant to this Agreement.

Consultant may not employ any District official, officer or employee in the performance of the Services, nor may any official, officer or employee of District 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 District. If Consultant was an employee, agent, appointee, or official of District 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 District 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 District 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.

DISTRICT

By: _____
Linda Ruffing
Its: District Manager

CONSULTANT

By: Dane Hardin
Dane Hardin
Its: Principal

ATTEST:

[Attach Notary Acknowledgment Page]

By: _____
June Lemos
District Clerk

APPROVED AS TO FORM:

By: _____
Samantha W. Zutler, District Counsel

Exhibit: Exhibit A – Consultant's Proposal

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DISTRICT

By: _____
Linda Ruffing
Its: District Manager

CONSULTANT

By: Dane Hardin
Dane Hardin
Its: Principal

ATTEST:

[Attach Notary Acknowledgment Page]

By: _____
June Lemos
District Clerk

APPROVED AS TO FORM:

By: Samantha W. Zutler
Samantha W. Zutler, District Counsel

Exhibit: Exhibit A – Consultant's Proposal



May 2, 2016

Revised June 15, 2016

Submitted to:

City of Fort Bragg
416 North Franklin St.
Fort Bragg, CA 95437

Submitted by:

A P P L I E D
inmarine
S C I E N C E S

911 Center Street
Santa Cruz, CA 95060

EXHIBIT A

TABLE OF CONTENTS

1. Background.....	1
2. Discharge and Monitoring History	1
3. Technical Approach.....	1
3.1. Outfall Inspection	2
3.1.1. Sampling Methods.....	2
3.1.2. Reporting.....	2
3.2. Biological Evaluation	2
3.2.1. Sampling Sites.....	2
3.2.2. Sampling Frequency	2
3.2.3. Sampling Methods.....	2
3.2.4. Analyses Performed.....	2
3. Monitoring Schedule.....	4
4. Reporting	4
5. Budget	4
6. References Cited.....	5

1. Background

The Monitoring and Reporting Program (MRP No. R1-2004-0009) for the Fort Bragg Municipal Improvement District No.1 (City of Fort Bragg) requires receiving water monitoring and inspection of the outfall from District's wastewater treatment facility. The primary objective of these activities is to document that the District's outfall is operating correctly and that the wastewater discharge is not impairing beneficial uses in the receiving water.

Protection of beneficial uses involves not only achievement of numerical objectives, but also documentation that narrative objectives are being met. For example, protection of the marine habitat beneficial use can be inferred through achievement of numerical water quality objectives, as well as through sampling to show whether biological communities in the vicinity of the discharge have been degraded. This proposal was developed to include elements that document the condition of flora and fauna on the seafloor in the vicinity of the outfall, and to provide a video record of the outfall condition.

2. Discharge and Monitoring History

In 1971, the District completed construction of a regional wastewater collection and treatment facility. At that time, wastewater was discharged through a 30-inch outfall that emptied into nearshore, shallow water. Following a thorough evaluation of outfall performance and biological communities in the vicinity of the outfall in 1973, the outfall was extended approximately 650 feet offshore in 1977. An average dry-weather flow of approximately 0.55 MGD currently is discharged through 14 diffuser ports spanning approximately 100 feet in 25–30 feet of water. Average wet-weather flow from January 1996 through December 2002 was approximately 1.3 MGD.

The 1973 evaluation of biological communities revealed decreased biological diversity within 75 feet of the outfall. Within this area, biological communities were dominated by the green alga, *Ulva lobata*. Infrared photography around the outfall also revealed depressed algal coverage within this area, which was attributed to outfall construction.

In December 2004, following negotiations between the City of Fort Bragg and the Water Board North Coast Region (Water Board) with technical assistance from Applied Marine Sciences, Inc. (AMS) the Water Board approved a monitoring plan. This plan was designed to document 1) compliance with California Ocean Plan receiving water objectives and 2) the integrity of the outfall structure, including the diffuser ports, at least once during each permit cycle to verify operational status of the outfall. Since 2004, monitoring has been conducted in 2007 and 2012.

3. Technical Approach

The technical approaches detailed below for assessing resident biota, and outfall condition are identical to those employed by AMS in conducting and the 2008 and 2012 NPDES receiving water monitoring program (Hardin and Dominik 2008, Johnson and Hardin 2013).

3.1. Outfall Inspection

3.1.1. Sampling Methods.

In conjunction with the biological sampling, divers will visually inspect the outfall structure, including the diffuser ports, to verify operational status of the outfall. The inspection will be documented with video.

3.1.2. Reporting

A report documenting outfall condition and maintenance, including original video footage and notations of any observed cracks, breaks, malfunctions, and recommended or performed repairs, will be submitted within 90 days following the inspection.

3.2. Biological Evaluation

3.2.1. Sampling Sites

Sampling will be conducted along five 30-meter transects arranged perpendicular to the outfall axis, with the beginning of each transect positioned over the outfall (Figure 1). Transects will be randomly located along the length of the diffuser section, using random numbers as meter distances between the inner and outer ends of the diffuser and alternating transects will extend in opposite directions from the diffuser.

3.2.2. Sampling Frequency

Sampling will be conducted once in the life of the permit.

