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, November 14, 2016 | **6:00 PM** | **Town Hall, 363 N. Main Street**

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

AGENDA REVIEW

1. MAYOR'S RECOGNITIONS AND ANNOUNCEMENTS

1A. 16-435 Presentation of Proclamation Recognizing Heather Paulsen on Receiving the B Corp "Building the Movement" Award

Attachments: 24-2016 Heather Paulsen Building the Movement Award

2A. 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 speak 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. If necessary, an additional 30 minutes shall be allotted to public comments after Conduct of Business, but only if the first 30-minute Public Comment period was not sufficient to allow all those who wished to speak to do so. Any citizen, after being recognized by the Mayor or acting Mayor, may speak on any topic that may be a proper subject for discussion before the City Council for such period of time as the Mayor or acting Mayor may determine is appropriate under the circumstances of the particular meeting, including 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.

3. STAFF COMMENTS

3A. 16-447 The City's New Street Sweeper

Attachments: Photo 1: Global M-4 Street Sweeper

Photo 2: Global M-4 Street Sweeper

4. MATTERS FROM COUNCILMEMBERS

5. CONSENT CALENDAR

All items under the consent calendar will be acted upon in one motion unless a Councilmember requests that an individual item be taken up under CONDUCT OF BUSINESS

5A. 16-432 Adopt by Title Only and Waive Second Reading of Ordinance 926-2016 Amending Chapter 6.14 (Licensing of Tobacco Sellers) and Chapter 6.18 (Smoking Pollution Control and Health Protection Regulations) of the Fort Bragg Municipal Code to Modify Tobacco Retailer Licensing Regulations and Smoking Prohibitions to Include Electronic Smoking Device

Attachments: ORD#926 Tobacco Ordinance

5B. 16-433 Adopt by Title Only and Waive Second Reading of Ordinance 927-2016 Adding Chapter 9.33 (Cannabis Manufacturing) to Title 9 (Public Peace, Safety and Morals) of the Fort Bragg Municipal Code

Attachments: ORD#927 Cannabis Manufacturing

5C. 16-444 Adopt City Council Resolution Downgrading the City of Fort Bragg's Water Emergency from Stage 2 to Stage 1

Attachments: RESO Rescind Stage 2 Replace with Stage 1 Water Emergency Nov 2016

5D. 16-445 Adopt City Council Resolution Approving Sublease of a Portion of the Skunk Depot Parking Lot to North Coast Brewing Company and Authorizing City Manager to Execute Same

Attachments: RESO North Coast Brewing Sublease Agreement

North Coast Brewing Co., Inc. Parking Lot Sublease

5E. 16-460 Adopt City Council Resolution Authorizing Expenditure of Asset Forfeiture Funds and Amending the FY 2016-17 Budget (Budget Amendment No. 2017-11) to Purchase Two New 2015 Ford Taurus Vehicles (Amount Not to Exceed $50,000; Transfer from Asset Forfeiture Account No. 167-7999-0799 to Fleet Account No. 522-4550-0742)

Attachments: RESO PD Taurus Purchase

5F. 16-450 Approve City Council Letter in Support of Economic Development & Financing Corporation Application to the Intermediary Relending Program

Attachments: 2016-11-14 Fort Bragg-EDFC IRP Support Letter

5G. 16-458 Receive and File Minutes of August 23, 2016 Community Development Committee Meeting

Attachments: CDCM 08232016

5H. 16-434 Approve Minutes of October 24, 2016

Attachments: CCM2016-10-24

6. 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.

6A. 16-439 Receive Report and Conduct Public Hearing for Disclosure of Accomplishments and Closeout of Activities Funded by Community Development Block Grant (CDBG) 14-CDBG-9731

Attachments: 11142016 OTC 14-CDBG-9731 CloseOut Report

Attachment 1 - Close Out Public Hearing Notice

7. CONDUCT OF BUSINESS

7A. 16-442 Receive Report from Janet Self, Executive Director of Flockworks, and Consider Adoption of Resolution Approving First Amendment to Lease Agreement with Flockworks and Authorizing City Manager to Execute Same

Attachments: 11142016 Oral Report Flockworks

Attachment 1 - Letter to Council from Flockworks 10-31-2016

Attachment 2 - Flockworks Article

Attachment 3 - Flockworks Brochure

Attachment 4 - Flockworks Lease Agreement 12-09-2014

Attachment 5 - RESO Flockworks Lease Amendment

Attachment 6 - Flockworks Lease Amendment

7B. 16-443 Receive Recommendation of Public Works & Facilities Committee and Provide Direction to Staff Regarding Electric Vehicle Charging Stations

Attachments: 11142016 EV Charging Station Report

Attachment 1 - EV Charging Station Locations

Attachment 2 - EV Fee Based Station

Attachment 3 - EV Stations PG&E Elec Charges

Attachment 4 - EV Stations Signage

7C. 16-440 Receive Recommendation from Community Development Committee to Host a Mural Competition in Fort Bragg and Provide Direction to Staff

Attachments: 11142016 Mural Competition

Attachment 1 - Potential Mural Locations

Attachment 2 - Mural Samples

7D. 16-441 Adopt City Council Resolution Awarding the Contract for the Chestnut Street Corridor Project, City Project No. 2015-04 to Akeff Construction Services of Fort Bragg, Authorizing City Manager to Execute Contract (Amount Not to Exceed $1,379,313.00; Account No. 413-5009-0731 and 413-4950-0731) and Approving Budget Amendment No. 2017-06 for $563,313 Amending the FY 2016/17 Budget to Appropriate from Special Sales Tax - Street Repair, Fund 250 to Account No. 413-4950-0731

Attachments: 11142016 Chestnut St Corridor Staff Report

Attachment 1 - RESO Chestnut Corridor Project Constr Contract Award

Attachment 2 - RESO Budget Amendment Chestnut Street Project

Attachment 3 - Chestnut Street Bid Opening

Attachment 4 - Akeff Construction Contract

7E. 16-461 Receive Report and Adopt Resolution Authorizing Execution of a Grant Agreement, Committing Match Funding of $27,368, and Amending the FY 2016-17 Budget (Budget Amendment No. 2017-12) for Purchase of Up To Twenty Body-Worn Cameras and Associated Equipment for the Body-Worn Camera Policy and Implementation Program (Amount Not to Exceed $25,219.00; Account No.110-4200-0381)

Attachments: 11142016 BWC Grant Execution-Match Approval Report

Attachment 1 - RESO BWC Grant Execution and Match Commitment

Attachment 2 - BWC Grant Award Documents

7F. 16-457 Receive Report and Provide Direction to Staff Regarding Proposed Amendments to Article 3 and Article 4 of the Fort Bragg Municipal Code Title 18, the Inland Land Use and Development Code (ILUDC)

Attachments: 11142016 Inland Land Use and Development Code Update - Articles 3 & 4

Attachment 1 - ILUDC Article 3 11-14-2016

Attachment 2 - ILUDC Article 4 11-14-2016

2B. PUBLIC COMMENTS ON NON-AGENDA, CONSENT CALENDAR & CLOSED SESSION ITEMS (30 Minutes, If Necessary)

The second 30-minute Public Comment period shall only be held if the first 30-minute Public Comment Period was not sufficient to allow all those wishing to speak to do so. Please see 2A above.

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, NOVEMBER 28, 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 November 9, 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

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Text File

File Number: 16-435

Agenda Date: 11/14/2016 **Version:** 1 **Status:** Mayor's Office

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

Agenda Number: 1A.

Presentation of Proclamation Recognizing Heather Paulsen on Receiving the B Corp "Building the Movement" Award

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

RECOGNIZING HEATHER PAULSEN ON RECEIVING THE CERTIFIED B CORPORATION 2016 "BUILDING THE MOVEMENT" AWARD

WHEREAS, Certified B Corporations are leading a global movement to create an economy in which businesses compete to be the best ***for*** the world so there is a shared and durable prosperity for all; and

WHEREAS, Certified B Corps are for-profit companies certified by the nonprofit B Lab to meet rigorous standards of social and environmental performance, accountability and transparency; and

WHEREAS, there are more than 1900 Certified B Corps worldwide in over 50 countries and 130 industries, all sharing one goal, to use business as a force for good; and

WHEREAS, each year B Lab awards a "Building the Movement" award to the individual who most helped impact the growth of the B Corp community over the past year; and

WHEREAS, Mendocino County is currently home to nine Certified B Corps, including Harvest Market, North Coast Brewing Company, Thanksgiving Coffee Company, Fetzer Vineyards, Beckman Printing, Eleek and Heather Paulsen Consulting; and

WHEREAS, Heather Paulsen has supported six of the nine Mendocino County B Corps to become Certified B Corporations and to engage them as active members in the B Corp community; and

WHEREAS, Heather spearheaded the formation of the Mendocino County B Corps group and created educational opportunities for its members; and

WHEREAS, the "Building the Movement" Award for 2016 was awarded to Heather Paulsen Consulting for her collaboration on a year-long series of webinars and workshops to help B Corps engage suppliers and grow the B Corp movement.

NOW, THEREFORE, I, Dave Turner, Mayor of the City of Fort Bragg, on behalf of the entire City Council, do hereby acknowledge Heather Paulsen for her achievement in receiving the Certified B Corporation 2016 "Building the Movement" Award.

SIGNED this 14th day of November, 2016.

_____

DAVE TURNER, Mayor

ATTEST:

_____

June Lemos, City Clerk

No. 24-2016

City of Fort Bragg

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Text File

File Number: 16-447

Agenda Date: 11/14/2016 **Version:** 1 **Status:** Staff Comments

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

Agenda Number: 3A.

The City's New Street Sweeper

Public Works Director Varga will update the City Council on the City's new street sweeper during Staff Comments. These photographs are provided as a visual aid.

GLOBAL
M4
GLOBAL
ENVIRONMENTAL PRODUCTS
CITY OF FORT BRAGG
CALIFORNIA
CLEAN SHAFTS DAILY
NO STEP
NO STEP

GLOBAL
CAUTION
NO JACK
NO JACK
56

City of Fort Bragg

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Text File

File Number: 16-432

Agenda Date: 11/14/2016 **Version:** 1 **Status:** Consent Agenda

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

Agenda Number: 5A.

Adopt by Title Only and Waive Second Reading of Ordinance 926-2016 Amending Chapter 6.14 (Licensing of Tobacco Sellers) and Chapter 6.18 (Smoking Pollution Control and Health Protection Regulations) of the Fort Bragg Municipal Code to Modify Tobacco Retailer Licensing Regulations and Smoking Prohibitions to Include Electronic Smoking Device

On November 14, 2016, the City Council of the City of the City of Fort Bragg will consider adoption of Ordinance No. 926-2016, said ordinance having been introduced for first reading (by title only and waiving further reading of the text) on October 24, 2016.

The proposed ordinance will amend Chapter 6.14 (Licensing of Tobacco Sellers) and Chapter 6.18 (Smoking Pollution Control and Health Protection Regulations) of the Fort Bragg Municipal Code to modify tobacco retailer licensing regulations and smoking prohibitions to include electronic smoking devices. This amendment also: (1) Updates the definitions to include electronic smoking devices and related terminology to bring the current Ordinance into compliance with new California law; (2) States that tobacco products cannot be sold to a person under the minimum age for purchase pursuant to state and federal laws; and (3) States that smoking is prohibited in all public parks and facilities.

If adopted, Ordinance 926-2016 will become effective December 14, 2016.

BEFORE THE CITY COUNCIL OF THE CITY OF FORT BRAGG

AN ORDINANCE AMENDING CHAPTER 6.14 (LICENSING OF TOBACCO SELLERS) AND CHAPTER 6.18 (SMOKING POLLUTION CONTROL AND HEALTH PROTECTION REGULATIONS) OF THE FORT BRAGG MUNICIPAL CODE TO MODIFY TOBACCO RETAILER LICENSING REGULATIONS AND SMOKING PROHIBITIONS TO INCLUDE ELECTRONIC SMOKING DEVICES	**ORDINANCE NO. 926-2016**

WHEREAS, the hazards related to exposure to secondhand smoke are well documented and have been determined to be detrimental to human health even in the open air; and

WHEREAS, the US Surgeon General warns that there is no risk-free level of exposure to secondhand smoke; and

WHEREAS, Governor Jerry Brown signed SBX2-7 into law effectively raising the legal age permitting the use of tobacco and tobacco related products from 18 to 21 effective June 9, 2016; and

WHEREAS, Governor Jerry Brown signed SBX2-75 into law effectively including electronic smoking devices, such as electronic cigarettes ("e-cigarettes"), that deliver nicotine or other vaporized liquids, under the "tobacco" and "tobacco products" definitions; and

WHEREAS, laws restricting the use of electronic smoking devices have benefits to the public as evidenced by the following:

- Research has found at least ten chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm, such as formaldehyde, acetaldehyde, lead, nickel, and toluene associated with electronic smoking devices; and
- More than one study has concluded that exposure to vapor from electronic smoking devices may cause passive or second hand vaping; and
- The use of electronic smoking devices in smoke-free locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment; and

WHEREAS, the State of California's Tobacco Education and Research Oversight Committee "opposes the use of e-cigarettes in all areas where other tobacco products are banned;" and

WHEREAS, in order to protect the public health, the City Council of the City of Fort Bragg desires to amend its existing ordinances addressing tobacco licensing, sales, and use to include the licensing, sales and use of electronic smoking devices;

NOW, THEREFORE, the City Council of the City of Fort Bragg ordains as follows:

Section 1. **Legislative Findings.** The City Council hereby finds as follows:

1. Numerous studies have established that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke is a cause of disease in nonsmokers.
2. Numerous studies have established electronic smoking devices are designed to be used in the similar manner to conventional lighted tobacco products with the user exhaling a smoke-like aerosol that mimics the exhaled smoke from lighted conventional tobacco products. Because electronic smoking devices may contain (and thus emit) nicotine, tobacco and/or other particulates, their use undermines the City's smoke-free air laws and hazardously exposes the public to secondhand aerosols that have not been scientifically proven as safe.
3. The purpose of the ordinance codified in this chapter is to protect the public health and welfare by prohibiting or regulating smoking in certain places; to guarantee the right of nonsmokers to breathe smoke-free air; and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.
4. There is no possibility that the adoption of this ordinance will have a significant impact on the environment, and therefore, the adoption of this ordinance is exempt from the California Environmental Quality Act ("CEQA"), pursuant to Section 15061(b)(3) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations).

Section 2.

TITLE 6 – HEALTH AND SANITATION

Chapter 6.14: Licensing of Tobacco Sellers

Section 6.14.010 entitled **Definitions** is hereby amended by the following:

6.14.010 DEFINITIONS.

The definition of ***TOBACCO PRODUCT*** is amended to read as follows:

TOBACCO PRODUCT. Means any of the following:

A. Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff;
B. Any electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah.
C. Any component, part, or accessory of a tobacco product, whether or not sold separately.
D. "Tobacco product" does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for an approved purpose.

The definition of ***TOBACCO SELLER*** is amended to read as follows:

TOBACCO SELLER. Any person who sells, offers for sale, or offers to exchange, tobacco products, as defined in this section, for any form of consideration. "Tobacco selling" shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco or tobacco products sold, offered for sale, exchanged, or offered for exchange.

Section 6.14.020 entitled **Requirement for Tobacco Seller's License** is amended as follows:

6.14.020 REQUIREMENT FOR TOBACCO SELLER'S LICENSE.

A. It shall be unlawful for any person to act as a tobacco seller without first obtaining and maintaining a valid Tobacco Seller's license pursuant to this Chapter for each location at which that activity is to occur. No license may be issued to authorize tobacco selling at other than a fixed location. For example, tobacco selling by persons on foot or from vehicles are prohibited.

B. The term of a license is one year from the date of issuance, unless earlier suspended, terminated or revoked pursuant to Section 6.14.090. Each licensed tobacco seller shall apply for the renewal of his or her Tobacco Seller's license no later than thirty (30) days prior to its expiration.

C. Nothing in this Chapter shall be construed to grant any person obtaining and maintaining a Tobacco Seller's license any status or right other than the right to act as a tobacco seller at the location in the City identified on the face of the license. For example, nothing in this Chapter shall be construed to render inapplicable, supersede, or apply in lieu of any other provision of applicable law, including, without limitation, any condition or limitation on smoking in enclosed places of employment made applicable to business establishments by Cal. Labor Code §6404.5.

D. It is the responsibility of each licensed tobacco seller to be informed regarding all laws applicable to tobacco selling, including those laws affecting the issuance of a tobacco and E-cigarette seller's license. No licensed tobacco seller may rely on the issuance of a license as a determination by the City that the tobacco seller has complied with all laws applicable to tobacco selling.

Section 6.14.022 is hereby added to Chapter 6.14 as follows:

6.14.022 PERFORMANCE STANDARDS; DEEMED APPROVED ACTIVITIES

An activity shall retain its 'deemed approved' status only if it conforms to all of the following deemed approved performance standards:

A. The tobacco seller does not offer illegal paraphernalia for sale. The offering of sale of such items shall result in immediate suspension of a Tobacco Seller's license;

B. The tobacco seller does not sell tobacco products to a person under the minimum age for purchase pursuant to state and federal laws;

C. The tobacco seller does not adversely affect the peace or safety of persons residing or working in the surrounding area;

D. The tobacco seller's activities do not result in repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, harassment of passersby, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, curfew violations, or police detentions and arrests;

E. The tobacco seller's activities do not result in violations to any applicable provision of any other city, state, or federal regulation, ordinance or statute;

F. The tobacco seller's upkeep and operating characteristics are compatible with and will not adversely affect the livability or appropriate development of the surrounding neighborhood.

Section 3.

TITLE 6 – HEALTH AND SANITATION

Chapter 6.18: Smoking Pollution Control and Health Protection Regulations

Section 6.18.030 entitled **Definitions** is hereby amended as follows:

6.18.030 DEFINITIONS.

The following definition is added to this section:

ELECTRONIC SMOKING DEVICE. An electronic and/or battery-operated device, the use of which may resemble traditional smoking and that can be used to deliver an inhaled dose of nicotine or other substances including any component, part, or accessory of such a device, whether or not sold separately. The term includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an e-cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, an electronic vape or vaping pen, or any other product name or descriptor that is used for the purpose of circumventing the prohibition of smoking. The term does not include any inhaler prescribed by a licensed doctor.

The definition of ***SMOKING*** is amended to read as follows:

SMOKING. Inhaling, exhaling, burning, or the carrying, holding or operating, of any lighted or heated tobacco product intended for inhalation, whether natural or synthetic, in any manner or form. Smoking also means the use of an electronic smoking device that creates an aerosol or vapor, in any manner or any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking.

Section 6.18.050D is amended to read as follows:

6.18.050 PROHIBITION OF SMOKING IN PUBLIC PLACES.

D. *Public Parks and Facilities*.

Smoking shall be prohibited in all public parks and facilities in the City of Fort Bragg.

Section 4. **Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council of the City of Fort Bragg hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

Section 5. **Effective Date and Publication.** This ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage. Within fifteen (15) days after the passage of this Ordinance, the City Clerk shall cause a summary of said Ordinance to be published as provided in Government Code §36933, in a newspaper of general circulation published and circulated in the City of Fort Bragg, along with the names of the City Council voting for and against its passage.

The foregoing Ordinance was introduced by Councilmember Peters at a regular meeting of the City Council of the City of Fort Bragg held on October 24,

2016, and adopted at a regular meeting of the City of Fort Bragg held on November 14, 2016, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSED:

_____
Dave Turner
Mayor

ATTEST:

_____
June Lemos
City Clerk

PUBLISH: **October 27, 2016 and November 23, 2016 (by summary).**
EFFECTIVE DATE: **December 14, 2016.**

City of Fort Bragg

416 N Franklin Street
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Phone: (707) 961-2823
Fax: (707) 961-2802

Text File

File Number: 16-433

Agenda Date: 11/14/2016 **Version:** 1 **Status:** Consent Agenda

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

Agenda Number: 5B.

Adopt by Title Only and Waive Second Reading of Ordinance 927-2016 Adding Chapter 9.33 (Cannabis Manufacturing) to Title 9 (Public Peace, Safety and Morals) of the Fort Bragg Municipal Code

On November 14, 2016, the City Council of the City of Fort Bragg is to consider adoption of Ordinance No. 927-2016, said ordinance having been introduced for first reading (by title only and waiving further reading of the text) on October 24, 2016.

The proposed ordinance will add Chapter 9.33 (Cannabis Manufacturing) to Title 9 (Public Peace, Safety and Morals) of the Fort Bragg Municipal Code. This new set of regulations would allow cannabis manufacturing uses to operate in the Light Industrial and Heavy Industrial zoning districts of Fort Bragg with an approved Use Permit.

If adopted, Ordinance 927-2016 will become effective December 14, 2016.

BEFORE THE CITY COUNCIL OF THE CITY OF FORT BRAGG

AN ORDINANCE ADDING CHAPTER 9.33 (CANNABIS MANUFACTURING) TO TITLE 9 (PUBLIC PEACE, SAFETY AND MORALS) OF THE FORT BRAGG MUNICIPAL CODE	**ORDINANCE NO. 927-2016**

WHEREAS, the City of Fort Bragg ("City") does not currently allow cannabis manufacturing within City limits; and

WHEREAS, the State of California has adopted Assembly Bill (AB) 243, AB 266 and Senate Bill (SB) 643, jointly referred to as the Medical Marijuana Regulation and Safety Act (MMRSA); and

WHEREAS, the State of California will not issue licenses under MMRSA until January 2018; and

WHEREAS, local governments may choose to adopt new ordinances to permit or license local cannabis businesses in preparation for state licensing; and

WHEREAS, on May 9, 2016, City Council of the City of Fort Bragg ("City Council") sought to establish rules and regulation by which cannabis manufacturing may be permitted; and

WHEREAS, through multiple public meetings, the Public Safety Committee, Fort Bragg Police Department and City staff have received input from citizens and discussed various options for permitting cannabis manufacturing, and

WHEREAS, a new set of regulations has been prepared for cannabis manufacturing that would allow cannabis manufacturing uses to operate in the Light Industrial and Heavy Industrial zoning districts with an approved Use Permit; and

WHEREAS, on September 12, 2016, City Council reviewed a draft cannabis manufacturing ordinance; and

WHEREAS, City Council has determined that Chapter 9.33 Cannabis Manufacturing Ordinance should be added to the Municipal Code, and that such changes will not possibly have a significant effect on the environment.

NOW, THEREFORE, the City Council ordains as follows:

Section 1. **Legislative Findings.** The City Council hereby finds as follows:

1. The foregoing recitals are true and correct and are made a part of this resolution.
2. Adding Chapter 9.33 to the Municipal Code in the manner described will ensure that cannabis manufacturing uses are effectively regulated so that they will not be detrimental to the public interest, health, safety, convenience or welfare of the City.

3. There is no possibility that the adoption of this ordinance will have a significant impact on the environment, and therefore, the adoption of this ordinance is exempt from the California Environmental Quality Act ("CEQA"), pursuant to Section 15061(b)(3) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations).

Section 2.

TITLE 9 – PUBLIC PEACE, SAFETY AND MORALS

Chapter 9.33 entitled **CANNABIS MANUFACTURING** is hereby added as follows:

CHAPTER 9.33: CANNABIS MANUFACTURING

Section

9.33.010 Purpose and intent
9.33.020 Definitions
9.33.030 Permit required
9.33.040 Applications
9.33.050 Time limit for filing application for permit
9.33.060 Term of permits and renewals
9.33.070 Fees
9.33.080 Investigation and action on application
9.33.090 Grounds for rejection of cannabis manufacturing use permit application
9.33.100 Appeal from Chief of Police decision to reject application
9.33.110 Processing of cannabis manufacturing use permit
9.33.120 Operating requirements
9.33.130 Minors
9.33.140 Display of permit
9.33.150 Registration of new employees
9.33.160 Transfer of permits
9.33.170 Suspension and revocation — notice
9.33.180 Suspension and revocation — grounds
9.33.190 Suspension and revocation — appeals
9.33.200 Suspension or revocation without hearing
9.33.210 Separate offense for each day
9.33.220 Public nuisance
9.33.230 Criminal penalties
9.33.240 Civil injunction
9.33.250 Administrative remedies
9.33.270 Severability

§ 9.33.010 PURPOSE AND INTENT.

It is the purpose and intent of this ordinance to regulate Cannabis Manufacturing in order to promote the health, safety, morals, and general welfare of the residents and businesses within the City.

§ 9.33.020 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words or phrases not specifically defined in this code shall have the meaning ascribed to them as defined in the following sources: Compassionate Use Act of 1996 (California Health and Safety Code Section 11362.5); Medical Marijuana Program Act (California Health and Safety Code Section 11362.7 through 11362.83); and Medical Marijuana Regulation and Safety Act of 2015 (enacted by Assembly Bill (AB) 243, AB 266 and Senate Bill 643).

APPLICANT. A person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a cannabis manufacturing use.

CHIEF OF POLICE. The Chief of Police of the City of Fort Bragg or the authorized representatives thereof.

CHURCH. A structure or leased portion of a structure which is used primarily for religious worship and related religious activities.

CONTROLLED SUBSTANCES. A drug, substance, or immediate precursor which is listed in any schedule in Cal. Health and Safety Code §§ 11054, 11055, 11056, 11057, or 11058.

DRUG PARAPHERNALIA. Shall have the same definition as Cal. Health and Safety Code § 11364.5, and as may be amended.

CANNABIS. Shall have the same definition as defined by State law.