3.2.3. Sampling Methods

At 1-meter intervals along each transect, the species under the transect line will be noted. These observations will provide data on percent cover of the flora and fauna around the outfall, which can be used to determine such community parameters as species richness and diversity and total abundance. All abalone within 0.5 meters of each transect will be counted and measured. These observations will provide data on the density and population structure of abalone around the outfall. A sediment sample will be collected near the diffuser at the beginning of each transect and at the outer end of each transect. These samples will provide data on the accumulation of organic material from the discharge around the outfall. Observations also will be recorded every meter along each transect of any objectionable aquatic growths, floating particulates or grease and oil, aesthetically undesirable discoloration of the ocean, color of fish or shellfish, and any evidence of degradation of indigenous biota attributable to the rate of deposition of inert solids, settleable material or nutrient materials.

3.2.4. Analyses Performed

Transect data will be analyzed according to transect segments, with those sampling points occurring within 15 meters of the diffuser being compared to those occurring greater than 15 meters from the diffuser. Each 15-meter segment will represent a replicate sample, providing 5 replicates each for the near-diffuser samples and far-diffuser samples (Figure 2). The proportion of sampling points in each segment that fall over a given plant or animal species provides an estimate of the percentage of the substrate covered by that species. Sediment samples will be analyzed for Total Organic Carbon (TOC) to indicate whether organic material from the

discharge is accumulating on the bottom. Routine statistical tests (e.g., t-test or analysis of variance) will be performed to determine whether there are differences between near-diffuser and far-diffuser samples in the percent cover of each species, the numbers or sizes of abalone or the percentage of TOC in sediments and whether there have been changes in the biological communities since the previous sampling in 2007. Changes since 2007 in the near-diffuser samples, in the absence of changes in the far-diffuser samples, might suggest effects of the discharge.

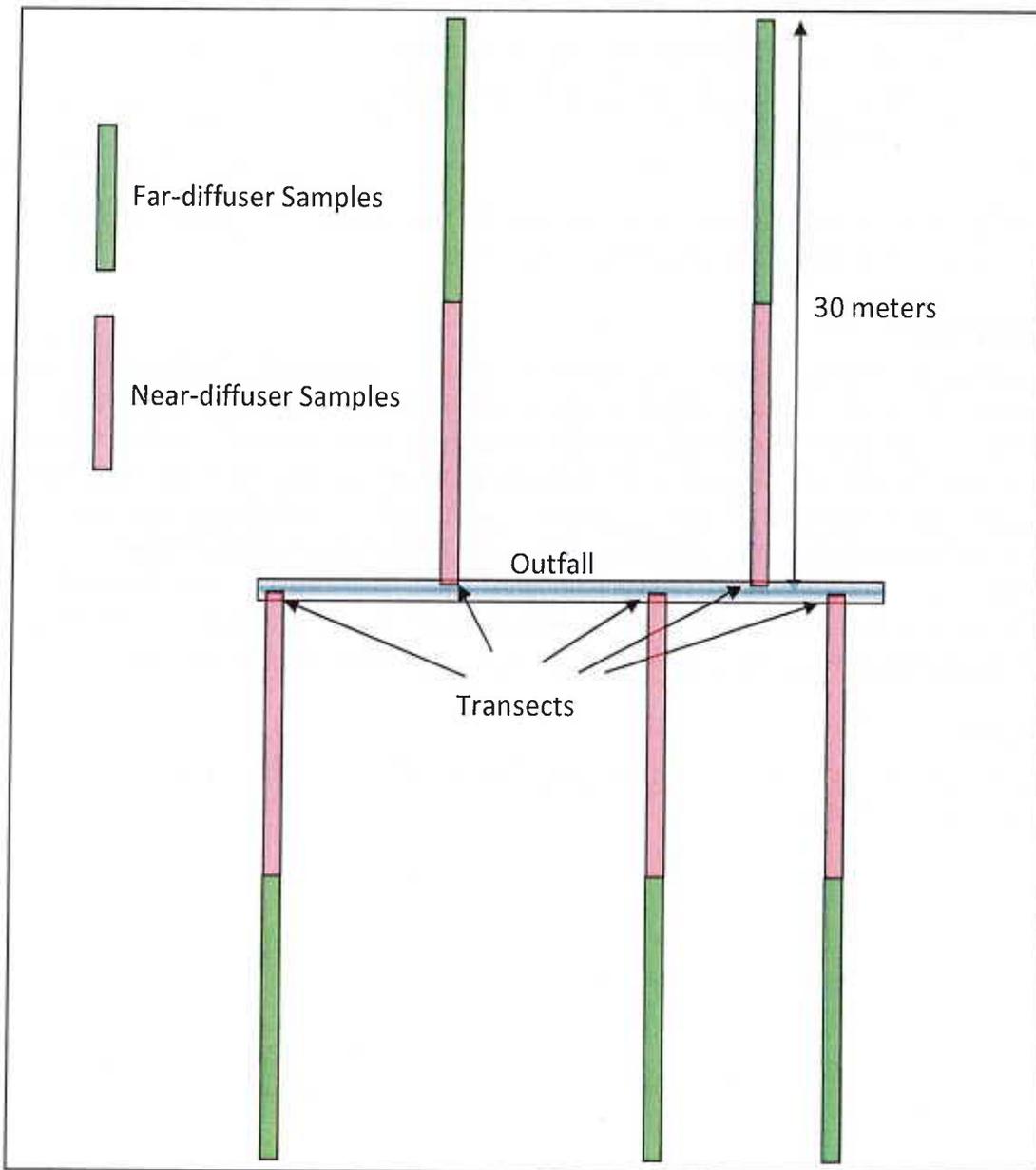


Figure 1. Layout of biological evaluation sampling transects.

3. Monitoring Schedule

Monitoring will be conducted during summer months before January 2014, at the City's convenience, to coincide with the season of maximum human visitation and utilization of beneficial uses. Three days will be scheduled for the monitoring, as shown in Table 1.

Table 1. Proposed Monitoring Schedule

Day	Activity
1	Mobilize gear and travel to Fort Bragg, set up gear
2	Conduct outfall inspection and biological sampling
3	Return home

Considerable logistical saving is achieved by conducting the biological monitoring and outfall inspection in the same field effort, as we have scheduled.

4. Reporting

A narrative report of the biological evaluation and outfall inspection will be submitted within 90 days following fieldwork. This report will include a description of all survey and analytical methods and results, including interpretation of any differences between the near-diffuser samples and the far-diffuser samples. It will be comparable in scope to the 2008 report to the water board prepared by AMS (Hardin and Dominik 2008) and will include appropriate statistical procedures to determine whether there have been changes in the biological communities that can be ascribed to the wastewater. The outfall inspection section of the report will document outfall condition and maintenance, including original video footage and notations of any observed cracks, breaks, malfunctions, and recommended repairs.

5. Budget

The cost estimate for all biological monitoring and analyses, the outfall inspection and all reporting is shown in Table 2.

Table 2. Cost estimate for implementation of biological monitoring and outfall inspection.

Cost Element	Unit	Rate	Item Cost
Labor			
Senior Scientist	hour	\$175.00	\$11,200
Associate Scientist	hour	\$120.00	\$11,520
Junior Scientist	hour	\$85.00	\$4,080
Editor	hour	\$85.00	\$340
Administrative Support	hour	\$75.00	\$700
Other Direct Costs			
Travel			
Mileage	mile	\$0.55	\$935
Lodging and per diem	day	\$190.00	\$990
Equipment and vessel rental	Day	various	\$2,150
Supplies	trip	\$200.00	\$200
G&A (applied to Other Direct Costs)	%	15%	\$641
Total			\$32,756

6. References Cited

Skarheim, H.P. 1973. Tables of the Fraction of Ammonia in the Undissociated Form for pH 6 to 9, Temperature 0-30°C, TDS 0-3000 mg/l. and Salinity 5-35 g/kg. Sanitary Engineering Research Laboratory, College of Engineering, School of Public Health, University of California, Berkeley, CA. SERL Report No. 73-5.

Hardin D, Dominik C (2008) Receiving Water Monitoring Report, Fort Bragg Municipal Improvement District No. 1. City of Fort Bragg, Fort Bragg, CA

Johnson D, D Hardin (2013) Receiving Water Monitoring Report, Fort Bragg Municipal Improvement District No. 1. City of Fort Bragg, Fort Bragg, CA



City of Fort Bragg

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

Text File

File Number: 16-338

Agenda Date: 8/22/2016

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Status: Consent Agenda

In Control: City Council

File Type: Committee Minutes

Agenda Number: 7G.

Receive and File Minutes of June 28, 2016 Community Development Committee Meeting



City of Fort Bragg

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

Meeting Minutes Community Development Committee

Tuesday, June 28, 2016

3:00 PM

City Hall Conference Room, 416 N. Franklin Street

MEETING CALLED TO ORDER

Committee Member Deitz called the meeting to order at 3:00 PM.

ROLL CALL

Present: 2 - Scott Deitz and Michael Cimolino

1. APPROVAL OF MINUTES

1A. [16-246](#) Approve Minutes of May 17, 2016

A motion was made by Committee Member Deitz, seconded by Committee Member Cimolino, that the Committee Minutes be approved for Council review.

Aye: 2 - Councilmember Deitz and Councilmember Cimolino

2. PUBLIC COMMENTS ON NON-AGENDA ITEMS

None.

3. CONDUCT OF BUSINESS

3A. [16-272](#) Receive Report and Provide Recommendation to Community Development Committee Regarding an Update to the Inland Land Use and Development Code to make it more Business Friendly

Associate Planner Perkins handed out an addendum entitled Summary of Public Participation at the Inland Land Use and Development Code (ILUDC) Update Workshops (added to Agenda after packet created). Perkins described the workshop as a positive productive experience. Community Director Jones intends to craft an ILUDC update matrix for City Council input. Director Jones indicated her intention to pursue and update to the Coastal Land Use and Development Code (LUDC) at the same time as the ILUDC to prevent the two documents from becoming more divergent and to facilitate a better understanding for residents regarding requirements and variations between land uses. Jones cited some examples of existing discrepancies between the two codes and explained how this update further warrants the Local Coastal Program (LCP) amendment process to streamline the two land use codes. Jones asked the Committee Members to go through the summary list and provide feedback on each line item.

Discussion:

1. Vacation Rentals:

- Committee and staff discussed the ten vacation rental permit limit with some uncertainty as to whether the limit was per land use for a total of twenty permits or ten total
- Committee Member Deitz asked if the City was ready to take applications and Jones responded that the code needs to be published before we can allow vacation rentals
- Cimolino asked for clarification about the implications of this code update affecting undeveloped property like Mill site and Jones answered this particular code update would only affect the Central Business District (CBD)
- Vacation rentals will be strictly limited to the CBD, unless re-addressed by Council
- Jones recommended considering Highway visitor Commercial for inclusion in this update
- Committee reiterated the intention to establish permit limits and slowly monitor the impacts on rental housing stock and demand from property owners
- The current regulation requires home rentals within the City to be in excess of thirty days
- Waiting lists, transferability, and per owner maximums are criteria that should be explicit in this code update