CANNABIS MANUFACTURING. A process where cannabis is transformed into a product (such as food, medicine, oil, clothing, textile, etc.), and the production, preparation, propagation, or compounding of cannabis or cannabis products, directly or indirectly.

PERMITTEE. The person to whom a cannabis manufacturing permit is issued.

PERSON WITH AN IDENTIFICATION CARD. Shall have the same definition as Cal. Health and Safety Code § 11362.7, and as may be amended.

PRIMARY CAREGIVER. Shall have the same definition as Cal. Health and Safety Code §§ 11362.5 and 11362.7, and as may be amended.

QUALIFIED PATIENT. Shall have the same definition as Cal. Health and Safety Code §§ 11362.5 and 11362.7, and as may be amended.

SCHOOL. An institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code, or any child or day care facility. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher education, including a community or junior college, college, or university.

§ 9.33.030 PERMIT REQUIRED.

It shall be unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the City the operation of a cannabis manufacturing use unless the person first obtains and continues to maintain in full force and effect a cannabis manufacturing permit from the City as herein required.

§ 9.33.040 APPLICATIONS.

A. All applications for cannabis manufacturing permits shall be filed with the Chief of Police. The application shall be made under penalty of perjury.

B. Any application for a cannabis manufacturing permit shall include the following information:

1. The full name, present address, and telephone number of the applicant;
2. The address to which notice of action on the application and all other notices are to be mailed;
3. Previous addresses for the past five years immediately prior to the present address of the applicant;
4. Written proof that the applicant is over 21 years of age;
5. Photographs for identification purposes (photographs shall be taken by the Police Department);
6. The cannabis business history of the applicant, including whether the person, in previously operating in any city, county, or state under permit, has had a permit revoked or suspended and, if so, the reason therefor;

7. The name or names of the person or persons having the management or supervision of applicant's business;

8. Whether the person or persons having the management or supervision of applicant's business have been convicted of a crime(s), the nature of the offense(s), and the sentence(s) received therefor;

9. The names of all employees, independent contractors, and other persons who will work at the cannabis manufacturing use;

10. A security plan ensuring the safety of employees and visitors from criminal activity, including theft and unauthorized entry;

11. A sketch or diagram showing the interior configuration of the premises, including a statement of the total floor area occupied by the cannabis manufacturing use and the purpose and security of each room or area of operation;

12. A diagram illustrating the use and coverage of security cameras, security lighting, and necessary access restrictions;

13. Security measures ensuring the safety of employees and visitors from criminal activity, including theft and unauthorized entry;

14. Detailed operating procedures, which shall include the following:

a. Proposed hours of operation;

b. How the business will comply with applicable State regulations;

c. Product safety and quality assurances;

d. Record keeping procedures;

e. Product recall procedures;

f. A solid waste disposal plan, with certification that waste transport entities and disposal facilities have agreed to haul and receive solid waste produced by the cannabis manufacturing use.

g. Product supply chain information (cultivation, testing, transportation, packaging and labeling);

h. An odor prevention plan, illustrating how the use will be consistent with §17.30.080(J) and/or §18.30.080(J). The odor prevention plan may include an odor absorbing ventilation and exhaust system or other measures to ensure the use does not produce odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public; and

i. Other information as required by the Chief of Police as necessary to ensure the project's compliance with local, state and federal regulations.

14. Authorization for the City, its agents and employees to seek verification of the information contained within the application; and

15. A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct.

C. If the applicant has completed the application improperly, or if the application is incomplete, the Chief of Police shall, within ten (10) days of receipt of the original application, notify the applicant of the fact and, on request of the applicant, grant the applicant an extension of time of ten (10) days or more to submit a complete application.

D. The fact that an applicant possesses other types of state or City permits or licenses does not necessarily exempt the applicant from the requirement of obtaining a cannabis manufacturing permit.

§ 9.33.050 TIME LIMIT FOR FILING APPLICATION FOR PERMIT.

All persons who possess an outstanding business license heretofore issued for cannabis manufacturing must apply for and obtain a cannabis manufacturing permit within 90 days of the effective date of this ordinance. Continued operation of a cannabis manufacturing use without a permit more than 90 days after the effective date of this ordinance shall constitute a violation of this chapter.

§ 9.33.060 TERM OF PERMITS AND RENEWALS.

Cannabis manufacturing permits issued under this chapter shall expire one year following their issuance. Cannabis manufacturing permits may be renewed by the Chief of Police for additional one-year periods upon application by the permittee, unless the permit is suspended or revoked subject to § 9.33.180. Applications for renewal shall be made at least 45 days before the expiration date of the permit and shall be accompanied by the nonrefundable fee referenced in § 9.33.070. When made less than 45 days before the expiration date, the expiration of the permit will not be stayed. Applications for renewal shall be acted on as provided herein for action upon applications for permits. The Chief of Police may deny an application for renewal based on any of the grounds referenced in §§ 9.33.090 and 9.33.180. An applicant aggrieved by the Chief of Police's decision to deny a renewal of a cannabis manufacturing permit may appeal pursuant to § 9.33.100.

§ 9.33.070 FEES.

Every application for a cannabis manufacturing permit or renewal shall be accompanied by a nonrefundable fee, as established by resolution adopted by the City Council from time to time. This application or renewal fee is in addition to fingerprinting, photographing, and background check costs and shall be in addition to any other permit fee imposed by this code or other governmental agencies. Fingerprinting, photographing, and background check fees will be as established by resolution adopted by the City Council from time to time.

§ 9.33.080 INVESTIGATION AND ACTION ON APPLICATION.

After the making and filing of the application for the cannabis manufacturing permit and the payment of the fees, the Chief of Police shall conduct a background check of the applicant and all employees and conduct an investigation of the application. After the background checks and investigation are complete, the Chief of Police shall either formally accept or reject the application in accordance with the provisions of this chapter.

§ 9.33.090 GROUNDS FOR REJECTION OF CANNABIS MANUFACTURING PERMIT APPLICATION.

The grounds for rejection of a cannabis manufacturing permit application shall be one or more of the following:

A. The business or conduct of the business at a particular location is prohibited by any local or state law, statute, rule, or regulation;

B. The applicant has violated any local or state law, statute, rule, or regulation respecting a cannabis business;

C. The applicant has knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the application for a permit;

D. The applicant, his or her agent or employees, or any person who is exercising managerial authority on behalf of the applicant has been convicted of a felony, or of a misdemeanor involving moral turpitude, or the illegal use, possession, transportation, distribution, or similar activities related to controlled substances, with the exception of marijuana related offenses for which the conviction occurred prior to passage of Proposition 215. A conviction within the meaning of this section means a guilty plea or verdict or a conviction following a plea of nolo contendere;

E. The applicant has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices;

F. The applicant is under 21 years of age;

G. The cannabis manufacturing use does not comply with Title 18 (Land Use and Development Code); and/or

H. The required application or renewal fees have not been paid.

(Ord. 850, passed 6-13-2005)

§ 9.33.100 APPEAL FROM CHIEF OF POLICE DECISION TO REJECT APPLICATION.

The Chief of Police shall cause a written notice of his or her decision to reject a cannabis manufacturing permit application to be mailed to the applicant by certified U.S. mail, postage prepaid, return receipt requested, to the address provided by the applicant for sending of notices. An applicant aggrieved by the Chief of Police's decision to reject an application may appeal the decision in accordance with the procedures described in Chapter 1.08. If an appeal is not taken within such time, the Chief of Police's decision shall be final.
(Ord. 900, § 11, passed 12-12-2011)

§ 9.33.110 PROCESSING OF CANNABIS MANUFACTURING PERMIT.

If an application is not rejected by the Chief of Police, it shall be forwarded to the Community Development Department for processing using the same permit process and requirements for a Use Permit as defined in Title 17 (Coastal Land Use and Development Code) and Title 18 (Land Use and Development Code).

§ 9.33.120 OPERATING REQUIREMENTS.

A cannabis manufacturing use shall meet the following operating requirements for the duration of the use.

A. The design, location, size and operating characteristics of the cannabis manufacturing use shall comply with the findings and conditions of the Use Permit.

B. A cannabis manufacturing use shall maintain a current register of the names of all employees currently employed by the use.

C. The building entrance to a cannabis manufacturing use shall be clearly and legibly posted with a notice indicating that persons under the age of 21 are precluded from entering the premises unless they are a qualified patient or a primary caregiver and they are in the presence of their parent or legal guardian.

D. No cannabis or cannabis product shall be smoked, ingested, or otherwise consumed on the project site. The term "project site" includes the actual building, as well as any accessory structures, parking areas, or other immediate surroundings. The building entrance to a cannabis manufacturing use shall be clearly and legibly posted with a notice indicating that smoking, ingesting or consuming marijuana on the premises or in the vicinity of the cannabis manufacturing use is prohibited.

E. No marijuana shall be grown or cultivated on the premises of the cannabis manufacturing use.

F. No cannabis manufacturing use shall hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. In addition, alcohol shall not be provided, stored, kept, located, sold, dispensed, or used on the premises of the cannabis manufacturing use.

G. No cannabis manufacturing use shall conduct or engage in the commercial sale of any product, goods or service. The term "commercial sale" does not include the provision of cannabis on terms and conditions consistent with this chapter and applicable law.

H. No accessory uses shall be permitted in conjunction with a cannabis manufacturing use.

I. No cannabis manufacturing use shall sell or display any drug paraphernalia or any implement that may be used to administer cannabis.

J. A cannabis manufacturing use shall provide adequate security on the premises, including lighting and alarms, to ensure the safety of employees and visitors from criminal activity, including theft and unauthorized entry.

K. A cannabis manufacturing use shall provide the Chief of Police with the name, phone number, and email of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the cannabis manufacturing use.

L. A cannabis manufacturing use shall meet all the operating criteria for the manufacturing of cannabis as is required pursuant to state law.

§ 9.33.130 MINORS.

A. It shall be unlawful for any permittee, operator, or other person in charge of any cannabis manufacturing use to employ any person who is not at least 21 years of age.

B. Persons under the age of 21 shall not be allowed on the premises of a cannabis manufacturing use unless they are a qualified patient or a primary caregiver and they are in the presence of their parent or legal guardian.

§ 9.33.140 DISPLAY OF PERMIT.

Every cannabis manufacturing use shall display at all times during business hours the permit issued pursuant to the provisions of this chapter for cannabis manufacturing in a conspicuous place so that the same may be readily seen by all persons entering the cannabis manufacturing use.

§ 9.33.150 REGISTRATION OF NEW EMPLOYEES.

A. As a further condition of approval of every cannabis manufacturing permit issued pursuant to this chapter, every owner or operator shall register every employee with the Police Department within five business days of the commencement of the employee's period of employment at the cannabis manufacturing use, in order to provide necessary information to conduct background checks.

B. Each employee shall be required to provide two recent color passport-quality photographs and, at the discretion of the Chief of Police, shall allow himself or herself to be fingerprinted by the Police Department for purposes of identification.

C. Failure to register each new employee within five days of the commencement of employment or to maintain a current register of the names of all employees shall be deemed a violation of the conditions of the permit and may be considered grounds for suspension or revocation of the permit.

§ 9.33.160 TRANSFER OF PERMITS.

A. A permittee shall not operate a cannabis manufacturing use under the authority of a cannabis manufacturing permit at any place other than the address of the cannabis manufacturing use stated in the application for the permit.

B. A permittee shall not transfer ownership or control of a cannabis manufacturing use or transfer a cannabis manufacturing permit to another person unless and until the transferee obtains an amendment to the permit from the Chief of Police stating that the transferee is now the permittee. The amendment may be obtained only if the transferee files an application with the Chief of Police in accordance with § 9.33.040, accompanies the application with a transfer fee in an amount set by resolution of the City Council, and the Chief of Police determines in accordance with § 9.33.090 that the transferee would be entitled to the issuance of an original permit.

C. No permit may be transferred when the Chief of Police has notified the permittee that the permit has been or may be suspended or revoked.

D. Any attempt to transfer a permit either directly or indirectly in violation of this section is hereby declared void, and the permit shall be deemed revoked.

§ 9.33.170 SUSPENSION AND REVOCATION — NOTICE.

A. Any permit issued under the terms of this chapter may be suspended or revoked by the Chief of Police when it appears to him or her that the permittee has committed any one or more of the acts or omissions constituting the grounds for suspension or revocation under this chapter.

B. No permit shall be revoked or suspended by virtue of this section until a hearing has been held by the Chief of Police. Written notice of the time and place of the hearing shall be served upon the person to whom the permit was granted at least five days prior to the date set for the hearing. The

notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending the permit. Notice may be given either by personal delivery to the permittee or by depositing it in the U.S. mail in a sealed envelope, postage prepaid, addressed to the permittee at the address provided by the permittee for sending of notices.

§ 9.33.180 SUSPENSION AND REVOCATION — GROUNDS.

It shall be a ground for suspension or revocation of a permit if any permittee or person, his or her agent, or employee:

A. Does any act which violates any of the grounds set forth in § 9.33.090, which sets forth the grounds for rejection of an application for a permit for the cannabis manufacturing use;

B. Violates any other provision of this chapter or any local or state law, statute, rule, or regulation relating to his or her permitted activity;

C. Conducts the permitted business in a manner contrary to the peace, health, or safety of the public;

D. Fails to take reasonable measures to control the establishment's patrons' conduct resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic-control problems, or creation of a public or private nuisance, or obstruction of the business operation of another business;

E. Violates any provision of Title 15 of this code; or

F. Violates or fails to comply with the terms and conditions of the Use Permit.

§ 9.33.190 SUSPENSION AND REVOCATION — APPEALS.

Any permittee aggrieved by the decision of the Chief of Police in suspending or revoking a permit may, within 10 calendar days, appeal the decision in accordance with the procedures described in Chapter 1.08. If a decision of the Chief of Police to suspend or revoke a permit is not appealed within ten (10) calendar days, the decision of the Chief of Police shall be final.

§ 9.33.200 SUSPENSION OR REVOCATION WITHOUT HEARING.

If any person holding a permit or acting under the authority of the permit under this article is convicted of a misdemeanor in any court for the violation of any law which relates to his or her permit, the Chief of Police shall revoke the permit forthwith without any further action thereof, other than giving notice of revocation to the permittee. If a permit is summarily revoked pursuant to the provisions of this section, a permittee may, within ten (10) calendar days, appeal the revocation in accordance with the procedures described in Chapter 1.08. During the pendency of the appeal, the permit shall be deemed suspended. If the appeal is not taken within ten (10) days, the decision of the Chief of Police shall be final.

§ 9.33.210 SEPARATE OFFENSE FOR EACH DAY.

Any person that violates any provision of this chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.

§ 9.33.220 PUBLIC NUISANCE.

Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is hereby declared a public nuisance and may be abated by the City pursuant to Chapter 6.12 of the Fort Bragg Municipal Code.

§ 9.33.230 CRIMINAL PENALTIES.

Any person who violates, causes, or permits another person to violate any provision of this chapter commits a misdemeanor.

§ 9.33.240 CIVIL INJUNCTION.

The violation of any provision of this chapter shall be and is hereby declared to be a public nuisance and contrary to the public interest and shall, at the discretion of City, create a cause of action for injunctive relief.

§ 9.33.250 ADMINISTRATIVE REMEDIES.

In addition to the civil remedies and criminal penalties set forth above, any person that violates the provisions of this chapter may be subject to administrative remedies, as set forth by City ordinance.

§ 9.33.270 SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, the decision shall not affect the validity of the remaining portions of the ordinance. The City Council of the City hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that one (1) or more sections, subsections, sentences, clauses, or phrases may be held invalid or unconstitutional.

Section 3. **Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council of the City of Fort Bragg hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

Section 4. **Effective Date and Publication.** This ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage. Within fifteen (15) days after the passage of this Ordinance, the City Clerk shall cause a summary of said Ordinance to be published as provided in Government Code §36933, in a newspaper of general circulation published and circulated in the City of Fort Bragg, along with the names of the City Council voting for and against its passage.

The foregoing Ordinance was introduced by Councilmember Peters at a regular meeting of the City Council of the City of Fort Bragg held on October 24, 2016, and adopted at a regular meeting of the City of Fort Bragg held on November 14, 2016, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Dave Turner,
Mayor

ATTEST:

_____
June Lemos
City Clerk

PUBLISH: **October 27, 2016 and November 23, 2016 (by summary).**
EFFECTIVE DATE: **December 14, 2016.**

City of Fort Bragg

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

Text File

File Number: 16-444

Agenda Date: 11/14/2016 **Version:** 1 **Status:** Consent Agenda

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

Agenda Number: 5C.

Adopt City Council Resolution Downgrading the City of Fort Bragg's Water Emergency from Stage 2 to Stage 1

As a precautionary measure acknowledging low source water flows, City Council declared a Stage 2 Water Emergency on September 26, 2016. Since then, throughout the month of October, rain has been plentiful. Consequently, source water flows have recovered to a more reliable level. It is now appropriate to rescind the Stage 2 declaration and replace it with a Stage 1 Water Emergency Declaration. A Stage 1 declaration recognizes the ongoing drought conditions and meets water conservation mandates of the State of California.

RESOLUTION NO. ____*-2016*

RESOLUTION OF THE FORT BRAGG CITY COUNCIL DOWNGRADING THE CITY OF FORT BRAGG'S WATER EMERGENCY FROM STAGE 2 TO STAGE 1

WHEREAS, the City of Fort Bragg continues to experience the effects of the ongoing statewide and local drought; and

WHEREAS, the three surface water sources that supply raw water to the City's municipal water system were flowing at or below historic levels; and

WHEREAS, the City Council of the City of Fort Bragg declared a Stage 2 Water Emergency at its meeting of September 26, 2016 as a precautionary measure until raw water source water started to reliably recover; and

WHEREAS, rainfall during the month of October 2016 has been substantially greater than normal; and

WHEREAS, source waters have reliably recovered; and

WHEREAS, the long range climatological forecast for the winter of 2016/2017 is for normal rainfall.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby rescind the Stage 2 Water Emergency in accordance with Fort Bragg Municipal Code Section 14.06.05; and

BE IT FURTHER RESOLVED that the City Council of the City of Fort Bragg declares a continuing Stage 1 Water Emergency in recognition of the ongoing drought conditions and to meet water conservation mandates of the State of California.

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 14th day of November, 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: 16-445

Agenda Date: 11/14/2016 **Version:** 1 **Status:** Consent Agenda

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

Agenda Number: 5D.

Adopt City Council Resolution Approving Sublease of a Portion of the Skunk Depot Parking Lot to North Coast Brewing Company and Authorizing City Manager to Execute Same

The North Coast Brewing Company (NCBC) has traditionally utilized approximately 10-15% of the City's leased area within the Depot parking lot for its own use - employee parking, pallet storage, truck parking, etc. City staff, Mendocino Railway and NCBC, are interested in formalizing NCBC's use of a portion of the lot. Staff has met with NCBC on several occasions to discuss the sublease. NCBC has requested the use of 12 spaces near their building to be included in the sublease at a rate of $25 per space per month. This would generate approximately $3,000 of revenue in the first year of the lease. Thereafter, the rate increases to $27 per space per month until the end of the lease (October 1, 2018). It is also recommended NCBC be responsible for any necessary signage of its subleased spaces.

Discussions have also included NCBC's use of the northern tip of the parking lot for truck parking. NCBC understands the need for this unmarked area to remain clear at all times and plans to use only the subleased area for any truck loading, unloading and/or parking. Essentially, NCBC would be entitled to utilize the space in whatever ways most benefit their conduct of business as long as it does not interfere with the normal use of the rest of the lot for parking and as long as any equipment and vehicles stay within the boundaries of the areas of the sublease.

Below is a summary of the terms of the sublease:

<u>North Coast Brewing Company (NCBC) Obligations</u>

1. Payment terms
   - $25 per space per month for 12 spaces for Year 1 of the lease; $27 per month per space for Year 2 of the lease
   - Annual payment to "City of Fort Bragg" due within 10 business days of 1st day of lease
   - Annual increases shall be indexed to the Consumer Price Index and effective on each anniversary date of the contract
2. Duration of lease
   - Through October 1, 2018 which is when the current lease between the City and Mendocino Railway expires
3. Installation and maintenance of improvements
   - NCBC to pay for initial signage (including posts) and any subsequent replacements
4. General terms
   - No parking or storage outside of subleased areas
   - NCBC can utilize space however it deems necessary for everyday business functions, as long as these uses do not interfere with the use of the remainder of the parking lot for parking or traffic circulation
   - Insurance and indemnities following normal requirements for City agreements/contracts

<u>City of Fort Bragg Obligations</u>

1. Enforcement of parking regulations
2. Installation and maintenance of improvements

RESOLUTION NO. ____*-2016*

RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING A SUBLEASE AGREEMENT WITH NORTH COAST BREWING CO., INC. FOR RENTAL OF TWELVE PARKING SPACES IN THE LEASED PARKING LOT LOCATED AT THE MENDOCINO RAILWAY PARKING LOT AND AUTHORIZING CITY MANAGER TO EXECUTE SAME

WHEREAS, the City of Fort Bragg (City) currently leases parking spaces in that certain parking lot located between Laurel and Pine Streets and west of Main Street in the City of Fort Bragg, pursuant to a Parking Lease Agreement entered into on October 1, 2008 by and between Mendocino Railway and the City; and

WHEREAS, North Coast Brewing Co., Inc. (NCBC) desires to lease from City a portion of the parking spaces leased by the City under the Parking Lease Agreement for its exclusive use as employee parking, pallet storage, truck loading, and similar business uses; and

WHEREAS, the City desires to lease to NCBC for its exclusive use a portion of the parking spaces leased by the City under the Parking Lease Agreement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby approve the Parking Sublease Agreement with North Coast Brewing Co., Inc. for rental of twelve parking spaces in the leased parking lot located at the Mendocino Railway parking lot and authorizes City Manager to execute same.

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 14th day of November, 2016, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSED:

_____
DAVE TURNER,
Mayor

ATTEST:

_____
June Lemos
City Clerk

PARKING SUBLEASE AGREEMENT

This Parking Sublease Agreement ("**Agreement**") is entered into on November __, 2016 ("**Effective Date**"), by and between the City of Fort Bragg, 416 N. Franklin Street, Fort Bragg, California 95437, a municipal corporation ("**City**") and North Coast Brewing Co., Inc., 455 N. Main Street, Fort Bragg, California 95437, a California corporation, ("**NCBC**"). City and NCBC are hereinafter referred to individually as "**Party**" and collectively as the "**Parties.**"

Recitals

WHEREAS, City currently leases parking spaces in that certain parking lot located between Laurel and Pine Streets and west of Main Street in the City of Fort Bragg, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference ("**Parking Lot**") pursuant to a Parking Lease Agreement entered into on October 1, 2008 by and between the Mendocino Railway and the City ("**Parking Lot Lease**"); and

WHEREAS, NCBC desires to lease from City a portion of the parking spaces leased by the City under the Parking Lot Lease for its exclusive use as employee parking, pallet storage, truck loading, and similar business uses; and

WHEREAS, the City desires to lease to NCBC for its exclusive use a portion of the parking spaces leased by the City under the Parking Lot Lease;

NOW THEREFORE, in consideration of the recitals and obligations of the Parties herein expressed, City and NCBC hereby agree as follows:

Agreement

1. LEASED PREMISES.

City hereby leases to NCBC and NCBC hereby leases from City those certain 12 spaces in the Parking Lot, as more particularly shown in Exhibit B attached hereto and incorporated herein by this reference ("**NCBC Parking Space**").

2. TERM

The term of this Agreement ("Term") shall commence on the Effective Date and shall expire on October 1, 2018.

3. RENT

NCBC shall pay an annual rent, calculated on a monthly basis of $25 per parking space. The first annual payment is due within ten (10) business days of the Effective Date, and the second annual payment is due within ten (10) business days of the anniversary of the Effective Date. The second annual payment shall be increased to $27 per parking space per month.

In the event of an early termination of this Agreement, the City shall have 60 days to rebate a pro-rated portion of the rent to reflect the period paid for but no longer leased.

4. USE

NCBC shall be entitled to use the NCBC Parking Space for its normal business needs, subject to the following limitations: a) its use shall not interfere with the use of the Parking Lot as a whole, and b) its use shall comport with the limitations of the Parking Lot Lease, including without limitation the prohibition on commercial truck parking in the Parking Lot except in the NCBC Parking Space and the use, generation, manufacturing, production, storage, release, discharge, disposal, or transportation of any Hazardous Substance.

A. Both the City of Fort Bragg and Mendocino Railway authorize NCBC to utilize the space specified in the Sub Lease for its normal business operations. This includes company equipment, passenger vehicles, commercial trucks, etc. At no time shall any equipment or vehicles be stored or parked outside of the area specified in the Agreement.

5. "AS-IS" CONDITION OF NCBC PARKING SPACE

NCBC acknowledges and agrees that, except as expressly set forth in this Agreement, City has made, and is making, no representations or warranties of any kind or nature whatsoever respecting the NCBC Parking Space or any part thereof, including, without limitation, the condition of the NCBC Parking Space, the suitability of the NCBC Parking Space for the conduct of NCBC's business thereon, or any other matters (whether or not of public record) respecting the NCBC Parking Space. NCBC acknowledges and agrees that, prior to entering into this Agreement, it has examined and inspected the NCBC Parking Space and has performed such tests and studies and has reviewed all such matters respecting the NCBC Parking to the full extent NCBC has deemed necessary, and that in entering into this Agreement (except as otherwise expressly provided herein), NCBC is not relying upon any representation or warranty of any kind or nature whatsoever by City and that the NCBC Parking Space is acceptable to NCBC in all respects and NCBC is accepting the NCBC Parking Space in its "AS-IS" condition.