2. Home Sharing:

- Parking is a primary concern
- Parking impacts could be limited by capping the number of permits offered similar to the vacation rentals or by establishing standards requiring onsite parking in order for a property to be permitted for home sharing
- This would require a Minor Use Permit (MUP) which would be approved administratively after serving notice to property owners in a 300' radius which can be elevated to Planning Commission if contested
- Committee Members recommended limiting each property to one bedroom for sharing and/or one vehicle
- The negative effects on towns with large numbers of vacation rentals

3. Residences in Commercial Districts:

- Down-zoned properties can go right back to commercial use
- The six month requirement was deemed as an appropriate time frame as it provides relief to property owners where none currently exists but does not unintentionally incentivize owners to convert businesses to residences
- The goal is always highest and best use
- The excess of vacant businesses and lack of housing shows the need for an adjustment in supply
- Staff will (with the assistance of the interns) do an inventory of the business stock to present to council a potential impact analysis

4. Commercial Uses in Industrial Districts:

- This update would allow brewing as an activity in the Commercial district and/or add a model of brewery/tap room to the land use tables

- Commercial uses could increase values of property and make industrial uses less desirable to owners
- The Overtime Brewery was a very favored project and this update would benefit both of our existing operations by permitting necessary expansions of facilities
- The Mill Site will offer more industrially zoned properties, which will potentially be occupied by a brewery
- Committee Member Deitz inquired about demand for more breweries in recent years, Jones pointed out the current trend for Beer tourism
- Committee Member Deitz inquired if we would also allow for Light Industrial activities to be permitted in commercial districts with use permits and Jones explained that noise is the biggest concern though some light industrial uses fit well in commercial districts
- Committee members would like to see Light Industrial uses allowed in Commercial districts

5. Second Residential Units:

- Considered removing or changing the 6000sf parcel and 36ft street width requirements where off-street parking is available
- The City needs more rental housing so incentivizing 2nd units should be a priority
- There are lots of illegal units in town, 1/3 of parcels have 2nd units they may/may not be legal
- Providing owners the ability to legally add 2nd units benefits the City by providing good, legal, safe buildings, meets housing needs of residents, and the City recoups fees for water and sewer connections

6. Signage:

- Remove word permanent from code verbiage from the 20% window coverage regulation
- Window signage does not currently count toward the site signage maximums
- Businesses frequently recoup there signage needs by cluttering the windows
- Cimolino explained this request was brought about because of concerns about alcohol and tobacco signage
- Perkins asked how this might affect bars/taverns
- The City has flagrant sign code violators and increased code enforcement would be necessary if this update goes into effect
- Committee Member Deitz asked how many complaints for signs are submitted annually and Jones stated there are one to two per year
- Committee Members want to ensure this update has limited impact on small businesses who need the advertising space
- Staff clarified this cannot be limited to certain businesses
- Committee recommended striking the word permanent from the code and leaving code enforcement to being complaint driven

Miscellaneous:

- Council member Cimolino favors a mountain bike cleaning station but expressed

- hesitancies about potential transference of invasive species, the need for an interceptor, municipal water, permitting, and actual use of this type facility
- Taxing commercial properties that remain vacant for long periods of time
 - Staff and Committee discussed the potential causes of the vacancies; disrepair, location, high rent, Amazon effects on small businesses, and costs of sprinklers (current ordinance requirements) being a disincentive to perform regular maintenance on buildings
 - Deitz spoke in opposition of the sprinkler ordinance and the unintended consequence being empty store fronts
 - Jones will compile the number of sprinklers installed with information from Public Works
 - Add business sharing as a table line item in the development code to support co-businesses
 - Sidewalks throughout town in need of repair could be another side effect of the sprinkler ordinance
 - Specialty schools like woodworking is another use that should be evaluated for compatibility for various zoning districts

Committee Member Cimolino inquired about the process of changing the code. Director Jones explained the code can be changed anytime with staff time. The City tries to do updates once every two years or as warranted by City Council and residents. Up-zoning is rarely objected to but down-zoning can cause frustration for residents and should be considered carefully when making changes to the code.

3B. [16-275](#) Receive Oral Update from Committee Member Deitz and Discuss the Fort Bragg Business Density Packet

Lia Wilson presented a power point entitled “A Lovely Little Downtown” (added to Agenda after packet created). Wilson explained this idea came about after recent concerns were raised by local business owners regarding the current state of downtown Fort Bragg. The Goals of Wilsons plan included 90% occupancy, increased foot traffic, increased income for small businesses, and establishing a brand identity for the City. Several slides prompted discussion during the presentation so key points of the presentation and discussion are as follows:

- Potential incentives and disincentives to fill vacant spaces
- Using the 2nd unit model to package information about starting a business in Downtown
- Designing a one page zoning district summary table to display in vacant windows
- Revitalizing window staging program and “Pop-Up Shops”
- Many Downtown properties are in violation of Municipal Code and open Code Enforcement cases
- Ideas to make entrepreneurs more savvy; asking the right questions, outlining timeline and cost expectations early on, pursuing business ventures in the right order (permitting, licensing, zoning location)
- Public Works should summarize departmental information with brochures

- Facilitate communication between City departments to improve customer service experience
- Differences between cost and startup of a retail venture versus a restaurant
- Diversifying the City; Parklets, Murals, Art Park, Sculptures, Archway
- Changing Coastal Trail Phase II entrance to Redwood Ave instead of Alder St

Staff and Committee Members recommended Wilson present her slides at both Visit Fort Bragg and Downtown Watch meetings.

3C. [16-276](#) Receive Oral Update from Staff on Departmental Activities

No report given due to time constraints.

MATTERS FROM COMMITTEE / STAFF

None.

ADJOURNMENT

Committee Member Deitz adjourned the meeting at 5:15 PM.



City of Fort Bragg

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

File Number: 16-337

Agenda Date: 8/22/2016

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File Type: Committee Minutes

Agenda Number: 7H.

Receive and File Minutes of June 29, 2016 Public Safety Committee Special Meeting



City of Fort Bragg

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

Meeting Minutes Public Safety Committee

Wednesday, June 29, 2016

3:00 PM

Police Department Conference Room
250 Cypress Street

Special Meeting

MEETING CALLED TO ORDER

Committee Member Peters called the meeting to order at 3:00p.m.

ROLL CALL

Present: 6 - Lindy Peters, Scott Deitz, Fabian Lizarraga, Marie Jones, Debbie Desmond and Lesley Bryant

Absent: 3 - Linda Ruffing, Steve Orsi and Tom Varga

APPROVAL OF MINUTES

Approve Minutes of the May 11, 2016 Meeting

A motion was made by by Committee Member Deitz, seconded by Committee Member Peters, that the Committee Minutes be approved. The motion was carried by unanimous vote.

PUBLIC COMMENTS ON NON-AGENDA ITEMS

None Received

CONDUCT OF BUSINESS

Receive Report and Provide Recommendation to City Council Regarding
Commercial Cannabis Manufacturing Ordinance.

Public Comment on this issue was received from Jon McColley, David Ayster, Terry Vaughn, Suzie Valle and Bernie Norvell.

- Scott Perkins presented his staff report to the Committee after thanking Debbie Desmond for her assistance in making the process easier for him, as this was his first staff report to the Public Safety Committee.
- Perkins began by explaining the background regarding the new Medical Marijuana Regulation and Safety Act (MMRSA). As directed by City Council, staff has been reviewing ordinances from various cities and states. He explained that there were several policy questions that need to be addressed and discussed prior to the new City ordinance being drafted, and each topic would be explained, with committee recommendation and ideas.
- Zoning and Permitting; Presently the City has two manufacturing zoning areas, light industrial (IL) and heavy industrial (IH). According to the current zoning regulations, cannabis dispensaries could be allowed in either area with a Use Permit. Precluding cannabis manufacturing to just one of these zones would greatly diminish the amount of potential sites available to businesses. The Committee could make recommendations to change the zoning, and some areas could overlap. When the Mill Site is zoned, there will be IL in specific areas.

- Committee Member Peters agreed to allow both zoned areas to be available. A Use Permit would allow the Planning Committee to have the final overview. Both zoned areas are away from schools, churches and similar structures.
- It was brought up that the old Social Services building was for sale and was being looked at as a possible future site for manufacturing. Due to its close proximity to the Police Department and the Sheriff's Office, the security aspect would be covered. The area is zoned as visitor commercial (VC) and does fall into the Coastal Zone, where usage is much more regulated. Each Use Permit request has the possibility of being denied, depending on the location and the type of building. For the Social Services building to be used for manufacturing, the zoning regulations would need to be changed. The building has been looked at for several other ventures in the past. The smells and odors from a manufacturing facility would be minimal. There would also be minimal impact on the community as it is a safe process. It would be another "medical" facility in the area, alongside the Hospital, Clinic and Pharmacy within the local area. The classification for this type of manufacturing was determined to be a new classification of manufacturing. It would also need to take into consideration that this is a pharmaceutical business.
- Committee Member Deitz agreed that any zoning changes would need to be done only after careful consideration. There are lots of empty buildings in areas already zoned for manufacturing, and the idea of cannabis manufacturing within City limits may receive some push back from the community. The City needs to start out carefully when dealing with the locations. Manufacturing could be allowed with a Use Permit and a suitable building. This would not be a blanket permit.
- The question of how much a Use Permit costs was raised. Marie Jones stated the fees are just less than \$2000 and the permit takes approximately two months to process. There is no guarantee that a permit will be approved once the application has been submitted, as it has to be approved by the Planning Commission. A start-up business has to invest the finances prior to the permit being approved.
- There are not enough commercial or manufacturing areas within the City under the current zoning. Issues arise when manufacturing areas butt up against residential areas. There will need to be deliveries to the sites which may be disruptive. When the full City Council reviews any application, there could be some objections.
- Any changes in zoning can be made when purchasing the property. The purchase of the property can be contingent on having the zoning changed. The process would still have to go through the Coastal Commission. The Coastal Commission is very protective of their areas. Variances are not allowed to rezone a property or allow a project that is not allowed in a certain area and regulations may have to be changed.
- Proximity to Sensitive Uses was discussed. Currently there are four sections that cover this topic; no restriction; adjacent restriction; buffer restriction; review of buffer. A Commercial Cannabis Manufacturing (CCM) ordinance could restrict the distance between the premises and any sensitive needs. When an applicant files a Use Permit request and the ordinance deems the buffer review option, i.e. for a cannabis dispensary, the applicant must list all sensitive needs within 500 feet of the planned premises. The fact that an existing sensitive use is within the 500 feet, does not automatically deny the application. The current Dispensary ordinances include residences as sensitive use. There can be conditions written into the Use Permit that works around sensitive use areas.
- Deitz commented that there are not many sensitive needs in areas already zoned IL or IH, other than residences. There are permitted manufacturing businesses already within the IL or IH zones.
- Peters also likes option 4, buffer review, as it allows the Planning Commission a chance to really look at the surrounding area during the review. Use permits could allow zoning with churches as the high attendance numbers are usually on Sundays. Schools would be a very different issue and there may be restrictions during school hours.
- Jones warned Dietz and Peters that any specific feedback they give to a prospective applicant at this point could jeopardize any appeal filed by the applicant if their request is denied by City Council, and would preclude both of them from the appeal process.
- The prospective business for cannabis manufacturing is looking at a 7 day a week, 24 hour operation, which would help with the security aspect of the building. Shutting down and starting up production is the biggest cost to any manufacturing business. There are very few businesses within the City limits that have operational time restrictions.
- Use Restrictions; MMRSA deems the manufacturer cannot be any other participant in the supply