6. MAINTENANCE AND REPAIR; IMPROVEMENTS

City shall be responsible for ongoing maintenance, repairs, and improvements to the Parking Lot, inclusive of the NCBC Parking Space, in accordance with and as limited by the Parking Lot Lease, except as otherwise specified in this Section or Section 10. NCBC shall not make any alternations, improvements, or repairs to the NCBC Parking Space without the prior written consent of the City.

A. If the NCBC Parking Space is damaged by NCBC, City is entitled to recover any such amounts incurred in repairing such damage from NCBC.

B. It is anticipated that the NCBC Parking Space will be marked by appropriate signage. City shall install all necessary signage and NCBC shall reimburse the City for its costs. At the termination of the Agreement, NCBC shall be responsible for the costs associated with the City's removal of the signage.

7. PARKING REGULATION ENFORCEMENT

It shall be NCBC's responsibility to clearly indicate the approved use of the NCBC Parking

Space by its agents, owners, invitees, employees, or similar, and shall communicate to the City how it intends to indicate approved use. By way of example, indication may be by the issuance of parking passes to vehicles authorized by NCBC to park in the NCBC Parking Space.

City shall be responsible for all parking regulation enforcement, for example, by the ticketing or removal of vehicles not displaying a NCBC Parking Space pass.

8. RIGHT TO ENTER

The City shall have the right to enter the NCBC Parking Space at all reasonable times for the purposes of inspection, maintenance, repair, or parking regulation enforcement.

9. INSURANCE

NCBC shall procure and maintain at its sole expense a commercial general liability insurance policy in an amount not less than One Million Dollars ($1,000,000) per occurrence against the risk of bodily injury, property damage, and personal injury liability and shall name the City as an additional insured. City and its officials, officers, employees, agents, and volunteers ("Additional Insured") shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of NCBC, products and completed operations of NCBC; premises owned, occupied, or used by NCBC; and automobiles owned, leased, or used by NCBC. The coverage may contain no special limitations on the scope of protection afforded to City or its officials, officers, employees, agents, or volunteers. All policies of insurance shall be maintained with financially sound and responsible insurance companies reasonably acceptable to City and which are admitted to do business as an insurance company in the State of California. NCBC shall provide the City with copy of the insurance at the Effective Date and shall promptly provide updated and renewed copies when received.

10. INDEMNITY

NCBC shall indemnify, protect, defend and hold harmless City, and its elected and appointed officials, officers, agents and employees (collectively, the "**Indemnified Parties**"), from and against any and all claims, actions, liabilities, damages, losses, judgments, costs and expenses (including reasonable attorneys' fees and costs), (collectively "**Claims**") which the Indemnified Parties, or any of them, may suffer or incur arising from any default by NCBC under this Agreement or from NCBC's use of the NCBC Parking Space or from the conduct of NCBC's business or from any activity, work or things done, permitted or suffered by NCBC in or about the NCBC Parking Space, and shall further indemnify, protect, defend and hold harmless the Indemnified Parties, and each of them, from and against any Claims arising from any negligence of NCBC, its agents, contractors, servants, employees, or licensees; provided, that the foregoing indemnity shall not extend to any Claims to the extent arising from the grossly negligent, willful or intentional acts or omissions of the Indemnified Parties, or any of them, as to all of which Claims City shall indemnify, protect, defend and hold harmless NCBC.

11. ASSIGNMENT AND SUBLETTING

NCBC shall not be permitted to sublet all or any portion of the NCBC Parking Space, nor shall NCBC be permitted to assign its interest in this Agreement without City's prior, written

approval. In the event of any subletting of all or any portion of the NCBC Parking Space by NCBC and/or any assignment or attempted assignment of this Agreement by NCBC in violation of the provisions of this Section, City shall be entitled to all remedies provided for in California Civil Code section 1995.320.

12. NO OBSTRUCTION/INTERFERENCE

NCBC shall not interfere with use of the Parking Lot, exclusive of the NCBC Parking Space, by the general public. No walls, fences, or barriers of any sort or kind shall be constructed or maintained by a Party within the Parking Lot; provided, however, that reasonable traffic controls as may be necessary to guide and control the orderly flow of traffic or for security purposes may be installed, so long as access and use of such areas is not unreasonably impaired.

13. TERMINATION

This Agreement shall automatically terminate with the termination of the Parking Lot Lease on October 1, 2018. This Agreement may also be terminated by either Party with 90 days' written notice.

14. REPRESENTATIONS

The Parties hereby represent and warrant that all of the following are true and correct as of the Effective Date:

A. The Party making the representation ("**Representing Party**") has taken all requisite action in connection with the execution of this Agreement and the undertaking of the obligations set forth herein. This Agreement constitutes the legally valid and binding obligation of the Representing Party enforceable against the Representing Party in accordance with its terms, except as it may be affected by bankruptcy, insolvency or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally; and

B. The execution of this Agreement and the acceptance of the obligations set forth herein do not violate any court order or ruling binding upon the Representing Party or any provision of any indenture, agreement or other instrument to which the Representing Party is a party or may be bound. Neither the entry into nor the performance of this Agreement will violate, be in conflict with or constitute a default under any charter, bylaw, partnership agreement, trust agreement, mortgage, deed of trust, indenture, contract, judgment, order or other agreement, charge, right or interest applicable to the Representing Party.

15. SEVERABILITY

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

16. NOTICES

All notices required to be sent in writing shall be sent by Unites States certified mail or by personal delivery, effective upon delivery, to the address provided hereunder. The Parties may change this notice address upon written notice to the other Party.

City:
City of Fort Bragg
416 N. Franklin Street
Fort Bragg, CA 95437
Attention: City Manager
(707) 545-8009

North Coast Brewing Co., Inc.:
North Coast Brewing Co., Inc.
455 N. Main Street
Fort Bragg, CA 95437
Attention: President
(707) 964-2739

With copy to:
Samantha Zutler, City Attorney
Burke, Williams & Sorensen, LLP
101 Howard Street, Suite 400
San Francisco, CA 94105
(415) 655-8100

17. CAPTIONS; CONSTRUCTION

The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree that since both Parties have participated in the negotiation and drafting of this Agreement with the advice of counsel, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

18. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any permitted successor and assign of such Party who has acquired an interest in compliance with this Agreement as if in every case so expressed.

19. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed in the Superior Court of Mendocino County, California.

20. ATTORNEYS' FEES

If either Party commences an action against the other to enforce any obligation contained herein, or to interpret any provision hereof, the prevailing Party shall be entitled to recover from the other Party reasonable attorneys' fees, costs and necessary disbursements, as determined by the court having jurisdiction over the action.

21. INDEMNITY INCLUDES DEFENSE COSTS

In any case where either Party is obligated under an express provision of this Agreement, to indemnify and to save the other Party harmless from any damage or liability, the same shall be deemed to include defense of the indemnitee by the indemnitor, such defense to be through legal counsel reasonably acceptable to the indemnitee.

22. NO THIRD-PARTY BENEFICIARIES

Nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties, any rights or remedies hereunder.

23. ENTIRE AGREEMENT; MODIFICATION

This Agreement, together with Exhibit A and Exhibit B which by this reference are hereby incorporated herein, contains the entire agreement between the Parties relative to the transactions covered hereby. All previous correspondence, communications, discussions, agreements, understandings or proposals and acceptances thereof between the Parties or their representatives, whether oral or written, are deemed to have been integrated into and superseded by this Agreement and are of no further force and effect except as expressly provided in this Agreement.

This Agreement may be amended or modified only by a written instrument executed by the Parties.

24. WAIVER

No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any subsequent breach of the same or any other covenant or provision hereof. No waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the waiving party.

25. TIME IS OF THE ESSENCE.

Time is of the essence of this Agreement and of each provision hereof.

26. COUNTERPARTS.

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

27. NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS.

No member, official, employee or agent of City shall be personally liable to NCBC or its successors in interest in the event of any default or breach by City or for any amount which may become due to NCBC pursuant to this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first shown above:

CITY OF FORT BRAGG

By: _____
Linda Ruffing, City Manager

NORTH COAST BREWING COMPANY

By: _____
Mark Ruedrich, President

ATTEST:

_____
June Lemos, City Clerk

APPROVED AS TO FORM:

_____
Samantha W. Zutler, City Attorney

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first shown above:

CITY OF FORT BRAGG

By: _____
Linda Ruffing, City Manager

NORTH COAST BREWING COMPANY

By: _____
Mark Ruedrich, President

ATTEST:

_____
June Lemos, City Clerk

APPROVED AS TO FORM:

_____
Samantha W. Zutler, City Attorney

EXHIBIT A
Legal Description of Parking Lot

008-053-29
A P.N.: ~~005-149-08~~

File No.:2306-1301837
(DN)
Date: 04/14/2004

Beginning at U.S.C. & G.S. Station "Soldier;" thence North 54° 31' 38" East, bearings based on the Grid Meridian (State Plane Coordinates) North 3,856.96 feet to the True Point of Beginning a 3/4" rebar L.S. 4455; thence North 04° 59' 33" West, 170.31 feet to a 3/4" rebar L.S. 4455; thence North 0° 56' 11" East, 215.00 feet to a 3/4" rebar L.S. 4455, hereinafter known as "Point A," said point is the beginning of a tangent curve of 387.31 feet radius, concave Southeasterly; thence Northeasterly through a central angle of 18° 52' 22" a distance of 127.58 feet to a 3/4" rebar L.S. 4455 at the beginning of a non-tangent line bearing North 12° 56' 20" West, thence along said line 23.98 feet to the Southeast corner of a concrete fuel tank enclosure; thence South 77° 18' 00" West 49.95 feet to a "PK" Nail and L.S. 4455 tag at the Southwest corner said enclosure; thence North 12° 55' 37" West 24.00 feet to the Northwest corner said enclosure; thence North 77° 18' 00" East, 49.95 feet to a "PK" Nail and L.S. 4455 tag at the Northeast corner said enclosure; thence North 20° 26' 46" East, 85.46 feet to a "PK" Nail and L.S. 4455 tag in a concrete footing of a cyclone fence post; thence North 70° 43' 18" East, 30.18 feet to a "PK" Nail and L.S. 4455 tag in another concrete footing of a cyclone fence post, hereinafter known as "Point B," thence North 67° 45' 41" East, 69.81 feet to a "PK" Nail and L.S. 4455 tag in a third concrete footing of a cyclone fence post; thence North 39° 34' 19" East 221.07 feet to a 3/4" rebar tagged L.S. 4455 on the South line of Pine Street; thence South 88° 27' 14" East 113.71 feet along said South line to a "PK" Nail and L.S.4455 tag; thence South 01° 32' 46" West, 275.00 feet along the Westerly boundary of City Lots; #16, #15, #14, #13, #12 and #11 of Block #14; thence North 88° 27' 14" West 50.00 feet to a 3/4" rebar tagged L.S. 4455; thence South 01° 32' 47" West, 185.55 feet to the South line of Laurel Avenue; thence along said South line North 88° 41' 11" West, 39.96 feet to a "PK" Nail and Brass Washer stamped L.S. 3184 on the Northerly boundary of property conveyed to the City of Fort Bragg in Record of Survey filed in Map Case 2, Drawer 42, page 75, Mendocino County Records; thence along the Westerly boundary said Record of Survey. The following courses and distances:

South 01° 18' 49" West, 7.01 feet; South 33° 21' 13" West, 18.01 feet; South 01° 18' 49" West, 16.06 feet; South 89° 15' 40" West, 54.70 feet; South 00° 21' 27" West, 198.73 feet; to a 3/4" rebar L.S. 3184 at the Southwest corner of property conveyed to the City by said Record of Survey; thence North 88° 41' 11" West, 2.83 feet to a 3/4" rebar tagged L.S. 3184 at the Northwest corner of property conveyed to Daly Eureka Corporation in Record of Survey filed in Map Case 2, Drawer 42, page 59, Mendocino County Records; thence along the Westerly boundary said Record of Survey, the following courses and distances:

South 01° 11' 41" West, 40.72 feet; North 88° 17' 49" West, 18.18 feet; South 01° 30' 45" West, 72.30 feet; to a 3/4" rebar tagged L.S. 4455; thence North 89° 19' 16" West, 31.70 feet, leaving said Westerly boundary to a point on the Easterly boundary of a Parking Area, leased by Daly Eureka Corporation from George-Pacific as shown on Record of Survey filed in Map Case 2, Drawer 42, page 59; thence along said Lease boundary the following courses and distances:

North 01° 01' 21" East, 37.55 feet; North 89° 39' 42" West, 13.55 feet; North 00° 48' 38" East, 59.39 feet; to the Northeast corner Parking Lease Area, hereinafter known as "Point C," thence continuing North 00° 48' 38" East, 160.86 feet to a 3/4" rebar tagged L.S. 4455; thence North 88° 36' 24" West, 75.06 feet to a 3/4" rebar tagged L.S. 4455; thence South 01° 19" 53" West, 63.35 feet to a "PK" Nail and L.S. 4455 tag in concrete; thence North 88° 40' 13" West, 2.50 feet to a 3/4" rebar tagged L.S. 4455; thence South 11° 50' 48" West, 94.29 feet to a "PK" Nail and L.S. 4455 tag in concrete footing of a cyclone fence; thence South 01° 57' 25" West, 139.33 feet to a 3/4" rebar tagged L.S. 4455; thence North 86° 18' 13" West, 41.31 feet to the True Point of Beginning.

EXHIBIT B
Diagram of NCBC Parking Space

See Attachment

Google earth

miles 40
km 70

SKUNK TRAIN DEPOT PARKING LOT

CITY OF FORT BRAGG PARKING LOT LEASE AREA

NORTH COAST BREWERY - PARKING SUB-LEASE AREA

City of Fort Bragg

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

Text File

File Number: 16-460

Agenda Date: 11/14/2016 **Version:** 1 **Status:** Consent Agenda

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

Agenda Number: 5E.

Adopt City Council Resolution Authorizing Expenditure of Asset Forfeiture Funds and Amending the FY 2016-17 Budget (Budget Amendment No. 2017-11) to Purchase Two New 2015 Ford Taurus Vehicles (Amount Not to Exceed $50,000; Transfer from Asset Forfeiture Account No. 167-7999-0799 to Fleet Account No. 522-4550-0742)

The Fort Bragg Police Department has accumulated Asset Forfeiture funds as a result of participation in the Mendocino Major Crimes Task Force. Asset Foreiture funds may be used to purchase law enforcement vehicles and the Police Department would like to use these funds to purchase two new 2015 Ford Taurus vehicles. One of these vehicles will be used for our Community Service Officers and the other vehicle will be used as a department pool car. With the recent addition of a third Community Service Officer in the department, there is a need for a second vehicle for their use. The pool car will provide a reliable means of transportation for officers traveling to training, as well as on plain clothes assignments.

RESOLUTION NO. ____ *-2016*

RESOLUTION OF THE FORT BRAGG CITY COUNCIL AUTHORIZING EXPENDITURE OF ASSET FORFEITURE FUNDS AND AMENDING THE FY 2016-17 BUDGET (BUDGET AMENDMENT NO. 2017-11) TO PURCHASE TWO NEW 2015 FORD TAURUS VEHICLES (AMOUNT NOT TO EXCEED $50,000; TRANSFER FROM ASSET FORFEITURE ACCOUNT NO. 167-7999-0799 TO FLEET ACCOUNT NO. 522-4550-0742)

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

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

WHEREAS, the Police Department wishes to spend some of the asset forfeiture funds available ($50,000) to purchase two new 2015 Ford Taurus vehicles; and

WHEREAS, one of these vehicles will be used for Community Service Officers and the other will be a Department pool car; and

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

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

1. With the addition of a third Community Service Officer, there is a need for an additional vehicle.
2. The second vehicle will be used both as a pool car for a reliable means of transportation for officers traveling to training, as well as in plain clothes assignments.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby authorize the expenditure of asset forfeiture funds to purchase two new Ford Taurus vehicles and does hereby approve Budget Amendment No. 2017-11 amending the FY 2016/17 Budget to transfer funds in an amount not to exceed $50,000 from the Asset Forfeiture Fund Account No.167-7999-0799 to Fleet Account No. 522-4550-0742.

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 14th day of November, 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: 16-450

Agenda Date: 11/14/2016 **Version:** 1 **Status:** Consent Agenda

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

Agenda Number: 5F.

Approve City Council Letter in Support of Economic Development & Financing Corporation Application to the Intermediary Relending Program

The Economic Development & Financing Corporation (EDFC) has requested that the City submit a letter in support of EDFC's application to the U.S. Department of Agriculture (USDA) Rural Business-Cooperative Services Agency, Intermediary Relending Program (IRP). The IRP program provides gap financing and acts as a lender of last resort to startup and existing businesses who need capital and are creating jobs. Loan amounts range from $10,000 to $250,000, and loans may be used for purchase of equipment, inventory, and real estate; leasehold improvements; and/ or working capital. EDFC has exhausted its prior IRP loan fund and is seeking $500,000 from the IRP program to replenish funding and allow additional lending in Mendocino and Lake Counties. The IRP application is due mid-December, and EDFC would like to receive a City of Fort Bragg support letter to submit with the IRP application.

CITY OF FORT BRAGG

Incorporated August 5, 1889
416 N. Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

November 14, 2016

Dan Johnson
Community Economic Development Director
Rural Development
United States Department of Agriculture
5000 California Avenue, Suite 100,
Bakersfield, CA 93309

RE: Economic Development & Financing Corporation – Application to the Intermediary Relending Program

Dear Mr. Johnson;

The City of Fort Bragg supports the Economic Development & Financing Corporation's application for new loan funds from the Intermediary Relending Program offered through USDA Rural Business-Cooperative Services.

The role that EDFC plays in our community is vital to continued economic growth through the development of small businesses. Mendocino County's shortage of living wage jobs and in particular, lack of sustainable jobs in Fort Bragg, is a critical issue of great concern to our community. EDFC has used IRP program funds to successfully leverage and increase support of new and expanding businesses in the last three years. Without additional loan funds to offer our community, EDFC's efforts will be curtailed.

We urge USDA to approve a new IRP loan to EDFC, to continue to support our community members in their efforts to create sustainable jobs throughout our county.

Sincerely,

Dave Turner
Mayor

Lindy Peters
Vice Mayor

Michael Cimolino
Councilmember

Scott Deitz
Councilmember

Doug Hammerstrom
Councilmember

City of Fort Bragg

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

Text File

File Number: 16-458

Agenda Date: 11/14/2016 **Version:** 1 **Status:** Consent Agenda

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

Agenda Number: 5G.

Receive and File Minutes of August 23, 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, August 23, 2016 | **3:00 PM** | **Town Hall, 363 N. Main Street**

MEETING CALLED TO ORDER

Committee Member Deitz called the meeting to order at 3:02 PM.

ROLL CALL

Present: 2 - Scott Deitz and Michael Cimolino

APPROVAL OF MINUTES

16-323

Approve Minutes of July 26, 2016

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

PUBLIC COMMENTS ON NON-AGENDA ITEMS

None.

CONDUCT OF BUSINESS

16-339 Receive Report and Consider Making a Recommendation to City Council to Adopt a Resolution to Establish a Two Year Moratorium on Enforcement of the Fire Sprinkler Ordinance

Community Development Director Jones presented the staff report, reviewing the history and effect of the existing fire sprinkler requirements. During the discussion, Committee Members recognized the complexity of balancing the need for fire sprinklers against the economic impacts of the sprinkler requirements.

Public Comment on this item: Citizens Marvin Parrish, Rex Gressett, Scott Menzies, Cas Smith and Bernie Norvell spoke on the topic of fire sprinklers.

Fort Bragg Fire Chief Steve Orsi and Fort Bragg Fire Inspector Steve Wells answered Committee questions and stressed the importance of fire sprinklers for fire suppression.

The Committee directed staff to research the matter further, particularly fire sprinkler funding options, and bring additional information to the Committee at a future date.

MATTERS FROM COMMITTEE / STAFF

None.

ADJOURNMENT

Committee Member Deitz adjourned the meeting at 4:19 PM.

City of Fort Bragg

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

Text File

File Number: 16-434

Agenda Date: 11/14/2016 **Version:** 1 **Status:** Consent Agenda

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

Agenda Number: 5H.

Approve Minutes of October 24, 2016

City of Fort Bragg

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

Meeting Minutes

City Council

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

Monday, October 24, 2016 | **6:00 PM** | **Town Hall, 363 N. Main Street**

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE

ROLL CALL

Present: 4 - Vice Mayor Lindy Peters, Councilmember Michael Cimolino, Councilmember Scott Deitz and Mayor Dave Turner

Absent: 1 - Councilmember Doug Hammerstrom

AGENDA REVIEW

1. MAYOR'S RECOGNITIONS AND ANNOUNCEMENTS

1A. 16-431 Present Proclamation Recognizing Robert Armitage for His 36 Years of Service on the Noyo Harbor Commission

Mayor Turner presented Robert Armitage with a Proclamation and City Plaque recognizing his 36 years of service on the Noyo Harbor Commission.

2. STAFF COMMENTS

Chief Lizarraga mentioned an upcoming Neighborhood Watch Program meeting and a Community Emergency Response Team (CERT) presentation. The Chief said the Police Department's second K-9, Maverick, will begin work this week, handled by Sgt. Kendl. Finance Director Damiani reported that the City's Finance Department was awarded the Government Finance Officers Association Distinguished Budget Presentation Award for its FY 2016/17 budget. Public Works Director Varga gave a brief update on the water situation, noting that the Summers Lane Reservoir is about three-quarters full. Acting City Manager Schneider announced that the City has a job opening for Assistant City Engineer.

3. MATTERS FROM COUNCILMEMBERS

Mayor Turner reported that he met with the School Board's playing field committee and the consensus was that if Measure AA passes, a nonprofit will be formed to make the best use of the funds to help in maintaining the playing fields. The Mayor announced that he received an invitation to a ceremony in Tokyo to celebrate the recoery and rebuilding of Fort Bragg's Sister City, Otsuchi, and will therefore miss the December 12 meeting of the City Council.

Vice Mayor Peters reported that the Mendocino Coast Recreation and Parks District (MCRPD) had unanimous support for Measure AA. If the nonprofit organization is formed, MCRPD may be eligible for matching grants. Peters noted that the Mendocino Transit Authority meets in Point Arena next week.

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

- Ron White related that Glass Beach artwork is available for use by a nonprofit to raise funds to go toward the cost of coastal trail and restroom maintenance.
- Kaitlin Alexander and Sharon Davis updated the Council on Visit Fort Bragg's promotional efforts.

5. PUBLIC HEARING

6. CONDUCT OF BUSINESS

6A. 16-430 Receive Recommendation from Ad Hoc Committee Regarding the Appointment of a Commissioner and Chair of the Noyo Harbor Commission

Mayor Turner reported that the ad hoc committee met with Supervisor Dan Gjerde and interviewed applicants for positions on the Noyo Harbor Commission. The committee recommended that the City and County jointly appoint current Noyo Harbor Commissioner Joe Caito as Chair of the Commission; that the County appoint Steve Bradley to fill Mr. Caito's vacant seat; and that the City confirm interim appointee William Forkner as the City's designated Harbor Commissioner.
Public Comment: None.

A motion was made by Vice Mayor Peters, seconded by Councilmember Deitz, that Joe Caito be the City's appointee for the Joint Chair position on the Noyo Harbor Commission. The motion carried by the following vote:

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

Absent: 1 - Councilmember Hammerstrom

A motion was made by Councilmember Cimolino, seconded by Vice Mayor Peters, that William Forkner be appointed to the Noyo Harbor Commission. The motion carried by the following vote:

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

Absent: 1 - Councilmember Hammerstrom

6B. 16-403 Receive Report and Consider Introduction, by Title Only, and Waive Further Reading of Ordinance 927-2016 Adding Chapter 9.33 (Cannabis Manufacturing) to Title 9 (Public Peace, Safety and Morals) of the Fort Bragg Municipal Code

Associate Planner Perkins gave the staff report on this agenda item and recommended that the Council introduce the ordinance, waiving the first reading.
Public Comment was received from:
- David Eyster thanked the Council and spoke in support of the ordinance.
- Gabriel Quinn Moroni spoke about the safety of cannabis manufacturing workers.

• Richard Mack said he has been denied housing and services because of his cannabis use.
Discussion: It was noted that CalOSHA has regulations that protect workers in the cannabis manufacturing business.

A motion was made by Vice Mayor Peters, seconded by Councilmember Cimolino, that Ordinance 927-2016 be introduced by title only, waiving the first reading. The motion carried by the following vote:

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

Absent: 1 - Councilmember Hammerstrom

6C. 16-419 Receive Report and Provide Direction to Staff Regarding Follow Up on Proposed Amendments to Article 2 of the Inland Land Use and Development Code & Vacancy Tax

Associate Planner Perkins presented the staff report on this item and requested direction from Council on condominium conversions and the proposed changes for use findings in the Central Business District (CBD).
Public Comment was received from:
• Ann Rennacker spoke on the vacancies in downtown businesses.
• Catherine Reitz said the City needs to do something about the raccoons, possums and rats.
Discussion: It was generally agreed by the Councilmembers as follows:
1. **Condominium Conversions:** The ordinance language concerning condominium conversions should remain as is, and not allow conversion projects of more than 3 units in the high density zoning districts.
2. **Use Permits and Minor Use Permits in the CBD**. The revisions to the section entitled "Limitation on the location of allowable land use" are approved, which will allow for more flexibility if the Review Authority can make the findings as outlined in the proposed changes.
3. **Emergency Shelter Definition**. This item was referred to the Community Development Committee (CDC) for discussion.
4. **Service Animal Definition.** This item was referred to the CDC for discussion.
5. **Vacancy Tax**. This item was referred to the CDC for discussion.