chain. There must be a separate production location, retail location, delivery, and distribution contract. This cuts down on security risks, and the ordinance would not allow it. The manufacturing ordinance is looking to include a provision to prevent sales of other items, i.e. clothing, from the premises which cuts down on the amount of people going in and out of the building, therefore limiting the security risks.

- If the name of the ordinance was changed to Cannabis Manufacturing as permitted by the State, no matter the result of the initiative and its final name, the ordinance would be in line with the State. By keeping the word Commercial in it, would mean the ordinance would have to be changed each time the State changed the wording. If the Council wanted to restrict the use of the ordinance, they could include the word "medical" which would not allow "recreational" marijuana processes to be included. By having "as permitted by the State", the ordinance would reflect the current State regulations.
- Exterior Restrictions; the cultivation ordinance currently requires there to be no evidence of marijuana production on the signs. Dispensaries have to have signage stating, "Over 21". If the ordinance is passed, the signs could probably say, "Fort Bragg Extracts", or something similar. The sign could not say, "Fort Bragg Marijuana Extracts". This would reduce the chances of the premises becoming an "attractive nuisance". It also lowers the security risk. The name of the business would be allowed on any advertising, but there must not be any key words or graphics.
- Odor; the current Municipal Code has an odor clause to businesses. There have been no complaints to date about the Brewery when they are emptying the tanks. The smells that emanate from there have obviously not been deemed to be "obnoxious". The new ordinance could add extra odor controls for cannabis manufacturing. The applicant is to provide an odor control plan. The odor control will be looked at on a case by case basis, through the Use Permit. How strict the ordinance is and the possibility of increasing the buffer zone will need to be discussed.
- Dietz stated the only issues he could see would be a nuisance issue and security issue. The only time another business might be affected would be if they were using the same building. If there was an existing business in the proposed building, the restrictions may be tougher than if the business was on a currently empty lot.
- Peters stated there were complaints of the odor from the Brewery years ago, when they first started. He asked if they currently have any restrictions. Years ago the Brewery had a specific timeframe for emptying the vats, due to the odor it caused.
- Deitz stated that no one would be attempting to break into the brewery to steal their vat contents.
- Security; Other City ordinances seem to have an extensive variety of security requirements. Some have no requirements while others have pages and pages of requirements. There does seem to be a common theme, which it is currently part of the City's Dispensary Ordinance. Prior to the Use Permit application coming to the Community Development Committee, it is submitted to the Police Department. The Police Department then does background checks on employees, and confirms that the business will provide adequate security on the premises including lighting and alarms. The Chief of Police would review the security plan for the business and sign off when satisfied that all the elements are met. Each application would be taken on a case by case basis as each building is different, and so a blanket ordinance would not work. As most of the buildings available in Fort Bragg are not that big, it would allow Cannabis Manufacturing to fall under the Dispensary Ordinance verbiage.
- The Chief could require the business owner to have secure locks on doors that meet certain standards for the security of the building and the safety of employees.
- Chief Lizarraga would require surveillance cameras that will need to record in all areas of the building, and the recordings be kept for a pre-determined amount of time. He could also regulate how much outside lighting each building should have. The background checks for employees would be done through the Department of Justice with the Police Department only receiving the results.
- Peters wondered if the security issue with doors etc. would be required when the architectural draft was submitted, or when the building inspection took place, due to any additional expenses being incurred.
- Perkins stated it would depend on the building. Some buildings may need to be retrofitted. The problem is, there are no existing examples to refer to, and therefore no indication of costs. There are no standard limits on security lighting for example.
- Jones added the whole issue depends on what is placed on the ballot. If the measure/initiative is for recreational use, the value of marijuana would drop. If the value reduces greatly the chances of thefts

or break-ins would diminish. Background checks for employees have scared off some potential applicants for dispensaries, as some prospective employees may have been previously associated with illegal drug activity.

- The City has been implementing a new applicant checklist that includes a pre-application conference, which includes a person from each department in the City that would be involved. The fee for this is \$300, but it has not been charged very often. The meeting explains what is required from the applicant and what the initial costs will be for water, etc.. Once the Use Permit has been applied for, the staff time is included in the cost of any meetings, consulting etc.
- Peters suggested using Chief Lizarraga as a “consultant” for applicants prior to the actual application process so they don’t end up investing time and money into a building that then may need to have numerous changes.
- Dietz was concerned about employee safety and wondered who would test the product and how the product would be tested. It was decided that the Department of Consumer Affairs Public Health would oversee the process. Mendocino County Environmental Health would probably do an inspection prior to opening as well.
- Manufacturing Operations; The Municipal Code already has a comprehensive code regarding manufacturing. There is still the question of how any spent cannabis will be disposed of. It was asked if it would still be “chemically active” when it was disposed of and what chemicals would be used in the process. There is no solution that will work for every manufacturer.
- There is a need to comply with the hazardous material handling, as well as solid waste. The permit applicant would need to provide a business operations plan that would cover these topics to include the delivery and transportation methods that comply with the current regulations. Once submitted, the plan would be circulated to all interested agencies, i.e. Air Quality Management, Fish and Wildlife, Fort Bragg Police Department, Environmental Health, just to name a few. This would allow the agencies to review the plans and also request further information if necessary. The onus would be on the applicant to provide answers to waste disposal questions. Deitz agreed that the current plan makes sense.
- Infrastructure; Having an operations plan available should iron out any kinks. The plan could specify or over manage, but Public Works needs to review it anyway to make sure the project meets standards. Each operation is different, and so having Public Works review it eliminates any additional plans.
- Deitz stated the new Overtime Brewery didn’t know about certain things until the end, so all infrastructure related items need to be looked at ahead of time.
- Jones stated the cost of producing an operations plan can be very expensive. Items can continue to be argued over until the building permit is approved and it is interactive. Having a checklist in place, will assist the applicants as far as being aware of the possible costs to be incurred. Public Works is always the biggest hurdle as their requirements are very specific with what exits the building through the drains. The operations plan may need to be tweaked to match Public Works requirements. Permits are very business specific and so having a business plan submitted may be premature until Public Works have been consulted.
- Some cannabis manufacturing processes are water treated, which then may contain suspended solids. The results can affect the effluent discharge that may cause the City to be fined by the State.
- Peters stated there are impact fees and set up fees that need to be considered.
- Jones stated that property north of GEO Aggregate’s (formerly Baxman’s) does not have City water or sewer services. Having a pre-application conference gets everyone together to discuss issues and all questions get answered, prior to putting in an application. This then ensures that the applicant has answers to the majority of issues before submitting the application, hiring an architect, etc.
- The inland code is being updated, and the matrix format for cannabis manufacturing will be presented to City Council on July 25.
- During the first Council meeting in September the ordinance should be ready to be presented to City Council. If agreed to, an environmental document will be created and the new ordinance will hopefully be read by the Council in November and adopted by early December.
- Applications could be submitted to Public Works and the Police Department prior to the ordinance being adopted and before the use permit is obtained. The application cannot be presented to the Planning Commission until the new regulations are in effect, as per State law. Perkins requests all questions continue to be sent to him.

- There was a commendation of the presentation, deeming it to be very well done, and that it obviously took a great deal of time to produce.

The Public Safety Committee looked to allow the Cannabis Manufacturing to be in the industrial zoned areas with the current Proximity to Sensitive Uses, Use Restrictions, Exterior Restrictions, Odor control, Security and Manufacturing Operations regulations that are already in the Municipal Code. The Committee deemed there be no additional restrictions be added to an already detailed code.

MATTERS FROM COMMITTEE / STAFF

- Lizarraga stated the fireworks display scheduled for July 2nd would have plenty of police presence. There will be three electric motorcycles along with two bicycle patrol officers with two additional bicycle patrol officers from Willits Police Department. The Noyo Bridge will be patrolled and a checkpoint will be at the entry to the Noyo Beach. Viewing areas are available on the South Trail.
- National Night Out is scheduled for August 2nd at four locations around the City including Safe Passage, Bainbridge Park and the Police Department. The event is scheduled to start at 5.00p.m.
- The Cadet Program will be starting soon for youths aged 14 - 20 years old. There will be an orientation for parents. So far there has been a good response. Once trained, the Cadets will be able to provide additional help on special events, like parades.
- A request has been submitted to the Mendocino County Public Safety Foundation for two additional K-9s. To date, Takoda, the Department's first K-9, has had a very positive impact on the Department and the community.
- The Police Department is currently trying to fill the third Community Service Officer position. Interviews for the current applicants are scheduled for July.
- Chief Lizarraga has issued a mandate for officers to continue to do downtown foot patrols. So far there has been a great response from business owners.
- The Fort Bragg K-9 Foundation started by members of the community is doing well. They are visible at community events and they are looking to purchase a ballistic vest for Takoda.

ADJOURNMENT

The meeting was adjourned at 4:27p.m. by Committee Member Peters.



City of Fort Bragg

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Approve Minutes of July 25, 2016



City of Fort Bragg

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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, July 25, 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. [16-307](#)** Proclamation in Special Recognition of Participants in the Mendocino Coast Children's Fund's 2016 Bridge Internship Program

Mayor Turner read a Proclamation regarding the 2016 Bridge Internship Program. Administrative Services Director Schneider presented individual Proclamations to the interns and spoke briefly about the program sponsored by the Mendocino Coast Children's Fund.

- 1B. [16-304](#)** Presentation by Marcia Sloane Regarding Symphony of the Redwoods

Marcia Sloane made a presentation to the Council regarding the Symphony of the Redwoods, concluding her remarks with a short selection on the cello.

- 1C. [16-310](#)** Presentation by Mike Carter Regarding Mendocino County's Community Emergency Response Team (CERT) Program

Mike Carter of the Community Emergency Response Team made a presentation to the Council about the CERT Program.

2. STAFF COMMENTS

City Manager Ruffing reported that a City Dialogue meeting is set for August 3, 2016 at 5pm at Town Hall; the August 8, 2016 City Council meeting is cancelled for summer recess; and Finance Director Damiani received the Government Finance Officers Association Certificate of Achievement for Excellence in Financial Reporting for the City's 2015 Comprehensive Annual Financial Report. Police Chief Lizarraga announced that National Night Out is next Tuesday, August 2, 2016.