Direction was given to staff.

6D. 16-424 Receive Report and Consider Introduction, by Title Only, and Waive Further Reading of Ordinance 926-2016 Amending Chapter 6.14 (Licensing of Tobacco Sellers) and Chapter 6.18 (Smoking Pollution Control and Health Protection Regulations) of the Fort Bragg Municipal Code

Acting City Manager Schneider gave a report on this item and recommended introduction of the ordinance, waiving the first reading.
Public Comment: None.

A motion was made by Vice Mayor Peters, seconded by Councilmember Deitz, that Ordinance 926-2016 be introduced, waiving the first reading. The motion carried by the following vote:

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

Absent: 1 - Councilmember Hammerstrom

6E. 16-427 Receive Report and Provide Direction to Staff on Modifications to City Council, Council Committee, and Planning Commission Meeting Minutes Format

City Clerk Lemos presented the staff report on brief summary minutes.
Public Comment: None.
Discussion: After brief discussion, the Council decided to transition to brief summary minutes on a permanent basis.

The Council directed staff to prepare brief summary minutes for all future City Council, Planning Commission, and standing Council Committee meetings.

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

7. CONSENT CALENDAR

Approval of the Consent Calendar

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

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

Absent: 1 - Councilmember Hammerstrom

7A. 16-423 Adopt Resolution Confirming the Continued Existence of a Local Drought Emergency in the City of Fort Bragg

This Resolution was adopted on the Consent Calendar.

Enactment No: RES 3945-2016

7B. 16-425 Adopt City Council Resolution Establishing City Council Rules of Procedure for Conduct of City Council Business

This Resolution was adopted on the Consent Calendar.

Enactment No: RES 3946-2016

7C. 16-426 Adopt City Council Resolution Amending the Schedule for Standing Committee Meetings

This Resolution was adopted on the Consent Calendar.

Enactment No: RES 3947-2016

7D. 16-429 Adopt City Council Resolution Declaring Surplus Property (Road Grader)

This Resolution was adopted on the Consent Calendar.

Enactment No: RES 3948-2016

7E. 16-428 Approve Minutes of Special Joint City Council/Board of Supervisors Meeting of

September 19, 2016

These Minutes were approved on the Consent Calendar.

7F. 16-422 Approve Minutes of October 11, 2016

These Minutes were approved on the Consent Calendar.

8. CLOSED SESSION

ADJOURNMENT

Mayor Turner adjourned the meeting at 7:13 PM.

_____
DAVE TURNER, MAYOR

_____
June Lemos, City Clerk

IMAGED (_____)

City of Fort Bragg

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

Text File

File Number: 16-439

Agenda Date: 11/14/2016 **Version:** 1 **Status:** Public Hearing

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

Agenda Number: 6A.

Receive Report and Conduct Public Hearing for Disclosure of Accomplishments and Closeout of Activities Funded by Community Development Block Grant (CDBG) 14-CDBG-9731

AGENCY:	**City Council**
MEETING DATE:	**Nov. 14, 2016**
DEPARTMENT:	**CDD**
PRESENTED BY:	**J. Owen**

AGENDA ITEM SUMMARY REPORT

TITLE:
RECEIVE REPORT AND CONDUCT PUBLIC HEARING FOR DISCLOSURE OF ACCOMPLISHMENTS AND CLOSEOUT OF ACTIVITIES FUNDED BY COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) 14-CDBG-9731

ISSUE:
The City was awarded an Over-the-Counter (OTC) grant from the Community Development Block Grant (CDBG) program in November 2014. The City's OTC grant funded a loan restructuring for Sportz Investment, Inc. The loan was funded in February 2015, and loan repayments by Sportz Investment, Inc. commenced in March 2015. The OTC grant also provided Activity Delivery funds to provide for loan development and loan servicing costs, as well as General Administration funding to provide for costs of administering and implementing the CDBG program. All grant activities have been completed, and reimbursable costs have been billed to CDBG. Per CDBG regulations, a close-out public hearing must be conducted to describe accomplishments resulting from the grant funding.

RECOMMENDED ACTION:
No specific action is required of Council. The purpose of this item is to provide a report and conduct a required public hearing to disclose accomplishments and closeout of activities funded by CDBG #14-CDBG-9731.

ALTERNATIVE ACTION(S):
None.

ANALYSIS:
The CDBG Over-the-Counter (OTC) program provides single-purpose grants of up to $3 million for eligible cities and counties to lend to identified businesses or to use for public infrastructure improvements, to accommodate the creation, expansion or retention of identified businesses. Submittal of an OTC application is allowed only after potential applications are thoroughly vetted, reviewed, and preliminarily approved by CDBG staff. As with all CDBG activities, OTC activities must meet Public Benefit and National Objective requirements.

The application process for the Sportz Investments loan included a comprehensive pre-application process that began in May 2013. With the assistance of the City's CDBG loan development consultant Jeff Lucas of Community Development Services, the City and applicant Sportz Investments successfully navigated the pre-application process and were invited to submit a formal application in February 2014. Prior to submitting the formal application, the City was required to hold a public hearing and to provide a resolution authorizing submittal of the CDBG OTC application. The public hearing regarding the Sportz Investment OTC loan was held on March 10, 2014. At that meeting, City Council approved Resolution #3694-2014 authorizing submittal of the OTC application.

The OTC application requested funding for a loan in an amount not-to-exceed $756,151. The purpose of the loan was to allow the company to restructure debt to ensure retention of 27 full-time and six part-time jobs provided by Sportz. Debt restructure included consolidation of three loans

into one CDBG loan to be amortized and repaid by Sportz over 20 years at 2.0% interest, significantly reducing debt service costs and eliminating two balloon payments due in 2015. In addition, Savings Bank of Mendocino County agreed to restructure other outstanding debt. The debt restructurings will ensure that the company has adequate working capital as required by Chrysler LLC and as needed for ongoing operations.

CDBG approved the "low-moderate income area of benefit" National Objective because the funded activity provides a unique service (new car sales) within Fort Bragg city limits that is "available to benefit all the residents of an area that is primarily residential…where at least 51% of the residents are LMI persons."[1] The City of Fort Bragg is an area that is primarily residential where 51.4% of the population was low-moderate income per HUD tables available for the 2014 application. The required Public Benefit was met through provision of an "area benefit" loan with a maximum funding amount equal to $350 per low/moderate income resident, or $1,295,125 ($350 times 3,700 low-moderate income residents).

The total grant application of $846,151 included $756,151 for the loan, Activity Delivery funding of up to $40,000 and General Administration funding of up to $50,000. The actual amount funded for the loan was $720,397. Actual Activity Delivery expended was $7,006, and General Administration expenses were $50,000. General Administration expenses included $19,563 in pre-application loan development fees that could not be charged as Activity Delivery before the grant was funded. Amounts that were awarded but not billed or received for the loan ($24,274) and Activity Delivery ($32,994) will be disencumbered.

Since the loan was funded, Sportz has made nearly $62,000 in payments of interest and principal on the loan. These payments are CDBG Program Income that must be used for other CDBG-eligible activities. Sportz payments, along with payments from other outstanding CDBG business and residential loans, helped to fund improvements for four Fort Bragg non-profit organizations in 2015. Program Income is currently funding the Food Bank Solar Project, and future loan repayments will fund Bainbridge Park Improvements Project.

FISCAL IMPACT:

The CDBG funds awarded to the City allowed the City to provide a loan that will help to ensure sustainability of an important Fort Bragg business that contributes to the community both as a large local employer and as a significant producer of local sales tax. The CDBG funds also provided sufficient leverage to ensure cooperation of local lenders in loan refinancing and consolidation. Loan repayments will continue to benefit Fort Bragg residents as they are reused for a variety of CDBG-eligible housing and economic development activities that might otherwise be postponed or abandoned due to insufficient funding for implementation. Grant Activity Delivery and General Administration awards provided sufficient funds to pay for contracted loan development costs as well as grant-specific and other CDBG program administrative costs.

CONSISTENCY:

The State CDBG mission is to improve the lives of low- and moderate-income residents through the creation and expansion of community and economic development opportunities, which supports livable communities for all residents. This mission is consistent with City Priority Areas established in City Council's February 2015 Goal Setting process, especially Priority Area 2, "A Prosperous Economy" (economic development and affordable housing activities). The City's 2014 Economic Development Strategy includes growing and retaining businesses with business technical support and resources (Strategies 1.1 and 1.2).

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[1] From the 2016 CDBG Notice of Funding Availability, Section G(1), page 41, available at http://www.hcd.ca.gov/financial-assistance/community-development-block-grant-program/docs/2016_nofas/2016-cdbg-nofa-final-for-website.pdf

IMPLEMENTATION/TIMEFRAMES:
The expenditure deadline for the 2014 OTC grant is September 30, 2017, and the grant termination date (date by which all grant accomplishments must be completed) is September 30, 2019. Because all grant activities have been completed, the final Funds Request was submitted on May 9, 2016, and the final reimbursement from CDBG was received on August 25, 2016. A preliminary completion report and close-out certification letter have been submitted to CDBG. After the Close-Out Public Hearing is held, the final close-out package including dis-encumbrance request, proof of publication of the Public Hearing Notice, and proof that the Public Hearing was held will be submitted to CDBG. A final monitoring of the City's grant activities by CDBG may occur prior to the grant termination date of September 30, 2019.

ATTACHMENTS:
1. Public Hearing Notice

NOTIFICATION:
1. Mike Slaughter, Sportz Investments Inc.
2. Jeff Lucas, Community Development Services

City Clerk's Office Use Only

Agency Action ☐ Approved ☐ Denied ☐ Approved as Amended

Resolution No.: _____ Ordinance No.: _____

Moved by: _____ Seconded by: _____

Vote: _____

☐ Deferred/Continued to meeting of: _____

☐ Referred to: _____

CITY OF FORT BRAGG

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

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the City of Fort Bragg will conduct a public hearing at a regular meeting to be held at 6:00 p.m., or as soon thereafter as the matter may be heard, on **MONDAY, November 14, 2016**, at Town Hall, southwest corner of Main and Laurel Streets (363 North Main Street), Fort Bragg, California 95437. The City Council will solicit citizen input regarding the following:

RECEIVE REPORT AND CONDUCT PUBLIC HEARING FOR DISCLOSURE OF ACCOMPLISHMENTS AND CLOSEOUT OF ACTIVITIES FUNDED BY COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) 14-CDBG-9731

The purpose of the public hearing will be to disclose grant accomplishments and to give citizens an opportunity to make their comments known. If you are not able to attend the public hearing, you may direct written comments to the City of Fort Bragg, Attention: Special Projects Manager Jennifer Owen, 416 N. Franklin Street, Fort Bragg, CA 95437. In addition, a public information file about the CDBG program is available at the above address between the hours of 9:00 a.m. – 12:30 p.m. and 1:30 - 5:00 p.m. on weekdays.

If you plan to attend the public hearing and need a special accommodation because of a sensory or mobility impairment/disability or have a need for an interpreter, please contact City Hall at (707) 961-2823 to arrange for those accommodations to be made.

The City of Fort Bragg promotes fair housing and makes all programs available to low and moderate income families regardless of age, race, color, religion, sex, national origin, sexual preference, marital status, or handicap.

Dated: October 26, 2016

June Lemos, City Clerk

PUBLISH: November 3, 2016

STATE OF CALIFORNIA)
)ss.
COUNTY OF MENDOCINO)

I declare, under penalty of perjury, that I am employed by the City of Fort Bragg in the Administration Department; and that I posted this Notice in the City Hall Notice case on November 3, 2016.

June Lemos, City Clerk

cc: City Manager
Fort Bragg City Council
Community Development Director
Special Projects Manager
Fort Bragg Advocate News
2016 Press Listing

City of Fort Bragg

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

Text File

File Number: 16-442

Agenda Date: 11/14/2016 **Version:** 1 **Status:** Business

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

Agenda Number: 7A.

Receive Report from Janet Self, Executive Director of Flockworks, and Consider Adoption of Resolution Approving First Amendment to Lease Agreement with Flockworks and Authorizing City Manager to Execute Same

AGENCY:	**City Council**
MEETING DATE:	**Nov 14, 2016**
DEPARTMENT:	**Admin Services**
PRESENTED BY:	**S. Schneider**

AGENDA ITEM SUMMARY

TITLE:
RECEIVE REPORT FROM JANET SELF, EXECUTIVE DIRECTOR OF FLOCKWORKS, AND CONSIDER ADOPTION OF RESOLUTION APPROVING FIRST AMENDMENT TO LEASE AGREEMENT WITH FLOCKWORKS AND AUTHORIZING CITY MANAGER TO EXECUTE SAME

ISSUE:
On December 9, 2014, the City and Flockworks entered into a 2-year lease agreement for office space at 215 E. Laurel Street in Fort Bragg for use as an industrial and fine arts working center. The lease expires on December 31, 2016. Flockworks is requesting a two-year extension of the lease with no change in terms of the lease.

RECOMMENDED ACTION:
Adopt City Council Resolution approving First Amendment to lease agreement extending the lease with Flockworks to December 31, 2018.

ALTERNATIVE ACTION(S):
1. Provide alternate direction to staff regarding the space at 215 E. Laurel Street, Fort Bragg; or
2. Take no action.

ANALYSIS:
Janet Self, Executive Director of Flockworks will provide an oral presentation.

FISCAL IMPACT:
The City would continue to receive monthly rent of $50.00 for the terms of the lease.

IMPLEMENTATION/TIMEFRAMES:
Current lease expires December 31, 2016. Lease extension extends the expiration date to December 31, 2018.

ATTACHMENTS:
1. Letter to Fort Bragg City Council from Flockworks
2. Real Estate Magazine article regarding Flockworks
3. Flockworks brochure
4. Current lease agreement with Flockworks
5. City Council Resolution approving First Amendment to lease agreement with Flockworks

AGENDA ITEM NO. 7A

6. First Amendment to lease agreement with Flockworks

NOTIFICATION:
Janet Self – Executive Director, Flockworks

City Clerk's Office Use Only

Agency Action ☐ Approved ☐ Denied ☐ Approved as Amended
Resolution No.: _____ Ordinance No.: _____
Moved by: _____ Seconded by: _____
Vote:
_____
_
☐ Deferred/Continued to meeting of: _____
☐ Referred to: _____

flockworks
artful:community

Oct. 31, 2016
TO: Members of the City Council, City of Fort Bragg
Fm: Janet Self, Executive Director
& Joanna Wigginton, Pres. Board of Directors
RE: Renewed Lease of Noyo Printworks space in the old City Swim & Recreation Center

Two years ago, the City Council gave Flockworks use of space to incubate a new community art venture in heart of Ft. Bragg. We transformed an unused space into a vibrant community Studio for letterpress and printmaking called Noyo Printworks, at 215 Laurel St. (See Attached Update)

This undertaking challenged Flockworks as a very small volunteer-driven organization to find new ways to manage this project along with our whole range of community projects. Flockworks mission is fostering community through art & creativity, and we work together with others, like Noyo Center for Marine Science, Schools in Fort Bragg, Noyo Food Forest, Youth Soccer, Pacific Textile Arts, Safe Passages, and many other local organizations, in addition to artists, art lovers and area visitors. As our first decade of work draws to a close, we are evolving a new organizational frame and strategic plan for the decade ahead. (See Attached Story in Real Estate Magazine).

Perhaps the most important outcome of the City's support for our work, is Flockworks' clear commitment to Fort Bragg as the central hub of the Coast's creative community. We ask for your continued incubation support to help us successfully grow this project as we expand and deepen the many ways we work in Fort Bragg

<u>REQUEST to the City Council for continued Incubation Support for Noyo Printworks project</u>:

Renew the lease of space for Noyo Printworks for another 2 year incubation period. We have laid a strong base with facility, interest and participation. It is becoming a strong creative center for learning, teaching and practice of print making and book arts. Extending the timeframe where financial costs are minimal will add to the long-term success of this venture establishing a strong Community Arts Studio, Noyo Printworks, dedicated to practice of printmaking, letterpress and book arts.

Flockworks' Noyo Printworks Project Update (October 2016):

With the City of Fort Bragg's initial two year commitment (Jan 2015-Dec 2016) of space, Flockworks has transformed the "forgotten" space of the old boy's locker room into a vibrant working Community Studio, called Noyo Printworks. Community members' donation of equipment that include a 1961 Vandercook Letterpress, a small Kelsey Letterpress and cases of moveable type, together with a Printmakers press, cutting equipment, stainless steel sink, flexible work tables, chairs, storage shelves and more. Flockworks funded lights, paints, and supplies with modest capital to set up the Studio and drew together artist volunteers to get things underway. Noyo Printworks opened its doors to the public April 2015, with a focus on letterpress and printmaking of all kinds. It has been exciting and challenging to develop this new studio space for local arts. To date, here's what's happened: .

- Our beautiful Studio is set up with equipment, tools, and supplies; we even have trash service! Everyone helps keep the space tidy and flexible in how it is used.
- A core of about 15-20 people regularly work in the studio and work has been shared in exhibits and Studio displays. An Advisory group has helped shape the thinking and direction.
- Workshops in linocut, drypoint, Mono print, book arts & letterpress have hosted more than 60 people to learn new techniques and ideas.
- *First Fridays Art Walks* regularly see Noyo Printworks open, offering exhibits, demonstrations and hands-on activities. More than 290 have signed up with interest to know more and participate. Exhibits in our Art@OddFellows in Mendocino showcase art from the studio.
- Noyo Printworks has a clear brand, visible signage, flier/brochure and a working website and Facebook presence, thanks in part to a Community Enrichment grant from the Community Foundation of Mendocino County. We've had good local press, and seen solid interest in the project from locals and visitors.
- Flockworks' mailing list of 700+ includes 290+ with special interest in Printworks; E-News goes out to a growing circle of interest. Many regional printmakers have also expressed a great interest in Noyo Printworks, and we've begun ties to related organizations like Center for the Book in SF, North Bay Letterpress Arts in Sebastopol and California Society of Printmakers..
- The City's incubation support has allowed a vibrant community art studio begin to blossom in the heart of the downtown.

This was all accomplished with volunteer time, a commitment to excellent Studio Group practice and modest financial and organizational core support by Flockworks (volunteer-led & operated).

From the beginning, the aim has been a self-directed circle of Studio Partners & Associates who regularly work in the studio, and volunteer time to support and create opportunities for others. In less than 2 years, a great deal has been accomplished. We believe the Studio can become self-sustaining, covering operational costs, offering Studio opportunities at modest cost and creating a strong dynamic with outreach, workshops, and special events.

Special appreciation to Kathy Carl, Florrie Ashford, Judy Detrick, Mary Anderson, Richard Jacobs, Erica Harrold and Larry Thomas for ways they have personally stepped in. We have begun a really special Community Studio concept... creating new opportunities for artists to work together, engage others and enliven the local arts scene.

FOR HOME OWNERS, HOME BUYERS, HOME DREAMERS, AND THE BUSINESSES THAT SUPPORT AND SERVE THEM | JANUARY 2016

REAL ESTATE MAGAZINE

FREE!

MENDOCINO COAST PROPERTY | LIFESTYLE | COMMUNITY

art + community = a more beautiful world

flockworks

Volume 29 • Number 7 • Issue 681

Thousand Prayer Project by Larry Thomas at Odd Fellows Hall

Book Arts installation at Odd Fellows Hall

A decade of creating community through art

Photos by Keith Wyner.

Hearts of Children installation for Mendocino Coast Children's Fund

"The arts humanize the curriculum while affirming the interconnectedness of all forms of knowing. They are a powerful means to improve general education."
Charles Fowler

Rolling Fields at Noyo Food Forest

BELOW: Kind, Safe and Responsible *is a forty-foot playground mural.*

art + community = artful community

flockworks

By Janet Self, Founder and Volunteer Director of Flockworks

ART TIES US TOGETHER AND BELONGS TO ALL OF US. It's a celebration and an affirmation of life's wonders. Art matters in today's world as it has always mattered in human activities, layering meaning, beauty, skill, and non-verbal expression to everyday life. Creativity gives us tools to see things differently. Imagination keeps us dreaming, experimenting, and looking for new approaches. Stretching from the earliest cave drawings and woven through time in paint, music, dance, ceramics, basketry, and, really, *every* artform, art and creativity are fundamental to being human.

It was this broad view of art that led to the formation, back in 2006, of Flockworks—a nonprofit framework for community art initiatives. Building community through creativity is Flockworks' mission, stated briefly, and in ten years' time this idea has actively been explored.

It began as our commitment to children's art and creativity and has grown to become an overarching value for Flockworks community commitment: We say yes!...and find the way to make it happen. When asked for help by any community volunteer leader—teacher, soccer coordinator, event manager, AmeriCorp volunteer, Leadership Mendocino, community center, Mendocino Coast Children's Fund, lighthouse, gardens—we work hands on and find a way to make projects happen. We believe creative engagement builds community.

We mobilize space, resources, time, and talents to bring people together through art and to creatively celebrate who we are. From the exhibit hall or beach trail, to a train track, a classroom, a playground, a soccer field, and Earth Day celebrations, to community centers, a health clinic.

HOW DID IT ALL START?

A borrowed space for one exhibit inspired future projects. Van Phillips, owner of the historic Odd Fellows Hall (built in 1878), in Mendocino, agreed to loan the space and was open to an ongoing series of community exhibits. Flockworks was then created as a nonprofit and acquired the seller's permit, bank account, credit card system, lights, phone, etc. to make the exhibit happen. What had been the Zimmer Gallery for forty-two years, and prior to that the community's 4-H Hall, became Flockworks' first project, Art@OddFellows, in 2007.

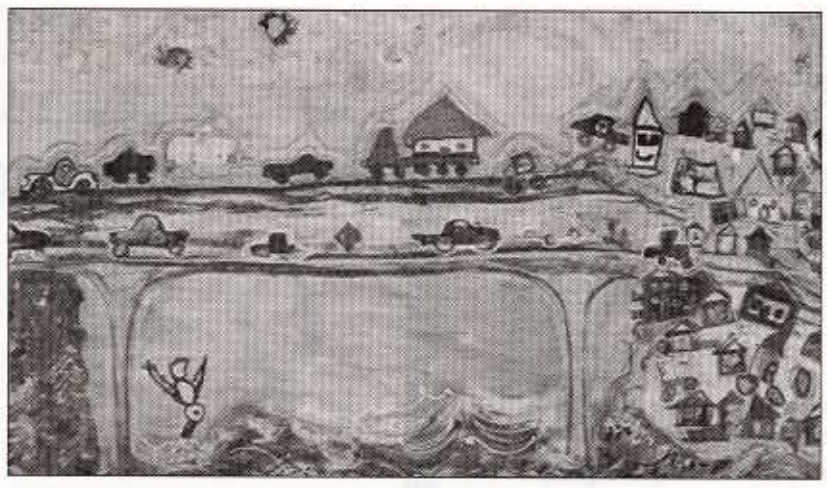
Cube Upon a Stand *Kerry Marshall*

ART@ODDFELLOWS

Mendocino Figure Drawing Collective, then led by local artists Bill Martin and Bob Ross, was the first featured exhibit in the series. "Our Figure Drawing Collective has been going steadily for over thirty years," said Ross. "This opportunity let us have a great show with our whole group. We even hosted visitors. We did another show in 2008 with work by professional and beginning artists. Our shows were rich and very diverse." Bob Ross said, "Flockworks has become a true leader, serving such a wide role in community art. Flockworks and Odd Fellows Hall are precious resources for our community."

Flockworks – Continued from Page 2

a 'keep out' approach. The children's clear understanding of the hazards birds faced became an important reminder to adults." A Save Our Shore Birds children's book was created from the kids' art with a grant from Community Foundation of Mendocino and help from Flockworks.



Our Town, *Flockworks' first mural was undertaken by 450 young learners at Redwood Elementary School.*

The response to these early exhibits was terrific and the Art Series has been going ever since. Each month is organized and hosted by a different group of local artists, the entire project facilitated by volunteers. Flockworks provides organizational support for each group, plus each year curates several exhibits that weave in children, historical elements, and explore various themes. "It would be hard for me to overstate the impact that Flockworks at Odd Fellows has had on the local art community. I started organizing fine woodworking shows in the nineties when it was very difficult to find venues on the coast for month-long shows. Since Odd Fellows Hall became available through the organizing efforts of Flockworks it has become a focus point for the local art scene by encouraging a wide range of local artists to come together to show and sell their work. This opportunity has made a significant impact on our ability to make a living at our work as well as heightening our awareness of the wide range of creative people and endeavors on the coast," says woodworker Paul Reiber.

Annually, more than twelve thousand visitors from all over the world enjoy the exhibits, while art sales from these shows contribute directly to the local economy. Monthly shows offer a vibrant gathering place for community creativity and have spurred many collaborations among artists and other groups. Over the years, Art@OddFellows exhibits benefited Art Explorers, Mendocino Coast Children's Fund, Rotary, Winesong, Otsuchi Recovery Fund, Mendocino Area Parks Association, Mendocino Land Trust, Mendocino Film Festival and other organizations. With this all-volunteer approach, costs have been modest and a simple percentage from art sales helped pay for lights, phones, paint and other production costs and provided very small seed funds for Flockworks' other community initiatives.

CHILDREN'S BANNER PROJECT

Flockworks sharpened a focus on children's creativity with a class visit to Odd Fellows in fall 2007. As part of their trip, children helped create a large abstract painting that was later sold. The fifth-grade class voted to use funds to make art banners to hang on the construction fences that surrounded the Mendocino K-8 School during major renovation. With Janna Hansen's class as art helpers, Friday lunch time on the playground engaged twenty-five to seventy kids each week in an open creative process. *Take turns and share space* were guiding principles and the fun-making process used stamps, tree branches, string, toy cars, marbles, and other unusual elements. By the end of the school year, twenty banners were hung around the school, and shared at the MUSE Big Fun Fair and other community events. Invitations from teachers, schools, and others like AmeriCorps and Leadership Mendocino came in, asking Flockworks to share this approach to the creative group project.

SURPRISE *YES!* FOR CHILDREN'S ART

Imagine you are a teacher hoping to bring a creative project like the Banner project into your classroom. "The kids would love that!...Would you be willing to come if I can find money?... How can we make this happen in my class?" From the beginning, we wanted to say *Yes!* as often as possible to any teacher or community group wanting to bring in art. We were determined to overcome hurdles of materials, ideas, or budget to ensure these opportunities could be offered. Flockworks would find a way. Small grants from Community Foundation of Mendocino County, Mendocino Children's Fund, and others have helped make this work; others have added money for materials when they could, and we have always found a way to say that big *Yes!* School-wide projects, classroom work, coast-wide installation projects, and integrating art into ongoing curriculum themes followed.

A request by kindergarten teacher, Susan Joyer, from Redwood Elementary School, was one of early *Yes!* projects. The mural project called "Our Town" was undertaken by 450 young learners, kindergarten to second grade and engaged the children in a lively process using wooden blocks, toy trucks, stamps, Q-tips, rollers, and more. Children worked together to build roads, bridges, houses, businesses and boats, and to explore ocean waves and marine creatures which led to a visual story of our community. Visitors to the C.V. Starr Center are greeted by "Bridge over Noyo," which was gifted to the city of Fort Bragg; "Sunny Day" went to Harvest Market in Fort Bragg in recognition of their leadership in building community. Cards and postcards from mural images raised money for school art and other children's projects. Redwood Elementary School has hosted three major mural projects and has taken part in many large-scale installation projects featured in other exhibits. "The Discovery Mural," painted on ninety feet of canvas was funded by A.D. Abramson Grant for Public Art from the Community Foundation of Mendocino and hangs in the school's multipurpose room. "Kind, Safe and Responsible" is a forty-foot playground mural that was supported by the Parents Club in 2014.

This year, a new mural will be done on the water catchment tanks in the School Garden at Redwood Elementary School. Dunbar School, in the heart of Sonoma County's wine country, has four Flockworks murals, supported with funds from the Sonoma Plein Air Foundation; and a Water Cycle Mural is planned for Spring 2016. A.D. Abramson Grant for Public Art from the Community Foundation of Mendocino County, will support a mural for the Mendocino K-8 School gym this year. The art by children brings classes and families out to visit the Odd Fellows Gallery shows, and often includes special hands-on activities for kids.

BELOW: The element of joy in working on these major collaborative art projects cannot be underestimated in its importance to instilling a love of learning and working together cooperatively: 'Take turns and share space.' Yay! Photo provided.

Welcome Mural *is one of five murals painted with students at Dunbar School in Sonoma County. Photo provided.*

FOCUS ON YOUTH

Our work with middle school students began seven years ago, when Flockworks brought hands-on creative projects into the Fort Bragg AVID class. AVID—Advancement Via Individual Determination—is a college-readiness system serving low-income and minority students who will be the first in their families to attend college. Students learn organizational and study skills, work on critical thinking and asking probing questions, get academic help from peers or college tutors, and participate in enrichment and motivational activities that make college seem attainable. Flockworks' projects were a natural fit, building on academic and team skills, while undertaking artful explorations inspired by Picasso, Georgia O'Keeffe, Wayne Thiebaud, Ruth Asawa, Joseph Cornell, and others. Gail Porcelan, history teacher at Fort Bragg Middle School, leads the local AVID program and has served on the Flockworks Board of Directors.

OUTREACH WITH THE BLUE DOOR

Mendocino Coast Clinics offers sexual counseling and reproductive health care aimed at young adults up to age twenty-five. Established in 2010 as a teen clinic, with AmeriCorps volunteers promoting the program, hosting the clinic hours, and doing health education classes with local schools, the demand for services has steadily grown. When Diane Rubin came in 2013, she wanted to broaden the image from a generic teen clinic to be a more welcoming place for young people. With full support of MCC, she set about re-defining how the space was viewed, from the inside out, and sought Flockworks' support. "Together, we created art pieces reflecting the new name, BLUE DOOR@MCC, and undertook other creative engagement projects with local youth," says Rubin. "Young people coming to the clinic recognize the art and feel connected. Creative materials and our friendly setting welcome our young clients. The Blue Door mural outside clearly identifies which door to enter. Art changed the atmosphere completely, got young people involved and helped us re-shape our image."

ART SHAPES LEARNING

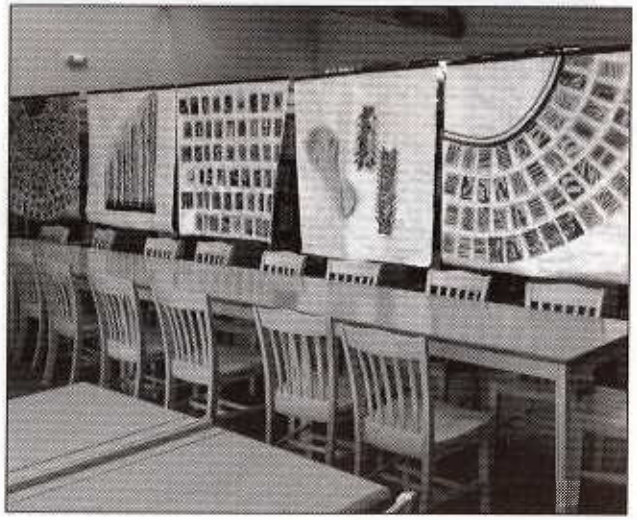
Last year, Flockworks was asked out to Noyo Lighthouse and Shelter Cove schools for a school-wide mural project. All students got involved and the resulting panels were woven into the chainlink fence surrounding the schools, dramatically changing the feel of the campus from "keep out" to "welcome." Ariela Marshall, then with the Mendocino Youth Project, joined forces with Flockworks and continued with projects about self-reflection, group effort, and cultural understanding. Resulting art was then exhibited at Odd Fellows, Headlands Coffee House, The BlackDoor Game store, and at several community events. A Mural@Safe Passage was completed by youth in their afterschool and weekend time. Marshall was asked to take on the Shelter Cove classes for the 2015–16 school year. She also joined the Flockworks Board.

At first glance, paint is everywhere, with students wielding brushes and palettes, working on multiple surfaces at once.This classroom scene could make anyone nervous. Yet Marshall is far from anxious, in fact she's in the middle of things. In this lively act of creation, not destruction, students are engrossed, mixing colors, and experimenting with technique. Rules are simple: respect the materials and one another's artwork. With freshly-painted canvases propped up against windows, on desks and tables, it seems more gallery than a typical classroom.

This is the Shelter Cove Community School classroom, at the Alternative Education campus in Fort Bragg. The art materials, along with conceptual support, are supplied by Flockworks. How is this different than any other art class? The main distinction is that it isn't an art class and it can occur at any time of day, during almost any subject. Along with the usual textbooks and worksheets, science, geography, and history are expanded into the tactile realm of creative arts. A length of raw canvas features swirls and splatters overlaid with hand-drawn schematic of a hydrogen molecule chain. A round of wood becomes a cross-cut of the Earth's layers. The students are making sea creatures, specifically those found in local coastal waters, from a messy plaster substance. Ranging in age from ten to fourteen, many spend their free time fishing, and have taught their teacher, Ariela Marshall about the finer points of local marine life.

Marshall, in her first year as core lesson teacher, brings her prior experience as a crisis counselor and youth worker where creative arts were used as a medium for conflict resolution. While researching restorative justice for her master's thesis, Marshall volunteered in San Quentin prison in San Rafael, and served in a summer internship working with incarcerated gang members in Pollsmoor Prison, South Africa. In both cases, art and self-expression were central to her work. Currently, in the Shelter Cove classroom, Marshall draws on students' own knowledge and interests to promote creative opportunities for learning.

Studies have shown increasing evidence that learning through doing (physical learning) helps accelerate and solidify the absorption of new information, particularly for students with learning and behavioral challenges. Charles Fowler, an esteemed advocate for arts in education, wrote, "The arts humanize the curriculum while affirming the interconnectedness of all forms of knowing. They are a powerful means to improve general education."



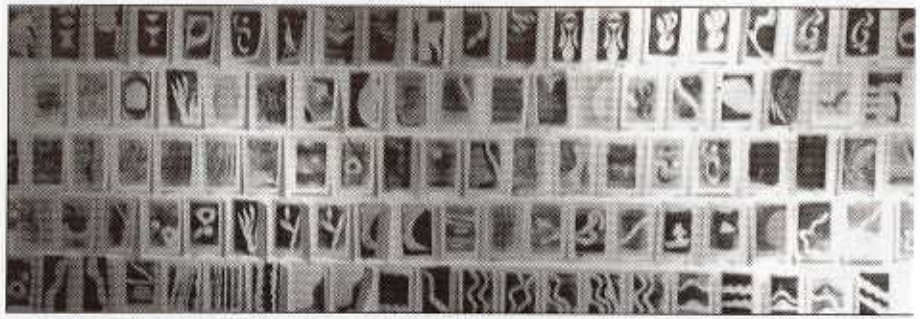
LEFT: Monoprint series for 2016 Mendocino Coast Writer's Conference transforms the library of the Mendocino College Campus, Fort Bragg.

RIGHT–TOP: Monoprint series in "Art of Letter, Word & Book" Exhibit at Odd Fellows Hall.

RIGHT–BOTTOM (from LEFT): Artist Larry Thomas talks about his drypoint printmaking at Noyo Printworks in Fort Bragg. BOTTOM MIDDLE: New Sign for Noyo Printworks goes up, thanks to an enrichment grant from the Community Foundation of Mendocino County. BOTTOM RIGHT: One of two table-top platen presses at the Noyo Printworks community studio. Photos Keith Weiner.

Students at Shelter Cove often face considerable adversity in their lives, and often struggle with motivation and focus. The tactile experience through arts gives them a dynamic and flexible way to engage with learning. They bring their own strengths, and work in their own time, in a safe environment. A natural reinforcement happens as they recreate a lesson through art. "The process, in this case, is far more important than the product. The act of figuring out what you're doing as you go can be a potent means of growth, both cognitively and emotionally," says Marshall. A current board member of Flockworks, Marshall witnessed the transformative power of art and wanted to ensure creative opportunities continued on the Mendocino coast. "Kids start to think differently about themselves when they engage in these artistic processes," says Marshall.

Artwork by the students at Shelter Cove will be shown in the January 2016 Odd Fellows' show called "Making Space" opening Saturday, January 9, 2016.

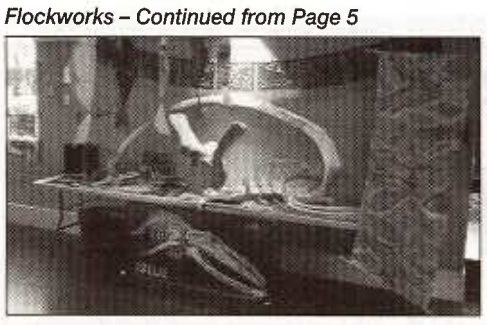


NOYO PRINTWORKS

Noyo Printworks is a new community studio in Fort Bragg led by volunteer artists and dedicated to learning, teaching, and practicing letterpress, printmaking and book arts. Gifts of equipment got things rolling, with the city of Fort Bragg giving unused space to incubate this start-up. Since doors opened in April 2015, the response has been enthusiastic. Nearly two hundred people signed up to participate. The space hosts visitors each First Friday Art Walk and workshops on printmaking. Studio Groups meet regularly cultivating many new creative projects.

Flockworks – Continued on Page 18

Flockworks – Continued from Page 5



Whale Bones add to the creative Ocean Celebration organized by Noyo Center for Marine Science and Flockworks.

OCEAN UPWELLING – AN INTERSECTION OF ART AND SCIENCE

Oceans cover 71 percent of the earth's surface and contain 97 percent of the water in the entire world. Water issues alone suggest the ocean as a key to earth's whole eco-system. In fact, new studies suggest that ocean microorganisms may be a critical factor in bringing rain. Clearly, a healthy ocean is critical for all of us.

The Ocean Upwelling collaboration is an intersection of art and science that will draw us to imagine, understand, and connect with our special coastal environment. Upwellings are forces that draw deep, nutrient rich water up to replenish depleted surface layers. Together, Noyo Center for Marine Science and Flockworks have begun an on-going "Upwelling" to engage visitors and locals deeply in the wonders of the marine world and reconnect our 'lost" coastal identity.

For over a hundred years, lumber operations dominated our local economy and literally blocked access to Fort Bragg's five-mile coastline. The city's new Coastal Trail is a dramatic step to reconnect to our coastal identity. With the incredible popularity of the trail, we have an opportunity with locals and visitors to cultivate a profound relation to our coastal ecosystem.

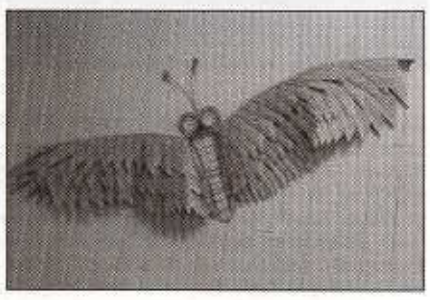
The Noyo Center for Marine Science, conservator of one of only twenty-one blue whale skeletons worldwide, has 11.5 acres on Fort Bragg's Noyo Headlands which opens right on the Coastal Trail, adding another powerful element to its program. Outreach through schools, events and special projects shapes understanding of critical issues. The long-range goal to build an Oceanarium for education and research will require strong local, regional, and global support for this vision. This collaboration aims to help lay groundwork for that future. Flockworks, known for lively creative engagement of children, youth, and community at large, undertakes art initiatives that capture imagination and foster wide participation around important themes. Together, the Noyo Center for Marine Science and Flockworks will weave art and science in understanding this "special place" and the fragile marine ecosystem on which we depend. The aim is to strengthen our local identity as a coastal community, enrich visitors' experience, strengthen the economy, invigorate local culture, and initiate a global network of interest in Fort Bragg and the Mendocino Coast.

BONES AND BEYOND: AN OCEAN CELEBRATION

With the Noyo Center for Marine Science, Flockworks combines art and science, and offers activities with schools, exhibits, and special events. Sheila Semans, director for the Noyo Center, says, "Working with Flockworks adds so much to how we can engage locals and visitors of all ages in caring for our oceans and sea life. We have shared projects reaching out to the schools and have plans to integrate art into our new Discovery Center on the Noyo Headlands. Art and science help engage imagination and hands-on thinking in different ways. We are looking forward to how this partnership will grow."

Flockworks weaves community collaboration into everything. Events like Stone Soup or Mendocino Coast Children's Fund's 21st Anniversary bring arts together to strengthen the sense of community and address important local concerns. Creative support for Mendocino Film Festival, the Noyo Food Forest, Leadership Mendocino, youth soccer, Mendocino Coast Clinics, Safe Passage, MAPA, Mendocino Land Trust, local schools, and others, has been visible with banners, murals, exhibits, installations, painted faces, crafts, and more.

BELOW LEFT: Redwood Elementary School students print with cabbages for a Garden Panel of the mural.
BELOW RIGHT: Book Moth *by Janet Self is made from reconstituted pages of* Reader's Digest Condensed Books.



NOW WE NEED YOUR HELP

Flockworks' accomplishments have all been done with volunteer time, minimal resources and an unwavering willingness to say yes whenever someone has asked. Now, after ten years, the challenge is to make this sustainable and able to respond to new opportunities. Support for added time and expertise is essential. We simply can't do it all with volunteer time alone any longer. For the very first time, we are asking for community help to continue this work. We are making our first financial appeal this winter, planning a March Art-A-Thon, and fundraising through grants, which will all enable Flockworks to continue to say *Yes!* to community creativity. Please contact us at www.flockworks.blogspot.com to find out how you can get involved. REM

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flockworks

Flockworks brings community together through creative arts. Working with local artists, non-profits, schools, and community groups, we promote the practice and exhibition of hands-on arts, and foster creativity that gives voice to the rich diversity of our area. Donations, fundraisers, sales of art from our Mendocino village gallery, volunteers, and grants help make possible the following Flockworks programs.

Art@OddFellows fosters local participation in arts through exhibits, special events, and more, hosted in the historic Odd Fellows Hall located at Kasten & Ukiah Streets in Mendocino.

Children's Banner Project takes hands-on art out into the community—to schools, events, and organizations. Banners, murals, special projects, and in-class activities all foster children's creative participation.

Noyo Printworks is a community studio in Fort Bragg offering letterpress, printmaking, and book arts with open studios, classes, and workshops. The studio is located at 215 Laurel Street in Fort Bragg; contact us at info@noyoprintworks.org

Community Collaborations builds working partnerships with others around important community issues. We bring arts to community ventures in order to raise awareness and enrich events, programs, and outreach.

(707) 937-2486 ❖ (707) 813-0107 ❖ flockworks1@gmail.com
10460 Kasten St. ❖ P.O. Box 1603 ❖ Mendocino, CA 95460
www.flockworks.blogspot.com

artfully devoted
to creating community

LEASE AGREEMENT

This Lease Agreement **("Lease")** is made and entered into as of this 9th day of December 2014, by and between the City of Fort Bragg, a municipal corporation **("Landlord")** and FLOCKworks, a California non-profit organization **("Tenant").** Landlord and Tenant are hereafter collectively referred to as the **"Parties."**

RECITALS

A. The Landlord is the owner of real property located at 416 N. Franklin Street, Fort Bragg, CA., (the **"Property).**

B. The Property includes rentable space (the **"Premises"),** as depicted in Exhibit A attached hereto and incorporated herein by this reference.

C. The Tenant desires to lease the Premises from the Landlord, and the Landlord desires to lease the Premises to the Tenant conditioned upon the terms therein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Landlord and the Tenant hereby agree as follows:

ARTICLE 1.

BASIC LEASE PROVISIONS

1.1 **Landlord's contact information:** Linda Ruffing, City Manager, City of Fort Bragg, 416 North Franklin Street, Fort Bragg, CA 95437.

1.2 **Tenant's contact information:** Janet Self, FLOCKworks, 11021 Gurley Lane, Mendocino, CA 95460

1.3 **Rented Area:** More particularly described as the area shown in Exhibit A, attached.

1.4 **Commencement Date:** December 9, 2014

1.5 **Term:** Two (2) years, expiring the last day in the month in which the term ends.

1.6 **Expiration Date:** December 31, 2016

1.7 **Option(s) to Extend Term:** Either party may request a Lease Extension upon a written 60-day notice to the other party. Landlord retains the right to deny or approve any extension request.

1.8 **Rent:** $50 per month, to be paid on the first day of the month.

1.9 **Security Deposit:** One month's rent (pre-paid).
Cleaning/Repair Deposit: N/A

1.10 **Permitted Uses:** Working center for industrial and fine arts to include a letterpress and print-making equipment for the purposes of: teaching art to children and adults; creating collaborative

public art projects; creating collaborative opportunities for exhibits, events and hands-on activities; enhancing Fort Bragg's brand as a destination center for arts and artists; and building community among artists and between the various arts disciplines.

1.11 **Parking:** No reserved parking. Parking is on-street, on a "first come, first served" basis, and subject to all signed hourly parking restrictions.

ARTICLE II.

DEFINITIONS

Definitions. As used in this Lease, the following terms shall have the definitions set forth below. Additional terms are defined in the remainder of this Lease.

2.1 **Additional Rent** means any amount of rent beyond the "Rent" as described in section 1.8 that Tenant is required to pay Landlord (e.g., late fees, or administrative charges), pursuant to this Lease.

2.2 **Alterations** means any decorations, modifications, additions or improvements made in, on, about, under or contiguous to the Premises by or for the benefit of Tenant including but not limited to, telecommunications and/or data cabling, lighting, HVAC and electrical fixtures, pipes and conduits, partitions, cabinetwork and carpeting.

2.3 **Commencement Date** is the date set forth in Section 1.4, and means the date upon which (i) Tenant shall be permitted to occupy the Premises for the conduct of Tenant's operations, and (ii) the date upon which Tenant's obligation to pay Rent shall commence.

2.4 **Premises** means the rented premises shown on Exhibit A.

2.5 **Property** means real property located at 416 N. Franklin Street, Fort Bragg, CA.

2.6 **Rent** means the monthly amount (in dollars) to be paid by Tenant to Landlord, pursuant to section 1.8

2.7 **Term** means the term of this Lease as set forth in Section 1.5 as such may be modified pursuant to the terms hereof.

ARTICLE III

PREMISES AND TERM

3.1 Leased Premises. Subject to and upon the terms and conditions set forth herein, Landlord hereby leases the Premises to Tenant and Tenant hereby leases the Premises from Landlord. The Premises consist of an archival area as depicted in the diagram attached hereto as Exhibit A. Tenant acknowledges that Landlord has made no representation or warranty regarding the condition of the Premises or the Property except as specifically stated in this Lease. The Parties agree that based upon their own inspection and estimates, the estimated square footage of the Premises is 400 square feet. Tenant and Landlord hereby stipulate and agree that the square footage of the Premises is as stated herein, notwithstanding any minor variations in measurement or other minor variations that may have occurred in the calculation thereof.

3.1.1 Appurtenant Rights. Tenant is granted the right during the Term to the nonexclusive use of the common area. Tenant will have access to bathroom facilities as shown on Exhibit A, attached. Landlord has sole discretion to determine the manner in which the public and common areas are maintained and operated.

3.2 Term and Commencement. The Term of this Lease shall commence on the Commencement Date, and unless sooner terminated as provided herein, the Term shall be for the period set forth in Section 1.5 as the same may be extended by an amendment to this Lease duly signed by both parties.

3.3 No Representations. Tenant acknowledges that neither Landlord nor any of Landlord's agents has made any representation or warranty as to the suitability or fitness of the Premises for the conduct of Tenant's business, and that neither Landlord nor any agent of Landlord has agreed to undertake any alterations or additions or to construct any tenant improvements to the Premises except as expressly provided in this Lease.

ARTICLE IV

RENT, OPERATING EXPENSES, AND DEPOSITS

4.1 Monthly Rent. From and after the Commencement Date, Tenant shall pay to Landlord for each calendar month of the Term, the monthly Rent set forth in Section 1.8. Each monthly installment of Rent shall be due and payable to Landlord in advance, on the first (1st) day of each calendar month during the Term, without abatement, deduction, claim or offset except as otherwise expressly provided herein, and without prior notice, invoice or demand, at Landlord's address or such other place as Landlord may designate from time to time.

4.2 Prorations. Monthly installments for any fractional calendar month at the beginning or end of the Term shall be prorated based on the number of days in such month.

4.3 Late Charge. Tenant acknowledges that the late payment of Rent will cause Landlord to incur administrative costs and other damages, the exact amount of which would be impracticable or extremely difficult to ascertain. Landlord and Tenant agree that if Landlord does not receive any such payment within five (5) calendar days after such payment is due, Tenant shall pay to Landlord as Additional Rent an amount equal to ten percent (10%) of the overdue amount as a late charge for each month or partial month that such amount remains unpaid. The Parties acknowledge that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of the late payment by Tenant. Acceptance of any late payment and/or late charge therefore shall not prevent Landlord from exercising any of the other rights and remedies available to Landlord for any other event of default under this Lease.

ARTICLE V

USE OF PREMISES

5.1 Permitted Use. The Premises shall be used solely for the purposes set forth in Section 1.10 ("Permitted Use") and for no other purpose without written consent of Landlord, which may be granted or withheld in Landlord's sole discretion. Tenant shall not do or permit anything to be done in or about the Premises or the Property, nor bring or keep anything therein that would in any way subject Landlord to liability, increase the premium rate of or affect any fire, casualty, rent or other insurance relating to the Property or any of the contents of the Premises, or cause

a cancellation of, or give rise to any defense by an insurer to any claim under, or conflict with, any policies for such insurance. If any act or omission of Tenant results in an increase in premiums, Tenant shall pay to Landlord upon demand the amount of such increase.

5.2 Sic:mac:ie. Tenant shall obtain the prior approval of the Landlord, which approval may be withheld in Landlord's reasonable discretion before placing any sign or symbol on doors or windows or elsewhere in or about the Premises so as to be visible from the public areas or exterior of the Property, or upon any other part of the Property, including building directories. Any signs or symbols which have been placed without Landlord's approval may be removed by Landlord. Upon expiration or termination of this Lease, all signs installed by Tenant shall be removed and any damage resulting therefrom shall be promptly repaired by Tenant, or such removal and repair may be done by Landlord and the cost charged to Tenant as Additional Rent.

5.3 Repairs and Replacements. Tenant shall repair and maintain the Premises, including tenant improvements, fixtures and furnishings in good order and repair, and Tenant shall, at Tenant's sole expense make all repairs, replacements, alterations, or improvements to the extent triggered by or relate to (i) Tenant's particular use of the Premises, and/or (ii) any improvements or alterations made by or on behalf of Tenant to the Premises. If Tenant fails to maintain or keep the Premises in good repair, at Landlord's option, Landlord may, after providing Tenant no less than thirty (30) days' prior written notice, perform any such required maintenance and repairs and Tenant shall pay Landlord's costs incurred in connection with such repairs, plus a percentage of such costs sufficient to reimburse Landlord for all overhead, general conditions, fees and other costs and expenses in connection therewith.