3. MATTERS FROM COUNCILMEMBERS

Mayor Turner commented on the approval of the transfer of the College of the Redwoods property to Mendocino College; the shipwreck of the *Frolic* on this day in 1850; and the recent meeting of the California Public Utilities Commission (CPUC) in Ukiah. Vice Mayor Peters commented on the argument in favor of Measure AA, Transient Occupancy Tax (TOT) increase; the importance of police patrols at Bainbridge Park; and the upcoming Public Safety Committee meeting. Councilmember Deitz commented on the upcoming Community Development Committee meeting. Councilmember Hammerstrom commented on the CPUC meeting and National Night Out.

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

- David Gurney commented on the Consent Calendar.
- Carol White spoke on the health of the hospital.
- George Reinhardt spoke on the development of the community.
- Sue Bocker also talked about community development and the hospital.
- Ann Rennacker remarked on atrazine at the mill site.

5. PUBLIC HEARING

6. CONDUCT OF BUSINESS

- 6A. [16-308](#)** Receive Presentation Regarding Other Post-Employment Benefits ("OPEB") Actuarial Valuation Report Prepared by Bartel Associates, LLC

Marilyn Oliver of Bartel Associates, LLC made a presentation to the City Council on the Actuarial Valuation as of June 30, 2015.

This Staff Report was not acted on.

- 6B. [16-298](#)** Receive Recommendation from Public Safety Committee and Provide Direction to Staff Regarding Cannabis Manufacturing Ordinance

Associate Planner Perkins presented the staff report regarding cannabis manufacturing. Public Comment was received from Leslie Kashiwada.

Discussion: The Council voiced support for the Public Safety Committee's recommendations and directed staff to proceed with drafting an ordinance.

This Staff Report was referred to staff for preparation of an ordinance.

Mayor Turner recessed the meeting at 8:00 PM; the meeting was reconvened at 8:08 PM.

- 6C. [16-302](#)** Receive Report and Consider Adopting City Council Resolution Approving Professional Services Agreement with Michael Baker International for Preparation of Hare Creek Center Environmental Impact Report and Authorizing City Manager to Execute Same (Amount Not to Exceed \$66,105; Funded by Developer Deposit Account DDA-016)

Councilmember Deitz recused himself, citing a financial conflict of interest, and left the

chamber at 8:09 PM.

Following Community Development Director Jones' presentation of the staff report on this agenda item, Florentina Craciun of Michael Baker International responded to questions from Council regarding the scope of work for the EIR.

Public Comment on this item was received from: Ann Marie Weibel, Sue Bocker, Liz Helenchild, Ann Rennacker, Alice Chouteau, Douglas Chouteau, Cecile Cutler, Deborah Lennox, David Gurney, Simon Smith, and Ed Oberweiser.

Discussion: The general consensus of the Councilmembers was to approve a contract with Michael Baker International and to move forward with preparation of an EIR for the Hare Creek Center project.

A motion was made by Councilmember Hammerstrom, seconded by Councilmember Cimolino, that this Resolution be adopted. The motion carried by the following vote:

Aye: 4 - Vice Mayor Peters, Councilmember Cimolino, Councilmember Hammerstrom and Mayor Turner

Recuse: 1 - Councilmember Deitz

Enactment No: RES 3922-2016

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

7. CONSENT CALENDAR

Councilmember Hammerstrom requested that Agenda Item 7E be removed from the Consent Calendar for further clarifying questions.

Approval of the Consent Calendar

A motion was made by Vice Mayor Peters, seconded by Councilmember Cimolino, to approve the Consent Calendar, with the exception of Item 7E. The motion carried by the following vote:

Aye: 4 - Vice Mayor Peters, Councilmember Cimolino, Councilmember Hammerstrom and Mayor Turner

Absent: 1 - Councilmember Deitz

7A. [16-290](#) Adopt City Council Resolution Appointing Representative to Represent and Vote on Behalf of the City at the 2016 League of California Cities Annual Conference

This Resolution was adopted on the Consent Calendar.

Enactment No: RES 3923-2016

7B. [16-306](#) Adopt City Council 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 3924-2016

7C. [16-309](#) Adopt City Council Resolution Consenting to the County of Mendocino's Extension of Caspar Transfer Station Operations Agreement and Lease to June 30, 2021

This Resolution was adopted on the Consent Calendar.

Enactment No: RES 3925-2016

7D. [16-305](#) Readopt Master Traffic Resolution

This Resolution was adopted on the Consent Calendar.

Enactment No: RES 1271-2016A

7F. [16-301](#) Approve Minutes of July 11, 2016

ITEMS REMOVED FROM CONSENT CALENDAR

7E. [16-300](#) Approve Scope of Services for a Market Research Study Regarding Marketing and Promotion of Fort Bragg to Out-of-Area Visitors

Administrative Services Director Schneider clarified information regarding the scope of services for the marketing and promotion study.

A motion was made by Vice Mayor Peters, seconded by Councilmember Cimolino, that this Scope of Work be approved. The motion carried by the following vote:

Aye: 3 - Vice Mayor Peters, Councilmember Cimolino and Mayor Turner

No: 1 - Councilmember Hammerstrom

Absent: 1 - Councilmember Deitz

8. CLOSED SESSION

ADJOURNMENT

Mayor Turner adjourned the meeting at 9:28 PM.

DAVE TURNER, MAYOR

June Lemos, City Clerk

IMAGED (_____)