5.4 Parking. Tenant parking is "on-street" and is a "first-come, first served" basis.

ARTICLE VI

ALTERATIONS AND ADDITIONS

6.1 Alterations and Improvements. Tenant may not make any Alterations to the Property or Premises without the prior written approval of Landlord. Any Landlord-approved alterations shall be done at Tenant's expense, in a good and workmanlike manner, in conformity with plans and specifications reviewed and approved by Landlord, and in compliance with all applicable laws. Tenant shall obtain all necessary governmental approvals and permits for such alterations. Tenant shall give Landlord not less than ten (10) business days' notice prior to the commencement of construction so that Landlord may post a notice of non-responsibility on the Premises. In no event shall any alteration, without the prior written consent of Landlord:

a) affect the exterior of the Property,
b) affect any structural portion of the Property, including without limitation, the roof,
c) require any change to the basic floor plan of the Premises or any change to the structural or mechanical components of the Premises,
d) diminish the value of the Premises,
e) result in an increase in demand for building services or utilities,
f) cause an increase in the premiums for hazard or liability insurance carried by Landlord, or
g) overload the floor load capacity or unduly burden the plumbing, heating, ventilation, air conditioning, electrical or other basic systems that serve the Property.

6.2 Liens. Tenant shall not permit any mechanics', materialmen's or other liens, to be filed against the Property or against Tenant's leasehold interest in the Premises. Landlord has the right at all

times to post and keep posted on the Premises any notice that it considers necessary for protection from such liens. If Tenant fails to cause the release of record of any lien(s) filed against the Premises or Tenant's leasehold estate therein, by payment or posting of a proper bond within ten (10) days from the date of the lien filing(s), then Landlord may, at Tenant's expense, cause such lien(s) to be released by any means Landlord deems proper, including but not limited to payment of or defense against the claim giving rise to the lien(s). All sums reasonably disbursed, deposited or incurred by Landlord in connection with the release of the lien(s), including but not limited to all costs, expenses and attorney's fees, shall be due and payable by Tenant to Landlord as Additional Rent on demand by Landlord.

ARTICLE VII

INSURANCE AND INDEMNITY

7.1 Indemnity. To the fullest extent permitted by law, Tenant shall defend (with counsel reasonably acceptable to Landlord), indemnify and hold Landlord and its officers, officials, employees and agents ("Indemnitees") harmless from and against any and all claims arising out of or relating directly or indirectly to this Lease or the Premises ("Claims"), including without limitation, Claims for or relating to loss of or damage to property, injury or death of any person, and economic losses and consequential or resulting damage of any kind, including any Claim arising from or in connection with or in any way attributable to: (i) the use or occupancy, or manner of use or occupancy of the Premises or the Property by Tenant or any invitee, guest or licensee of Tenant, (ii) any act, error, omission or negligence of Tenant or Tenant Parties or any invitee, guest or licensee of Tenant in, on or about the Property including without limitation Claims which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, any act or omission of Tenant, (iii) any activity, work, or thing done, omitted, permitted, allowed or suffered by Tenant or Tenant Parties in, at, or about the Premises or the Property, or (iv) any breach or default in performance of any obligation on Tenant's part in the performance of any covenant or agreement to be performed under this Lease, except to the extent caused by the sole gross negligence or willful misconduct of the Indemnitees. The provisions of this section shall not be construed or interpreted as restricting, limiting or modifying Tenant's insurance obligations under this Lease and are independent of such obligations. Tenant's compliance with insurance requirements set forth in this Lease shall not restrict, limit or modify Tenant's indemnification obligations hereunder. The provisions of this section shall survive the expiration or earlier termination of this Lease.

7.2 Tenant's Insurance. Tenant shall, at its sole expense, procure and maintain throughout the Term (plus any later periods where Tenant may be in occupancy of the Premises) all of the insurance coverages, of the type and amounts as described in Exhibit B, attached.

ARTICLE VIII

ASSIGNMENT AND SUBLETTING

8.1 Landlord's Consent Required. Tenant shall not directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, assign, mortgage, pledge, encumber or otherwise transfer this Lease, or permit all or any part of the Premises to be subleased or used or occupied for any purpose by anyone other than Tenant without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Any assignment or sublease without Landlord's prior written consent shall, at Landlord's option, be void and shall constitute an event of default entitling Landlord to terminate this Lease and to exercise all other remedies available to Landlord under this Lease and at law.

8.2 No Release of Obligations. The consent by Landlord to an assignment or subletting hereunder shall not relieve Tenant or any assignee or subtenant from the requirement of obtaining Landlord's express prior written consent to any other or further assignment or subletting. No subtenant may assign its sublease, or further sublet its subleased premises, without Landlord's prior written consent, which consent may be withheld in Landlord's sole discretion. Neither an assignment or subletting nor the collection of rent by Landlord from any person other than Tenant shall be deemed a waiver of any of the provisions of this Article or release Tenant from its obligations to comply with this Lease, and Tenant shall remain fully and primarily liable for all of Tenant's obligations under this Lease.

ARTICLE IX

DAMAGE AND DESTRUCTION

9.1 Repair and Restoration; Termination Rights. If all or part of the Premises is damaged by fire or other casualty, such that access to or use and occupancy of the Premises is materially impaired, within forty-five (45) days of the date of the damage, Landlord shall notify Tenant of the estimated time, in Landlord's reasonable judgment, required for repair or restoration **("Repair Period").** If the estimated Repair Period is one hundred eighty (180) days or less, Landlord shall proceed promptly and diligently to repair or restore the Premises or the portion of the Premises necessary for Tenant's occupancy, and this Lease shall remain in effect, except that for the time unusable, Tenant shall receive a Rent abatement for that part of the Premises rendered unusable in the conduct of Tenant's business. If the estimated Repair Period is in excess of one hundred eighty (180) days from the date of the casualty, Landlord, at its option, shall either (a) commence to repair the damage, in which case this Lease shall continue in full force and effect, or (b) terminate this Lease as of the date specified by Landlord in a notice of termination, and this Lease shall terminate on the date specified in the notice.

9.2 Damage Near End of Term. Notwithstanding anything to the contrary set forth in this Article, if the Premises are damaged during the last three (3) months of the Term, Landlord and Tenant shall each have the option to terminate this Lease by giving written notice to the other of the exercise of that option within thirty (30) days after the damage or destruction, and this Lease shall terminate as of the date specified in such notice which shall be not before the date of such notice nor more than 30 days after the date of such notice.

9.3 Rent Apportionment. If Landlord or Tenant elects to terminate this Lease under this Article IX, Tenant shall pay Rent, prorated on a per diem basis and paid up to the date of the casualty. If the Premises are wholly untenantable and this Lease is not terminated, Rent shall abate on a

per diem basis from the date of the casualty until Premises are ready for occupancy by Tenant or the default is cured. If part of the Premises are untenantable, Rent shall be prorated on a per diem basis and abated in proportion to the portion of the Premises which is unusable until the damaged part is ready for Tenant's occupancy. Notwithstanding the foregoing, if any damage was caused by the gross negligence or willful misconduct of Tenant, its employees or agents, then, in such event, Tenant agrees that Rent shall not abate or be diminished.

9.4 Waiver of Statutory Provisions. The provisions of this Lease, including those in this Article IX, constitute an express agreement between Landlord and Tenant that applies in the event of any damage to the Premises or Property. Tenant, therefore, fully waives the provisions of any statute or regulation, including California Civil Code §§ 1932(2) and 1933(4), relating to any rights or obligations concerning any such casualty.

ARTICLE X

SURRENDER OF PREMISES; HOLDING OVER

10.1 Surrender of Premises. On expiration of this Lease, Tenant shall surrender the Premises in the same condition as when the Term commenced, ordinary wear and tear excepted. Except for furniture, equipment and trade fixtures (other than those which are affixed to the Premises so that they cannot be removed without material damage to the Premises) all alterations, additions or improvements made in or upon the Premises, either by Landlord or Tenant, may, at Landlord's election, become Landlord's property without compensation to Tenant; provided that, upon reasonable written request of Landlord, Tenant shall, at its expense and without delay, remove any alterations, additions or improvements (including, without limitation, all telecommunications equipment and cabling, and all alterations and improvements made by Tenant after the Commencement Date) made to the Premises by Tenant and designated by Landlord to be removed, and shall repair any damage to the Premises caused by such removal. If Tenant fails to complete such removal or to repair the Premises, Landlord may complete such removal and repair, and Tenant shall reimburse Landlord therefor. If Tenant fails to remove such property as required under this Lease, Landlord may dispose of such property in its sole discretion without any liability to Tenant, and further may charge the cost of any such disposition to Tenant.

10.2 Hold Over Tenancy. If Tenant remains in possession of the Premises after expiration or earlier termination of this Lease, Tenant shall be deemed, at Landlord's option, to occupy the Premises as a tenant from month-to-month. During such tenancy (and prior to any termination by Landlord), Tenant agrees to pay Landlord, monthly in advance, an amount equal to the greater of (i) the then fair market rental (as reasonably determined by Landlord) for the Premises, or (ii) one hundred thirty percent (130%) of the Rent which would become due the last month of the Term, together with all other amounts payable by Tenant to Landlord under this Lease. Except as provided in the preceding sentence, such month-to-month tenancy shall be on the same terms and conditions of this Lease except that any rights or options pertaining to additional space shall be deemed to be terminated and shall be inapplicable thereto. Landlord's acceptance of Rent after such holding over with Landlord's written consent shall not result in any other tenancy or in a renewal of the initial term of this Lease. If Tenant remains in possession of the Premises after the expiration or earlier termination of this Lease without Landlord's written consent, Tenant's continued possession shall be on the basis of a tenancy at sufferance and Tenant shall pay Rent during the holdover period in an amount equal to the greater of (i) one hundred fifty percent (150%) of the then fair market rental (as reasonably determined by Landlord) for the Premises, or (ii) two hundred percent (200%) of the Rent which

would become due the last month of the Term, together with all other amounts payable by Tenant to Landlord.

ARTICLE XI

LANDLORD'S RESERVED RIGHTS.

Rights Reserved to Landlord. Without notice and without liability to Tenant, and without effecting an eviction or disturbance of Tenant's use or possession, Landlord shall have the right to (i) make changes in the legal status of the Premises or the Property as Landlord shall deem appropriate in its sole discretion, provided such changes do not substantially interfere with Tenant's use of the Premises for the Permitted Use; (ii) enter the Premises at reasonable times and with reasonable advance notice (and at any time in the event of an emergency), to inspect or repair the Premises and to perform any acts related to safety, protection, or improvement of the Premises; (iii) install and maintain signs on and in the Premises and the Property; and (iv) make such rules and regulations as, in the reasonable judgment of Landlord, may be needed from time to time for the safety of the tenants, the care and cleanliness of the Premises and the Property and the preservation of good order therein. Landlord shall at all times retain a key with which to unlock all of the doors in the Premises, except Tenant's vaults and safes. If an emergency necessitates immediate access to the Premises, Landlord may use whatever force is necessary to enter the Premises and any such entry to the Premises shall not constitute a forcible or unlawful entry into the Premises, a detainer of the Premises or an eviction of Tenant from the Premises or any portion thereof.

ARTICLE XII

DEFAULT AND REMEDIES

12.1 Tenant's Default. It shall be an **"Event of Default"** hereunder if Tenant shall:

a) fail to pay when due any monthly installment of Rent, or fail to pay any other amount owed by Tenant to Landlord under this Lease as and when due and such failure continues for five (5) days following written notice thereof to Tenant by Landlord;

b) fail to provide any certificate, instrument or assurance as required by this Lease if the failure continues for ten (10) days after written notice of the failure to Tenant;

c) make a general assignment for the benefit of its creditors or file a petition for bankruptcy or other reorganization, liquidation, dissolution or similar relief or have a proceeding filed against Tenant seeking any relief mentioned in this subsection (c) which is not discharged within sixty (60) days thereafter;

d) abandon or vacate the Premises for more than three (3) consecutive months;

e) assign this Lease or sublease any portion of the Premises in violation of Article XIII; or

f) fail to comply with any other provision of this Lease in the manner required hereunder and such failure continues for thirty (30) days after written notice thereof to Tenant by Landlord (or if the noncompliance cannot by its nature be cured within the 30-day period, if Tenant fails to commence to cure such noncompliance within the 30-day period and thereafter diligently prosecute such cure to completion).

12.2 Remedies on Default. Upon the occurrence of an Event of Default, Landlord shall have the right to pursue any one or more of the following remedies in addition to any other remedies now or later available to Landlord at law or in equity. These remedies are not exclusive but instead are cumulative.

a. Continue Lease. Landlord may continue this Lease in full force and effect. In such case, so long as Landlord does not terminate Tenant's right to possession, this Lease will continue in effect and Landlord shall have the right to collect Rent when due, and may undertake efforts to relet the Premises, or any part of them, to third parties for Tenant's account. Tenant shall be liable to Landlord for all reasonable costs Landlord incurs in reletting the Premises including without limitation, expenses of remodeling the Premises required by the reletting. Tenant shall pay to Landlord the Rent due under this Lease on the date the Rent is due, less the Rent Landlord receives from any reletting. No act by Landlord allowed by this Section shall terminate this Lease unless Landlord terminates Tenant's right to possession. After an Event of Default and for as long as Landlord does not terminate Tenant's right to possession of the Premises, if Tenant obtains Landlord's consent, Tenant shall have the right to assign or sublet its interest in this Lease, but Tenant shall not be released from liability.

b. Terminate Lease. Landlord may terminate this Lease and Tenant's right to possession of the Premises at any time following an Event of Default. No act by Landlord other than giving written notice to Tenant shall terminate this Lease. Acts of maintenance or efforts to relet the Premises shall not constitute a termination of Tenant's right to possession. On termination, Landlord shall have the right to recover from Tenant all of the following:

(i) The amount of any unpaid Rent that had been earned at the time of termination of this Lease;

(ii) The amount of unpaid Rent that would have been earned after the date of termination of this Lease less any amount of the unpaid Rent that Tenant proves could have been reasonably avoided;

(iii) Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform obligations under this Lease, including, without limitation, expenses of remodeling the Premises for a new tenant, and any special concessions made to obtain a new tenant; and

(iv) Any other amounts, in addition to or in lieu of those listed above that may be permitted by law.

12.3 Landlord's Default. Landlord's failure to perform any of its obligations under this Lease shall constitute a Landlord Event of Default hereunder if the failure continues for thirty (30) days after written notice of the failure from Tenant to Landlord. If the required performance cannot be completed within thirty (30) days, Landlord's failure to perform shall not constitute a Landlord Event of Default if Landlord undertakes to cure the failure within such thirty (30) day period and diligently and continuously attempts to complete the cure as soon as reasonably possible. Tenant waives any right to terminate this Lease and to vacate the Premises upon Landlord's default under this Lease. Tenant's sole remedy on Landlord's default is an action for damages or injunctive or declaratory relief.

ARTICLE XIII

MISCELLANEOUS

13.1 No Waiver. No receipt and retention by Landlord of any payment tendered by Tenant in connection with this Lease shall constitute an accord and satisfaction, or a compromise or other settlement, notwithstanding any accompanying statement, instruction or other assertion to the contrary unless Landlord expressly agrees to an accord and satisfaction, or a compromise or other settlement, in a separate writing duly executed by Landlord. Landlord will be entitled to treat any such payments as being received on account of any item or items of Rent, interest, expense or damage due in connection herewith, in such amounts and in such order as Landlord may determine at its sole option. Any waiver of any condition or provision set forth in this Lease shall not be deemed a waiver of any subsequent breach of such condition or provision or of any other condition or provision, nor shall any such waiver be deemed a continuing waiver.

13.2 Severabilit . The Parties intend this Lease to be legally valid and enforceable in accordance with all of its terms to the fullest extent permitted by law. If an arbitrator or a court of competent jurisdiction holds any provision hereof to be invalid or unenforceable in whole or in part for any reason, the validity and enforceability of the remaining clauses, or portions of them, shall not be affected unless an essential purpose of this Lease would be defeated by loss of the invalid or unenforceable provision.

13.3 Governing Law; Venue; Construction. This Lease shall be construed according to the laws of the State of California without regard to principles of conflict of laws. Any action or proceeding that relates to, or arises from, this Lease shall be brought in a state court of competent jurisdiction located in Mendocino County. The captions used for the Sections and Articles of this Lease have been inserted for convenience only and shall not be used to alter or interpret the content of this Lease.

13.4 Binding Effect; Survival. The covenants, conditions, warranties and agreements contained in this Lease shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. The representations and warranties of Landlord and Tenant and the indemnification obligations of Landlord and Tenant set forth herein shall survive the expiration or termination of this Lease as shall all other provisions hereof which are intended to survive such expiration or termination.

13.5 Time. Time is of the essence of each provision of this Lease.

13.6 Entire Agreement; Amendments. This Lease and Exhibits A and B, attached hereto and incorporated herein by this reference, constitutes the final, complete, and exclusive statement of the terms of the agreement between Landlord and Tenant pertaining to the lease of the Premises and supersedes all prior and contemporaneous understandings or agreements of the parties. This Lease may not be amended or modified except in a writing signed by both Parties.

13.7 Notices. All notices delivered pursuant to this Lease shall be in writing and delivered to Landlord or Tenant at the applicable address designated in Section 1.1 or to such other address as may hereafter be designated by either party by written notice delivered to the other party in accordance with this Section. Such notices shall be effective on the earlier to occur of actual receipt or: (i) if mailed, three (3) days after posting at a United States post office, (ii) upon receipt if mailed by certified mail with return receipt requested, and (iii) upon delivery if delivered by overnight delivery service and delivery is confirmed by the delivery service.

13.8 Force Majeure. Except as otherwise provided in this Lease, the time for performance of an obligation other than payment of money under this Lease shall be extended for the period during which a party is prevented from performing due to Unavoidable Delay. "**Unavoidable delay**" shall mean any and all delay beyond the applicable party's reasonable control, including without limitation, delays caused by the other party; governmental restrictions, regulations, controls, preemptions or delays; orders of civil, military or naval authorities; strikes, labor disputes, lock-outs, shortages of labor or materials or reasonable substitutes therefore; Acts of God; fire, earthquake, floods, explosions or other casualties; extreme weather conditions or other actions of the elements; enemy action, civil commotion, riot or insurrection.

13.9 Attorneys' Fees. If any judicial remedy or arbitration is undertaken to enforce or interpret any provision of this Lease, the prevailing party shall be entitled to reasonable attorneys' fees, costs, expert witnesses fees, post judgment collection costs, and other expenses, in addition to any other relief to which such party may be entitled.

13.10 Authority. Each party warrants and represents that it has full authority to enter into this Lease, that this Lease constitutes a binding obligation of such party, and that the individual(s) signing on behalf of such party are duly authorized to bind such party hereto.

13.11 Landlord Approvals. Whenever the consent or approval of Landlord is required hereunder, such consent or approval may be granted or withheld by the City Manager or his or her designee, unless the City Manager determines in his or her discretion that such matter shall be referred to Landlord's governing body for consideration.

13.12 Counterparts. This Lease may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by any other party. This Lease shall take effect when signed by all Parties.

NOW THEREFORE, Landlord and Tenant executed this Lease as of the date first written above.

TENANT

FLOCKworks,
a California non-profit organization

By: _____
Janet Self, Executive Director

LANDLORD

CITY OF FORT BRAGG,
a municipal corporation

By: _____
Linda Ruffing, City Manager

APPROVED AS TO FORM:

_____
Samantha Zutler, City Attorney

ATTEST:

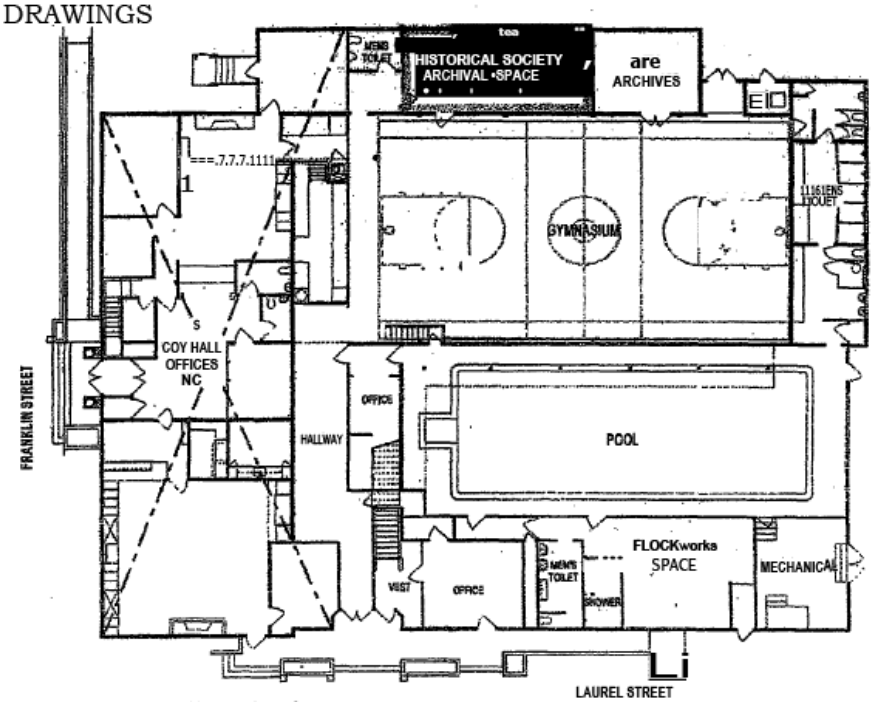
_____
Cynthia M. VanWormer, MMC
City Clerk

List of Exhibits

Exhibit A: Premises Being Leased (including common area)

Exhibit **B:** Insurance Requirements

EXHIBIT A
EXISTING BUILDING DRAWINGS



FIRST FLOOR PLAN - EXISTING
SCALE1=2047'

S3S11A131:1d :V.1.1131HX3

indigo 37

HAMMO440 PLAYLE ARM-111'MS. LLP
STEWCTuRAL AND USE STUDY far CITY OF FDFIfSMGS . City tiall East it-taY 2010

EXHIBIT B: INSURANCE REQUIREMENTS

(1) Commercial general liability insurance including contractual liability coverage, written on an "occurrence" policy form, covering bodily injury, property damage and personal injury arising out of or relating (directly or indirectly) to Tenant's operations, assumed liabilities, or use or occupancy of the Premises or the Property naming the Landlord as an additional insured, with minimum coverage in the amount of One Million Dollars ($1,000,000) per occurrence combined single limit for bodily injury and property damage and Two Million Dollars ($2,000,000) in the aggregate;

(2) Property insurance protecting Tenant against loss or damage by fire and such other risks as are insurable under then available standard forms of "all risk" insurance policies, covering Tenant's personal property and trade fixtures in or about the Premises or the Property, and any improvements or Alterations in the Premises, in an amount of one hundred percent (100%) of actual replacement cost or highest insurable value;

The foregoing policies shall protect Tenant as named insured, and Landlord and the other Indemnitees as additional insureds. Landlord reserves the right to increase the foregoing amount of required liability coverage from time to time (but not more than once each calendar year) and to require that Tenant cause any Tenant Parties conducting activities in or about or occupying the Premises to obtain and maintain similar types and amounts of insurance.

Each insurance policy must include an endorsement to provide that the policy and the coverage provided shall be primary, that Landlord, although an additional insured, shall nevertheless be entitled to recovery under such policy for any damage to Landlord by reason of acts or omission of Tenant, and that any coverage carried by Landlord shall be noncontributory with respect to policies carried by Tenant. Each such insurance policy or a certificate thereof, including appropriate endorsements, shall be delivered to Landlord by Tenant on or before the Commencement Date, and thereafter renewal policies, certificates, and appropriate endorsements at least thirty (30) days prior to the expiration dates of expiring policies.

Tenant shall cause its insurance companies issuing property (first party) insurance to waive any subrogation rights that those companies may have against Landlord, as long as the insurance is not invalidated by the waiver.

RESOLUTION NO. ____*-2016*

RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING FIRST AMENDMENT TO THE LEASE AGREEMENT WITH FLOCKWORKS AND AUTHORIZING CITY MANAGER TO EXECUTE SAME

WHEREAS, on December 9, 2014, the City of Fort Bragg and Flockworks, a California non-profit organization entered into a Lease Agreement for a portion of the City Hall East Building at 215 E. Laurel Street; and

WHEREAS, the term of the original Lease Agreement is scheduled to expire on December 31, 2016; and

WHEREAS, Flockworks desires to extend the term of the lease for an additional two years; and

WHEREAS, all other terms of the original lease shall remain in effect;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby approve the First Amendment to Lease Agreement with Flockworks and authorizes City Manager to execute same.

The above and foregoing Resolution was introduced by Councilmember _____, seconded by Councilmember _____, and passed and adopted at a special meeting of the City Council of the City of Fort Bragg held on the 14rd day of November, 2016, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSED:

_____
DAVE TURNER
Mayor

ATTEST:

_____
June Lemos
City Clerk

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT to Lease Agreement ("**Lease**") is made and entered into as of this 14th day of November, 2016, by and between the City of Fort Bragg, a municipal corporation ("**Landlord**") and Flockworks, a non-profit organization ("**Tenant**"). Landlord and Tenant are hereafter collectively referred to as the "**Parties**."

WHEREAS, on December 9, 2014, the Parties entered into a two-year Lease Agreement whereby Tenant leased from Landlord premises located at 215 E. Laurel Street, Fort Bragg, for use as an industrial and fine arts working center; and

WHEREAS, the Term of the Lease expires on December 31, 2016; and

WHEREAS, Tenant wishes to extend the Lease for two years, pursuant to Article III, Section 3.2 of the Lease;

NOW THEREFORE, for the aforementioned reasons and other valuable consideration, the receipt and sufficiency of which is acknowledged, Landlord and Tenant hereby agree that the Lease Agreement dated December 9, 2014 is hereby amended as follows:

1. **ARTICLE 1. BASIC LEASE PROVISIONS**
   1.5 **Term:** Four (4) years, expiring the last day in the month in which the term ends.
   1.6 **Expiration Date**: Through December 31, 2018.

2. Except as expressly amended herein, the Office Space Lease Agreement between the City of Fort Bragg and Flockworks dated December 9, 2014 is hereby reaffirmed.

IN WITNESS WHEREOF, the Parties have executed this First Amendment the day and year first above written.

LANDLORD:
CITY OF FORT BRAGG

_____
Linda Ruffing
City Manager

ATTEST:

_____
June Lemos
City Clerk

APPROVED AS TO FORM:

_____
Samantha W. Zutler
City Attorney

TENANT:
FLOCKWORKS

_____
Janet Self
Executive Director

City of Fort Bragg

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

Text File

File Number: 16-443

Agenda Date: 11/14/2016 **Version:** 1 **Status:** Business

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

Agenda Number: 7B.

Receive Recommendation of Public Works & Facilities Committee and Provide Direction to Staff Regarding Electric Vehicle Charging Stations

AGENCY:	**City Council**
MEETING DATE:	**November 14, 2016**
DEPARTMENT:	**Admin/Public Works**
PRESENTED BY:	**S Schneider/T Varga**

AGENDA ITEM SUMMARY REPORT

TITLE:
RECEIVE RECOMMENDATION OF PUBLIC WORKS & FACILITIES COMMITTEE AND PROVIDE DIRECTION TO STAFF REGARDING ELECTRIC VEHICLE CHARGING STATIONS

ISSUE:
For several years, the City has discussed the possibility of installing Electric Vehicle (EV) charging stations in City-owned parking lots throughout the City. Currently, the Mendocino Land Trust (MLT) has grant funds sufficient for the purchase and installation of several EV stations. These funds are sufficient to purchase and install four EV stations in two of the City owned parking lots – City Hall and the one next to Footlighters Theater. Staff would like direction on whether to move forward with these stations, including the parameters within which the stations would operate.

RECOMMENDED ACTION:
Provide direction for installing and operating four (4) EV charging stations in City-owned parking lots.

The following parameters for the EV charging stations are recommended:

- Two spaces each in the City Hall parking lot and the Footlighters parking lot to be designated as EV charging stations with only electric vehicles being authorized to utilize the stations
- EV charging stations to have a 4-hour limit from 8am to 7pm seven days per week
- The cost of charging a vehicle at each of the stations to be as follows:
  - 1st hour – free
  - 2nd hour through 4th hour - $1.00 per hour
  - More than 4 hours (overnight) - $2.50 per hour
  - More than 4 hours (during 4-hour parking limit) - $2.50 per hour plus a $35 parking violation fee if between the hours of 8am and 7pm; seven days a week

ALTERNATIVE ACTION(S):
- Provide alternate direction to staff
- Take no action

ANALYSIS:
In the late 1990s, the City installed an EV station in the public parking lot next to the North Coast Brewery. The charger is currently non-operative. There have been numerous conversations, both at the committee and Council level, regarding EV stations on City property. To date, these conversations have not resulted in the installation of any new EV stations. In 2013, Council authorized $3,000 for the installation of a charging station in the City Hall parking lot along with applying for a grant through the "Reconnect California Grant Program." The stations were never installed. The total estimated installation cost was almost $9,000 with the cost overage to be covered by a grant. Subsequently there was an additional substantial cost to install an electric meter and the project was shelved.

During the spring of 2015, the Mendocino Council of Governments (MCOG) hosted a series of workshops throughout the county (including one on June 2nd in Fort Bragg) to discuss potential locations for EV stations. The *"Mendocino County Zero Emission Vehicle (ZEV) Regional Readiness Plan*" was presented during the workshops. City staff and the Mendocino Land Trust (MLT) are using the Readiness Plan as a guide in siting this first round of EV stations in Fort Bragg. The City has an opportunity to have EV stations purchased and installed at no cost. The ongoing utility costs would be the City's responsibilities.

The Mendocino Land Trust has sufficient funds to purchase and install EV stations. The number of stations depends on the type and cost of the chargers themselves as well as the cost to install the chargers.

Type of EV charger:

Currently, three "levels" of charging is available for electric cars.

- Level 1 charging is plugging your car into an ordinary household outlet (120v). Depending on the type of vehicle, these chargers can take up to 8 hours (overnight) to fully charge a car's battery. Level 1 chargers are readily available in the commercial EV Charger market and essentially utilize a regular household outlet.

- Level 2 charging is plugging your car into a 240v outlet or the type of outlet your household washing machine or clothes dryer utilizes. Depending on the type of vehicle, these chargers can take up to 3 or 4 hours to fully charge a car's battery. Level 2 chargers can cost anywhere from $500 up to $6,000 depending on the amount of electricity (kW) it uses as well as operational features.

- DC Fast Charging is the quickest kind of charging available. Depending on the type of vehicle, these chargers can fully charge a car in under 30 minutes. DC Fast Chargers can cost, on average, $35,000. The biggest challenge with installing a DC Fast Charger is that they operate with 440v power. Since there are no 440v electric lines in Fort Bragg, a step up transformer is required at an additional cost, according to PG&E, of approximately $50,000.

Through conversations with PG&E and the MLT, and based on discussion at the September 28, 2016 Public Works and Facilities Committee meeting, Committee Members and Staff are recommending Level 2 chargers for the possible EV stations. Level 2 chargers will provide a quality, dependable resource for charging while fitting in budget and time constraints related to the purchasing, installation and ongoing maintenance of the EV stations.

Cost to the Public:

Also to be considered with regards to the type of EV charger is whether or not the use should be free, fee-based, or partially subsidized. There are several factors to consider when deciding on whether or not to utilize fee-based EV chargers:

1. Cost of electricity: It is estimated to cost approximately $3,000 per charger per year. This number is based on two separate estimates:

    a. PG&E estimates approximately $2,238.92 per charger annually based on an average of 3 hours of use per day.

    b. MLT, through their research of other publicly accessible charging stations, estimates approximately $3,434.75 per charger annually based on an average of 8 hours of use on weekends and 4 hours of use on weekdays.

Without historical data, it is very difficult to determine an exact estimate of electricity usage and cost. However, staff feels comfortable with the estimation above and will monitor ongoing electrical

costs closely. In addition, if the case study below is of any indication, electricity costs could end up being significantly less than $3,000 per charger per year.

2. Ongoing maintenance and servicing: Utilizing a charger which requires no fee is a simpler and less burdensome way of providing EV stations. No staff time is necessary to work with any vendors, payment programs and/or reporting. No contracts are necessary to administer the payment systems and related services. However, utilizing a fee-based charging system would provide some, or all, of the necessary funding to pay for electricity use and ongoing maintenance and servicing.

3. Budget implications: The MLT grant funding provides for the purchase, installation and a 5-year warranty on the chargers and related equipment and software. The warranty also includes monthly fees should the City move forward with the fee-based chargers. For at least the first 5 years, the City would only have to provide funds for electricity use and day-to-day wear and tear. However, the City may wish to consider some sort of capital fund to set aside money for the future replacement of the EV stations when they wear out. The EV stations being considered are robust and appropriate for coastal conditions and staff anticipates a minimum amount of servicing and maintenance on the physical EV stations and related equipment. Therefore, the main considerations with regard to budget implications are for electricity use and maintenance, repair and possibly replacement beyond the 5 year warranties.

The fee-based EV Stations being considered are flexible in how electricity is charged. The City has full control over this aspect of the stations and can change its methods at any time. Possibilities to charge for use include: by the hour, by the amount of electricity used, flat fee, time of day, specific drivers, etc.

Below are some pros and cons of utilizing fee-based EV stations:

PRO	CON
Funding would be provided to offset electricity costs and ongoing maintenance of regular wear and tear	Based on past Council and committee discussions, it has been the intent to offer non fee-based EV chargers
People utilizing the stations would be less likely to leave cars unattended for periods of time when charging is not necessary	Fee-based chargers are not as effectively meeting the community service goal in an effort to fulfill City Council Goal 3:0 “Establish Fort Bragg as a Leader in Sustainable Practices”

Based on the information above, the Public Works and Facilities Committee is recommending installing the fee-based EV stations. This allows for the flexibility of charging at any point in time while if the non-fee-based stations are installed, it would be difficult and more costly to change to charging for usage. In addition, fee-based stations can recover at least some of the estimated $3,000 per year per charger cost of electricity plus maintenance expenses.

The stations being recommended are manufactured and maintained by a company called ChargePoint. ChargePoint is a national EV charging system with over 60 locations in Mendocino County alone. This network of over 31,000 charging stations throughout the United States is the largest of its kind and is widely known by drivers of electric vehicles.

To strike a balance between encouraging use of electric vehicles and cost recovery, Committee members recommend programming the EV Stations as follows:

- First hour of charging free

- Second, third and fourth hours (61 minutes – 240 minutes) $1.00 per hour
- Over four hours (more than 240 minutes) $2.50 per hour. If use exceeds four hours during restricted hours (8am – 7pm), a $35 parking violation fee would be assessed to the user.

Specifically, this accomplishes the following:

1. Offers free EV charging as part of City Council's goal of "Establishing Fort Bragg as a Leader in Sustainable Practices;"
2. Encourages users to move their car after one hour and allows use by a broader audience;
3. Allows for some of the funding necessary to pay for the electrical use and maintenance costs;
4. Gives flexibility to raise or lower the cost of use after one hour in order to offset ongoing costs as well as the amount Council may designate to offset such costs.

Number of EV chargers and stations:

The type of chargers the City authorizes will determine the number of EV stations. Should the City authorize free EV stations, it is possible to install up to six (6) chargers in two locations. Should the City authorize fee-based EV stations, it is possible to install up to four (4) chargers in two locations. These numbers are due to the cost of the actual EV stations and the available MLT grant funds. The estimated cost of electricity for six chargers is $18,000 annually. With four chargers, the estimated cost would be $12,000 annually.

The Public Works and Facilities Committee recommends no more than 4 EV stations regardless of the type. This recommendation is based on minimizing the impacts to current parking availability in City lots and allows for electric cost recovery. This approach also allows the City to work out the inevitable kinks in the system and prepare for expansion in the future.

The EV stations being considered (whether free or fee-based) would be two individual stations with two chargers at each station. Therefore, two locations are being considered for installation.

Location of EV Stations:

City Staff has determined two locations for the EV Stations provided for in the MLT grant.

1. City Hall Parking Lot: Two spaces adjacent to the alleyway in the northeastern portion of the City Hall parking lot. The spaces would be within sight of Franklin Street enabling Police Officers to monitor the EV stations. Existing overhead powerlines and a nearby utility pole make for a convenient connection point.

2. Footlighters Parking Lot: Two spaces along the west side of the parking lot. This allows for easy access to current PG&E installed equipment located just to the south.

Other Considerations:

- Signage: The MLT grant allows for $500 per EV station for signage. Initially, signage will be included only at the stations themselves notating hours of use, costs for use and vehicle type restrictions for the stations. Staff will continue to research possible wayfinding signage after installation is complete in order to inform the public of the stations.

- Use Restrictions: Staff recommends four hour parking at the stations from 8am to 7pm seven days per week. No time limits would exist outside of these hours. This allows for sufficient turnover of use during peak hours. Charging for use would be 24 hours per day, seven days per week. A $35 parking violation fee would be charged for any vehicle parked at the charging station more than four hours during normal business hours (8am – 7pm).

- The Bigger Picture:
    - Other current efforts are underway to install EV stations throughout the Fort Bragg and adjoining coastal area. The MLT is working with State Parks and other private businesses to install stations utilizing funds from the same grant as would provide the chargers on City property. The State Department of Parks and Recreation is collaborating with the MLT to add EV charging stations at eight of the State Parks in Mendocino County. A site is planned for Harvest at Mendosa's in Mendocino as well as at the Caspar Community Center. Two additional sites are planned for the City of Willits. Each station is anticipated to have as many as two chargers. These stations are to be funded by a grant from the California Energy Commission (CEC).
    - Mendocino Railway, working with TESLA Motors, is exploring the installation of TESLA's fast chargers in the Depot parking lot. However, no definitive plans have been made. Success of this partnership relies greatly on the estimated cost for installation and whether those costs are suitable to TESLA who would pay for the entire cost to purchase and install the stations.
    - PG&E is launching a funding initiative sometime in 2017 to install EV stations throughout Northern California. While a timeline is unknown, Fort Bragg is on the list of cities showing interest in obtaining EV stations, possibly to be installed in one or two of the parking lots bordering Noyo Headlands Park. More details are forthcoming in either late 2016 or early 2017.

CASE STUDY:

The City of Healdsburg currently utilizes the ChargePoint charging stations in its City Hall parking lot. Installed just over a year ago, the stations proved very popular among visitors and residents alike. They have had no significant issues or complaints regarding the stations including functionality and usage. Electricity costs are subsidized by a special fund administered by the City. As a result, the City only charges $.50 per hour from 7am to 6pm and provides free charging outside of those hours. The $.50 per hour charge was implemented solely to keep vehicles from utilizing the stations for longer than was necessary. Both the City and users of the stations highly recommend ChargePoint and find them to be easy to use and program accordingly.

Recent statistics (over the last 30 days) from Healdsburg which operates 6 ChargePoint Level 2 stations are as follows:

- Chargers are utilized 41% of the time totaling 333 sessions
- Average session length is 3 hours, 6 minutes
- Revenue for 30 days totaled $302.00 (charging $.50/hour from 7am to 6pm)
- Electricity costs for 30 days totaled $520.00
- Electricity costs for 6 chargers for past 12 months totaled $5,578.59 (approximately $930 per charger per year)

Photo: City of Healdsburg, City Hall parking lot

FISCAL IMPACT:

During the first five years of the EV charging stations use, all hardware and software costs, including damages due to vandalism, general wear and tear, software upgrades and maintenance will be covered by the Mendocino Land Trust's grant providing the funds for the installation and purchase of the stations. The City will be responsible for the electricity used by the charging stations. However, staff will continually analyze the costs of the electricity compared to the income provided by the users of the stations to ensure no significant costs to the City's General Fund.

Starting in Year Six of the chargers, the City will be responsible for any damages, software licenses and user fees in addition to the electricity charges. Again, staff will continuously analyze the costs compared to revenue to ensure no significant costs to the City's General Fund.

CONSISTENCY:

The installation of EV charging stations in the City is consistent with City Council Goal 3.0, "Establish Fort Bragg as a Leader in Sustainable Practices."

IMPLEMENTATION/TIMEFRAMES:

Upon consent from City Council for the installation and operation of the EV charging stations, City Staff would work with the Mendocino Land Trust to complete the installation in the Spring of 2017. Appropriate signage and marketing of the stations would occur shortly thereafter.

ATTACHMENTS:

1. Map of proposed EV stations in City parking lots
2. Description/photos of proposed ChargePoint fee-based EV station
3. Pacific Gas & Electric estimated electrical costs for EV stations
4. Description/photos of possible signage to be installed at the EV stations

NOTIFICATION:

1. Doug Kern, Mendocino Land Trust

City Clerk's Office Use Only

Agency Action ☐ Approved ☐ Denied ☐ Approved as Amended

Resolution No.: _____ Ordinance No.: _____

Moved by: _____ Seconded by: _____

Vote: _____

☐ Deferred/Continued to meeting of: _____

☐ Referred to: _____

City Hall Parking Lot

Footlighter's Parking Lot

CT4000 Family

ChargePoint® Level 2 Commercial Charging Stations

The CT4000 family is the latest generation of ChargePoint commercial charging stations. Refined yet rugged, these stations set the industry standard for functionality and aesthetics.

The CT4000 full motion color LCD display instructs drivers and supports dynamic updates of custom branded videos and advertisements.

Intelligent power management options double the number of parking spaces served by allowing two charging ports to share a single circuit. Sites with single port EV stations can upgrade to dual port stations without requiring additional electrical services.

All CT4000 models offer one or two standard SAE J1772™ Level 2 charging ports with locking holsters, each port supplying up to 7.2kW. With this standard connector, ChargePoint level 2 stations can charge any EV.

Stations are available in bollard and wall mount configurations for easy installation anywhere. All stations are fully software upgradeable remotely over the air.

Stations come in both 6' and 8' tall models with 18' and 23' cords, respectively. With multiple options for size and cord reach, your station can service up to four parking spaces, reach all car models regardless of parking style or car sizes and increase the usability of your EV spots.

Driver Friendly User Interface

- Instructional video shows how to use the station
- Multi-language: English, French, Spanish
- Touch button interface; works in rain, ice and with gloves
- Backed by ChargePoint's world class 24/7 driver phone support

Easily Communicate with Your Drivers

Whether you're a retail establishment wanting to advertise your latest product, a workplace looking to communicate with employees or a municipality wanting to welcome visitors, ChargePoint's prominent LCD screen makes it easy to reach EV drivers:

- Daylight readable, with auto brightness control
- 640 X 480 resolution active matrix
- Full motion 30fps video support
- Upload up to 60 seconds of high quality video on a color LCD screen to individual stations as often as desired
- Brand your charging stations to communicate with drivers
- Instructional video in English, Spanish or French

Service Products and Support

ChargePoint offers world-class service products and support that help ensure quality of work, save time and money, protect your investment and enhance the productivity of your charging stations. From site planning to installation and setup, to ongoing care and management, when you choose ChargePoint, you're covered.

- ChargePoint Configuration and Activation: customized setup and activation of your stations
- ChargePoint Station Manager: ongoing and unlimited software tools to meet your changing needs
- ChargePoint Assure: extended parts and labor warranty coverage for up to five additional years

Energy Measurement and Management

- Real-time energy measurement
- 15 minute interval recording
- Time of Day (TOD) pricing
- Load shed by percentage of running average or to fixed power output

Minimize Costs with Flexible Power Management Options

In the vast majority of applications, a full power configuration is the best choice for both station owners and drivers. However, when drivers are parked for a longer time, an intelligent, lower power output can save station owners considerable installation cost while still providing drivers a great charging experience. With flexible power options, station owners can meet the needs of drivers while lowering costs:

Power Select (Patent Pending)

- Allows for a lower capacity (less than 40A) circuit to power each port
- Cuts installation costs by reducing the cost or even avoiding the need to upgrade panels or transformers

Power Sharing

- Dynamically share one 40A, 30A or 20A circuit between two parking spaces
- Doubles the number of parking spots served while reducing installation and operating costs
- Allows station owners to upgrade a single port station to dual port to serve more drivers with no electrical upgrade

Clean Cord Technology

- Keep charging cords off the ground
- Standard on all models
- Ultra-reliable second-generation gravity operated mechanism
- Flexible over entire -40°F to +122°F product temperature range

CT4000 stations come with 18' or 23' cords to increase the usability of your charging spots, on 6' and 8' tall models respectively.

Ultra-reliable second-generation gravity operated mechanism.

18' and 23' cords to reach all car models and serve more parking spaces.

World-class 24/7 driver phone support.

Instructional video shows how to use the station. Multi-language charging instructions, giving drivers the choice of English, French or Spanish.

Driver interaction is supported in any weather by five rugged, back-lit buttons with audio feedback.

Strong and rugged design materials built to withstand the elements.

CT4021
Dual-port bollard charging station with 18' charging cables. Standard *EV Charging Only* sign without optional custom branding.

Promote Your Brand and Business

Having your stations installed in a visible location makes a bold statement about your business' commitment to sustainability and shows that you care about your customers. ChargePoint CT4000 stations are built for customization so you can conveniently promote your brand as well. With custom signage and video you can:

- Increase brand recognition
- Attract EV drivers by making sure your stations are highly visible
- Ensure EV charging installations are consistent with the look and feel of your brand
- Differentiate your stations from standard ChargePoint stations to make them easily identifiable by your driver base

Easily customizable branding area.

All stations come with *EV Charging Only* sign, which can be replaced with your custom signage.

5.7" color LCD display for customizable video content.

Upload up to 60 seconds of high quality video to individual stations as often as desired.

Daylight readable with auto brightness control.

OPTIONAL:
Additional customizable branding areas.

All stations have standard extrusions to hold your custom signage.

Artwork templates and material specifications are conveniently downloadable from chargepoint.com

Branded CT4021
Shown with optional branding on bollard.
18' cords on 6' model.

Branded CT4025
Shown with optional branding on back.
23' cords on 8' model.

Bollard Charging Stations

CT4011

CT4021

CT4025

Wall Mount Charging Stations

CT4013

CT4023

CT4027

Learn More

To learn more about ChargePoint's CT4000 Family:

- Visit chargepoint.com/ct4000
- Call +1.408.705.1992
- Email sales@chargepoint.com

ChargePoint, Inc.
254 East Hacienda Avenue
Campbell, CA | 95008-6617 USA
+1.408.370.3802 or toll free +1.877.370.3802
chargepoint.com

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Printed on paper made with 100% post-consumer fiber and 100% certified renewable energy, and processed chlorine free.

100% Recycled Fiber PCF

Listed by Underwriters Laboratories Inc.

PG&E Estimated Charges

Note - A6 has maximum demand of 75 kW

Daily hours used	3
kWh/charger/day	21.6
Chargers	2
Monthly kWh	1,296
Charger kW	7.2

Usage Distribution	
Peak Period	40%
Mid Period	40%
Off Peak Period	20%
Summer Mos	6
Meter Fee/Mo	$15.89

Electricity Rates	Summer		Winter	
	Demand $/kW	Usage $/kWh	Demand $/kW	Usage $/kWh
Maximum	$0.00		$0.00	
Peak Period	$0.00	$0.55	$0.00	$0.20
Mid Peak Period	$0.00	$0.25	$0.00	$0.20
Off Peak Period	$0.00	$0.18	$0.00	$0.18

Assumed Usage	Summer		Winter	
	Peak Demand (kW)	Usage (kWh)	Peak Demand (kW)	Usage (kWh)
Maximum	0		0	
Peak Period	0	518	0	518
Mid Peak Period	0	518	0	518
Off Peak Period	0	259	0	259

Fees Charged	Summer		Winter	
	Demand Fees	Usage Fees	Demand Fees	Usage Fees
Meter Fee	$15.89		$15.89	
Maximum	$0.00		$0.00	
Peak Period	$0.00	$284.60	$0.00	$102.85
Mid Peak Period	$0.00	$130.72	$0.00	$102.85
Off Peak Period	$0.00	$46.81	$0.00	$46.70
Total Fees	$15.89	$462.13	$15.89	$252.40

Montly Average	Summer	Winter	Average
Estimated Bill	$478	$268	$373
Avg Rate $/kWh	$0.37	$0.21	$0.29

Site 1 (1 station with 2 chargers) Annual Total:	$4,477.85

Vehicle Charging Model

Daily hours used	3
kWh/charger/day	21.6
Chargers	2
Monthly kWh	1,296
Charger kW	7.2

Usage Distribution		
Peak Period	40%	*12:00-18:00*
Mid Period	40%	*08:30-12:00 and 18:00-21:30*
Off Peak Period	20%	*00:00-8:30 and 21:30-00:00*
Summer Mos	6	

CA-MUTCD, Section 2B.46

Electric Vehicle Charging Station Signs

Standard:

84 **If used, the Electric Vehicle Charging Station Tow-Away (R112(CA)) sign (see Figure 2B-24(CA)) shall be placed immediately adjacent to, and visible from, the charging station stall or space, or at each entrance to an off-street parking facility to inform motorists that their vehicles will be towed away if parked in designated stalls or spaces without being connected for electric charging purposes. The sign shall include the address where the towed vehicle can be reclaimed and the telephone number of the local traffic law enforcement agency. Refer to CVC 22511.**

Option:

85 Local agencies may, at their discretion, include CVC Section 22511 or local municipal code section, or ordinance number on the Electric Vehicle Charging Station Tow-Away R112(CA) sign.

Standard:

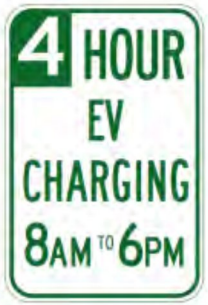
86 **If used, the No Parking (symbol) EXCEPT FOR EV CHARGING (R113(CA)), or the No Parking (symbol) EXCEPT FOR ELECTRIC VEHICLE CHARGING (R113A(CA) sign (see Figure 2B-24(CA)) shall be placed immediately adjacent to, and visible from, each charging station stall or space.**

87 **If used, the __HOUR EV CHARGING __AM TO __PM (R114(CA)), or the __HOUR ELECTRIC VEHICLE CHARGING __AM TO __PM (R114A(CA)) sign (see Figure 2B-24(CA)) shall be placed immediately adjacent to, and visible from, each charging station stall or space to identify the allowable time limit where electric vehicles may be connected, depending upon what time limitations for charging apply to each charging station.**

R112 (CA)

R113 (CA)

R113A (CA)



R114 (CA)

R114A (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: 16-440

Agenda Date: 11/14/2016 **Version:** 1 **Status:** Business

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

Agenda Number: 7C.

Receive Recommendation from Community Development Committee to Host a Mural Competition in Fort Bragg and Provide Direction to Staff

AGENCY:	City Council
MEETING DATE:	November 14, 2016
DEPARTMENT:	CDD
PRESENTED BY:	M. Jones

AGENDA ITEM SUMMARY

TITLE:
RECEIVE RECOMMENDATION FROM COMMUNITY DEVELOPMENT COMMITTEE TO HOST A MURAL COMPETITION IN FORT BRAGG AND PROVIDE DIRECTION TO STAFF

ISSUE:

On October 25, 2016, the Community Development Committee (CDC) received a staff report and discussed the possibility of City support for a mural competition in Fort Bragg. The idea for this competition originated with local artist Johnathan Palmer, who completed the beautiful mural on the North Coastal Trail restroom. Over the past few months, staff has discussed and worked with Mr. Palmer to develop the outlines for a mural competition in Fort Bragg. He hopes to coordinate the mural competition as a volunteer and is seeking limited staff support from the City and stipends for the mural artists.

The Community Development Committee recommended that the project go forward as developed by staff and Mr. Palmer and as described below. However, the CDC recommends that buildings in the Central Business District be given preference for participation in the mural competition.

RECOMMENDED ACTION:

Approve CDC recommendation to host a mural competition in Fort Bragg and provide direction to staff to identify funding and committee staff time to the project.

ALTERNATIVE ACTION(S):

1. Approve staff time to support the mural competition in Fort Bragg but not funding for stipends; or
2. Take no action.

ANALYSIS:

1. Background

Public art has been a priority of the City Council and Community Development Department since the adoption of the City's Economic Development Strategy in 2014. The Economic Development Strategy includes the following public art strategy:

Strategy 3.3 Encourage installation of "public" art throughout Fort Bragg (on both Public and Private Property)

Description The Mendocino Coast has a thriving arts community, and Fort Bragg is home to several galleries. However, art displays and arts education are generally limited to the classroom or studio. Public art, which consists of both publicly funded art and privately funded art that is visible from the public realm, helps to create an unforgettable sense of place. Public art can be commissioned as part of community infrastructure and other improvement projects or through private development. Public Art that is incorporated into private projects can improve the visual and architectural interest of private sector developments. The City of Fort Bragg can facilitate and encourage public art through various means, such as provision of planning incentives, encouraging public art through the Design Review process and funding public art projects. Support for public arts projects would in turn help to support and sustain the local arts community and would further enhance Fort Bragg's reputation as an arts community, thereby increasing visitation and arts sales.

Responsibility City of Fort Bragg, developers, arts community

Project Cost Paid for by project implementer.

Tactics

1. Research public art policies/programs in other communities and convene a meeting of arts and other community members to discuss opportunities for and interest in creating public art.
2. Investigate feasibility and opportunities for requiring public art as part of major public infrastructure and development projects.
3. Encouraging/requiring public art as part of Design Review for new development projects that have significant visual impacts on the community.

Over the past two years, staff has implemented this strategy primarily through tactics 2 and 3.

1. Staff hired local artists to complete 15 artist benches on the Coastal Trail.
2. Staff hired two artists to complete two beautiful murals on the restrooms of the Coastal Trail.
3. Through design review, the Planning Commission requested that the North Coast Brewing Company install a mural on its grist tower as part of that expansion.
4. Staff has revised the zoning ordinance to make it more art friendly by allowing studio and industrial art activities in more zoning districts as a permitted use and revised the live-work requirements to make it easier to build live-work units.
5. Staff worked with the Noyo Print Works project and City Council to reuse unutilized space in the gym, where they now successfully hold art classes and provide print making studio time.
6. Staff has worked with a local woodworker to help get a new industrial arts facility off the ground at the Cow Shed on Cypress Street. Staff assisted with project planning and pro-form analysis to help the entrepreneur develop his project concept and test it for feasibility. This private sector project is now underway.

n

Staff is always seeking new ways to support the arts and artists in Fort Bragg, and when Johnathan Palmer came forward with his idea, we worked together to refine the concept as outlined below.

2. Mural Competition Proposal

Jonathan Palmer would like to add to these economic development efforts by holding an annual competition to select four or five national or international caliber muralists to paint new murals on large vacant walls in Fort Bragg. Johnathan is seeking City support for this project in the form of an official endorsement and funding for small stipends of $2,000 for each muralist. This proposal would involve the City in a public-private approach to developing public art projects throughout our town.

Staff and Johnathan Palmer developed the following approach:

1. Johnathan Palmer responsibilities:

    a. Identify building faces that are highly visible, but not particularly scenic, which would benefit from a mural (some examples are included in attachment 1);

    b. Work with business owners to obtain permission for the mural and a commitment from each business to pay at least $1,000 to the muralist for completion of the mural;

    c. Reach out to the national and international mural artist community with an announcement and submission requirements for the Fort Bragg Mural Competition;

    d. Set up a mural submissions review committee to select the top twenty mural submissions for further consideration by the property owners; and

    e. Work with local artists to set up free accommodations for the winning muralists.

    f. Complete marketing for the mural competition.

2. City responsibilities:

    a. Provide encroachment permits, administrative design review and insurance coverage for the mural activities at no cost; and

    b. Provide up to $1,000 in funding per mural (the upper limit for public projects to be exempt from prevailing wage).

3. Building owners would:

    a. Select the muralist submission for their building from the top 20 submissions;

    b. Contribute at least $1,000 to the cost of their mural; and

    c. Agree to leave the mural in place for a minimum of five years.

If Council would like to provide direction about themes that would be acceptable to the City of Fort Bragg that may also be appropriate. For the Coastal Trail murals, City Council provided direction that the murals should reflect the City's natural, cultural or historic environment. These same guidelines could be used again to frame (limit) the types of mural competition entries that are received by the City. Such guidelines would obviously exclude some themes from consideration. Alternatively, staff and Jonathan could work with the property owners of large blank walls to gauge if they would be interested in hosting a mural and what themes they would like for their walls.

FISCAL IMPACT:

There will be a direct fiscal impact of $4,000 to $5,000 for artist stipends. There is also an indirect fiscal impact of the opportunity cost for staff time dedicated to this activity. The project will have unknown fiscal benefits if it results in more tourism or tourist spending in our community.

IMPLEMENTATION/TIMEFRAMES:

Jonathan Palmer hopes to hold the mural competition in the early summer of 2017 so that tourists could come and see the murals take shape over a weekend.

ATTACHMENTS:

1. Potential mural locations
2. Sample mural ideas

NOTIFICATION:

1. Jonathan Palmer

City Clerk's Office Use Only

Agency Action ☐ Approved ☐ Denied ☐ Approved as Amended

Resolution No.: _____ Ordinance No.: _____

Moved by: _____ Seconded by: _____

Vote: _____

☐ Deferred/Continued to meeting of: _____

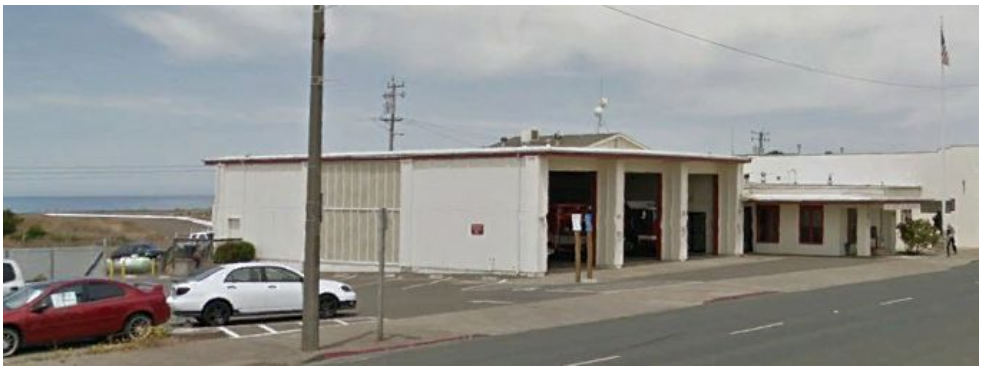
☐ Referred to: _____

Attachment 1- Potential mural locations

Fort Bragg Outlet – South Main Street

Safeway – South Main Street

Motel 6 – Main Street & Hazel

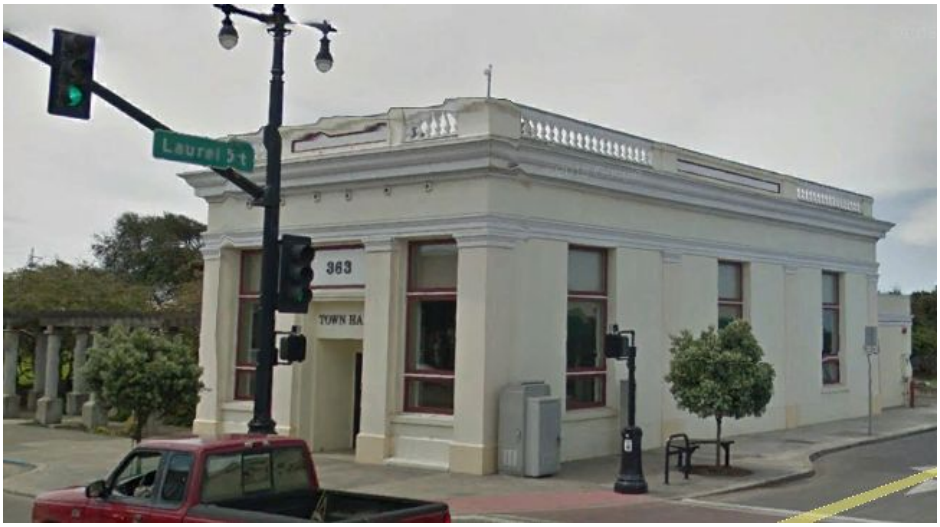


Fire Station – North Main Street

North Coast Brewery – North Main Street

Sears Building – East Laurel Street

Safeway – Franklin Street side



Town Hall- North side on Laurel Street

Calvery Chapel- North Main Street

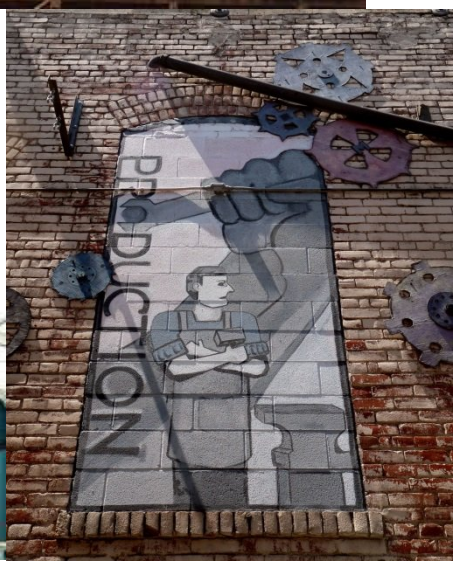
Rite Aid- South Franklin Street side

Attachment 2: Mural Ideas

Coast Central
PARKING

SAN DIEGO NATIONAL BANK

MESSAGE BEHIND WAVE OF NEW MURALS ACROSS SAN DIEGO
NAVY FEDERAL Credit Union
4:12
75°
CBS8.COM


PRODUCTION

City of Fort Bragg

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

File Number: 16-441

Agenda Date: 11/14/2016 **Version:** 1 **Status:** Business

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

Agenda Number: 7D.

Adopt City Council Resolution Awarding the Contract for the Chestnut Street Corridor Project, City Project No. 2015-04 to Akeff Construction Services of Fort Bragg, Authorizing City Manager to Execute Contract (Amount Not to Exceed $1,379,313.00; Account No. 413-5009-0731 and 413-4950-0731) and Approving Budget Amendment No. 2017-06 for $563,313 Amending the FY 2016/17 Budget to Appropriate from Special Sales Tax - Street Repair, Fund 250 to Account No. 413-4950-0731

AGENCY:	City Council
MEETING DATE:	Nov 14, 2016
DEPARTMENT:	Public Works
PRESENTED BY:	T. Varga

AGENDA ITEM SUMMARY

TITLE:
ADOPT CITY COUNCIL RESOLUTION AWARDING THE CONTRACT FOR THE CHESTNUT STREET CORRIDOR PROJECT, CITY PROJECT NO. 2015-04 TO AKEFF CONSTRUCTION SERVICES OF FORT BRAGG, AUTHORIZING CITY MANAGER TO EXECUTE CONTRACT (AMOUNT NOT TO EXCEED $1,379,313.00; ACCOUNT NO. 413-5009-0731 AND 413-4950-0731), AND APPROVING BUDGET ADJUSTMENT NO. 2017-06 FOR $563,313.00 AMENDING THE FY 2016/17 BUDGET TO APPROPRIATE FROM SPECIAL SALES TAX – STREET REPAIR, FUND 250 TO ACCOUNT NO. 413-4950-0731

ISSUE:

Bids for the Chestnut Street Corridor Project were opened on October 21, 2016. After a review of the bids, the successful low bidder was determined to be Akeff Construction of Fort Bragg with a bid of $1,379,313.00 for the base bid and $1,466,744.00 for the base bid plus additive alternate 1. However, project funds available for construction amount to $816,000.00. A Budget Amendment in the amount of $563,313.00 is necessary to fully fund construction costs.

RECOMMENDED ACTION:

Accept the bid of Akeff Construction and adopt the Resolution awarding the contract for construction of the Chestnut Street Corridor Project. In addition, approve Budget Amendment 2017-06 Allocating Amount Not to Exceed $563,313.00 to Provide Supplemental Project Funding from Fund 250-7999-0799 - Special Sales Tax - Street Repair.

ALTERNATIVE ACTION(S):

1. Council can add the additive bid items back into the contract.
2. Council can choose to reject all bids.

ANALYSIS:

The project as originally envisioned relies on two grant funding sources. DEMO funds were previously redirected from the Coastal Trail project to the Chestnut Street Corridor Project when Caltrans did not process environmental review in a timely fashion for these funds to be used on the Coastal Trail. More recently an Active Transportation Program (ATP) grant was secured providing additional funding to proceed with the project. A short, ATP imposed, design timeframe led to a one time extension by the California Transportation Commission allowing award of the construction contract by November 28, 2016. An unexpected, prolonged review and approval process by Caltrans delayed the original start of construction from May 2016 to November 2016. In order to keep the ATP funds, award of the contract will need to be accomplished before November 28, 2016.

September 1, 2016 was the original bid opening date for the project. On that date a single bid in the amount of $2,024,898.30 (base bid plus additive alternate) from Granite Construction was received. This amount was more than double the project budget and engineer's estimate. Consequently, all bids were rejected. Staff then reached out to the other project plan-holders to

ABSTAIN: .

DAVE TURNER,
Mayor

ATTEST:

June Lemos
City Clerk

find out why they did not submit bids. They described two obstacles that they were unable to overcome. Some potential bidders had difficulty securing subcontractors. Additional potential local contractors were suggested. Potential bidders also had difficulty with meeting Disadvantaged Business Enterprise (DBE) goals. The DBE goal calculation was reviewed and substantially reduced. At that point, the project was rebid with the new DBE goals.

On October 21, 2016, four bids were received for the construction of the Chestnut Street Corridor Project. The lowest successful bidder was Akeff Construction based on the base bid plus additive bids total of $1,466,744. The bid meets all of the requirements specified in Notice Inviting Bids. As a cost saving measure, only the base bid amount is being recommended for the contract award. The additive items for a slurry seal of Chestnut Street and high visibility crosswalk striping with a bid price of $87,430.00 are not to be included in the project. This results in a contract amount of $1,379,313.00 that is being recommended.

The successful bid amount exceeds the available funding balance of $816,000 by $563,313. Supplemental funding will be needed to proceed with the project.

The following plan has been developed to provide the needed supplemental funding for construction:

DEMO grant funds	$ 573,000.00	existing funds
ATP grant funds	233,000.00	existing funds
Redirected DEMO funds (MCOG)	10,000.00	existing funds
Street Sales Tax	563,313.00	supplemental funds
TOTAL	$ 1,379.313.00	

The redirected DEMO funds are unexpended monies from an old joint Willits/Fort Bragg project that was moved into the Chestnut project by MCOG.

The Street Sales Tax portion of the funding represents items of work that involve street improvements and associated improvements directly affected by the street work (e.g. street paving, curbs, gutters, curb ramps, signs, pavement markings, etc.). Specifically excluded are the bike/pedestrian path itself and storm drainage improvements. These items of work are consistent with the intended use of Street Sales Tax funds.

A 15% contingency of up to $200,000 is available using d(1) funds allocated by the Mendocino Council of Governments (MCOG) for street improvement purposes. The current d(1) balance is approximately $280,000 and no other uses of this fund are presently allocated. Value engineering will be further investigated to see if project refinements can be found further reducing project costs.

FISCAL IMPACT:

A Budget Amendment in the amount of $563,313.00 will be necessary to provide adequate funding to complete the project. This amount will be supplied from Account 250-7999-0799, Special Sales Tax - Street Repair.

Given the significant local funding contribution to this project, it is recommended to include the additive bid items for a street slurry seal or high visibility crosswalk striping.

IMPLEMENTATION/TIMEFRAMES:

Following Council action to award the contract, the contract can be executed. The required supporting documents (e.g. insurance, bonds, etc.) will be completed within two weeks. Caltrans requires various submittals to be reviewed before the DEMO and ATP funds can be authorized for construction. Construction is anticipated to begin at the end of November, weather permitting. Construction will be completed in the spring of 2017.

ATTACHMENTS:

1. Akeff Construction Resolution
2. Budget Amendment Resolution
3. Summary of Bid Opening
4. Contract between City and Akeff

NOTIFICATION:

1. Akeff Construction Services, Inc.

City Clerk's Office Use Only

Agency Action ☐ Approved ☐ Denied ☐ Approved as Amended

Resolution No.: _____ Ordinance No.: _____

Moved by: _____ Seconded by: _____

Vote: _____

☐ Deferred/Continued to meeting of: _____

☐ Referred to: _____

RESOLUTION NO. ____*-2016*

RESOLUTION OF THE FORT BRAGG CITY COUNCIL ACCEPTING BID OF AKEFF CONSTRUCTION SERVICES AS THE LOWEST RESPONSIVE BID, AWARDING THE CONTRACT FOR THE CHESTNUT STREET CORRIDOR PROJECT, CITY PROJECT NO. 2015-04, TO AKEFF CONSTRUCTION SERVICES AND AUTHORIZING CITY MANAGER TO EXECUTE CONTRACT (AMOUNT NOT TO EXCEED $1,379,313.00; ACCOUNT NO. 413-4950-0731)

WHEREAS, in accordance with California Public Contract Code 20164 and other applicable laws, the Project was advertised for bid on September 29, 2016, October 6, 2016 and October 13, 2016 with bids due on October 21, 2016; and

WHEREAS, four (4) bids were received with the apparent low bid coming from Akeff Construction Services in the amount of $1,379,313.00; and

WHEREAS, the City has confirmed that Akeff Construction Services has the proper license, experience and meets the necessary requirements to complete the project as bid; and

WHEREAS, the City has performed the necessary environmental review and obtained all necessary permits for the Chestnut Street Corridor Project; and

WHEREAS, the Project is funded by the Chestnut Street Corridor Capital Project Fund, and appropriations were made in the FY 2015-16 Budget, Account No. 413-4950-0731; and

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

1. The Akeff Construction Services bid meets the requirements of the Project bid documents and is considered responsive.
2. Sufficient funds are available through the appropriations made in the Chestnut Street Corridor Capital Project Fund to fully complete the project as advertised and bid.
3. Akeff Construction Services 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 accept the bid of Akeff Construction Services as the lowest responsive bid, awarding the contract for the Chestnut Street Corridor Project, City Project 2015-04, to Akeff Construction Services and authorizes the City Manager to execute the same (amount not to exceed $1,379,313; Account No. 413-4950-0731).

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 14th day of November, 2016, by the following vote:

AYES:
NOES:
ABSENT:

ABSTAIN:
RECUSED:

DAVE TURNER,
Mayor

ATTEST:

June Lemos
City Clerk

RESOLUTION NO. ____-2016

RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING BUDGET AMENDMENT NO. 2017-06 AMENDING THE FY 2016/17 BUDGET TO APPROPRIATE FUNDS IN THE AMOUNT OF $563,313 BY TRANSFER FROM SPECIAL SALES TAX – STREET REPAIR FUND 250 TO ACCOUNT NO. 413-4950-0731 FOR COMPLETION OF THE CHESTNUT STREET CORRIDOR PROJECT, PROJECT 2015-04

WHEREAS, in accordance with California Public Contract Code 20164 and other applicable laws, the Chestnut Street Corridor Project (the "Project") was bid and awarded to Akeff Construction Services, Inc. on November 14, 2016 in the amount of $1,379,313.00 for the base bid; and

WHEREAS, the adopted FY 2016/17 Budget allocates Special Revenue Funds/Grants from Fund 322 (CalTrans State Funding) for the Chestnut Street ATP in the sum of $259,000 and from Fund 323 (CalTrans Federal Funding) for the Chestnut Street Multi-Use Trail in the sum of $742,500 for a total of $1,001,500 for the Project; and

WHEREAS, the remaining grant funding is limited and City staff are working with Akeff Construction to identify project components that are most critical to the success of the Project; and

WHEREAS, sufficient revenues are available in the City's Special Sales Tax – Street Repair Fund 250 for the remainder of the necessary funds to complete the Project;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby approve Budget Amendment No. 2017-06 amending the FY 2016/17 Budget to appropriate funds in the amount of $563,313 from the Special Sales Tax – Street Repair Fund balance to Account No.413-4950-0731 to cover costs for completion of the Chestnut Street Corridor Project.

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 14th day of November, 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
Chestnut Street Corridor Project
City Project No. 2015-04

Bids were opened on **Friday, October 21, 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, and Administrative Services Director Scott Schneider.

Four (4) bids were received. Said bids were from:

1.	Wylatti Resource Management	Base Bid:	$1,708,504.95
	PO Box 575	Alternate 1:	$ 48,294.96
	Covelo, CA 95428	Total Bid:	$1,756,799.91
2.	Argonaut Constructors	Base Bid:	$1,420,956.00
	PO Box 639	Alternate 1:	$ 85,082.01
	Santa Rosa, CA 95402	Total Bid:	$1,506,038.01
3.	Akeff Construction Service, Inc.	Base Bid:	$1,386,112.00
	31201 Thomas Lane	Alternate 1:	$ 87,430.00
	Fort Bragg, CA 95437	Total Bid:	$1,473,542.00
4.	Mendocino Construction Service, Inc.	Base Bid:	$1,608,396.25
	PO Box 1517	Alternate 1:	$ 118,205.25
	Willits, CA 95490	Total Bid:	$1,726,601.50

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

The bids will be reviewed by City Staff and a recommendation will be made to the Fort Bragg City Council at their regular meeting of November 14, 2016, at 6:00 p.m., or as soon thereafter as the matter may be heard.

Dated: October 21, 2016

June Lemos
City Clerk

cc: Planholders

CITY OF FORT BRAGG
416 Franklin Street
Fort Bragg, California 95437

CONTRACT CHECK LIST

Complete, accurate, executed copies of the following documents must be submitted to the City of Fort Bragg in accordance with the bid package issued by the City for the Chestnut Street Corridor Project, Project No.2015-04, 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 City.

_____ Contract Check List

_____ Contract, Part 1

_____ Contract, Part 2 – General Provisions

_____ Contract, Part 3 – Special Provisions

_____ Required Contract Provisions for Federal-Aid Construction Contracts

_____ Performance Bond

_____ Payment Bond

_____ Maintenance Bond

_____ Certificates of Insurance and Endorsements

_____ Escrow for Deposit Agreement, if applicable

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CITY OF FORT BRAGG
416 Franklin Street
Fort Bragg, California 95437

CONTRACT, PART 1

The City of Fort Bragg, 416 N. Franklin Street, Fort Bragg, CA 95437 ("City") enters into this Contract, dated November 14, 2016, for reference purposes only, with AKEFF CONSTRUCTION SERVICES, INC., 31201 Thomas Lane, Fort Bragg, CA 95437 ("Contractor").

RECITALS

A. NOTICE INVITING BIDS. The City gave notice inviting bids to be submitted by October 21, 2016, for the Chestnut Street Corridor Project by published notice and/or posting in accordance with California Public Contract Code Section 20164 and other applicable law.

B. BID OPENING. On October 21, 2016 City representatives opened the bids for the Chestnut Street Corridor Project and read the bids aloud.

C. PROJECT AWARD. On November 14, 2016 the City Council awarded the Chestnut Street Corridor Project to the Contractor and directed City staff to send the Contractor written notice of award of the project. The City 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 City 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 City 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 Chestnut Street Corridor 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 Chestnut Street Corridor Project shall be constructed along the north side of Chestnut Street from South Franklin St. to Dana St. in the City right of way.

3. TIME FOR COMPLETION. The Contractor must complete the Work in accordance with the Contract Documents within **ninety (90)** working days from the date specified in the City'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 have accrued by the Time for Completion, the Contractor will become liable to the City for all resulting loss and damage in accordance with the Contract Documents and applicable law. The City'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 City will pay the Contractor in lawful money of the United States the total price of **One Million Three Hundred Seventy-nine Thousand Three Hundred Thirteen Dollars** (**$1,379,313.00)** (the "Contract Price") as specified in the Contractor's completed Bid Schedule dated October 21, 2016 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 City 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 City'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 City has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the project. In accordance with California Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at the City Public Works Department and will be made available on request. Throughout the performance of the Work the Contractor 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; however, should a conflict exist between City and Caltrans provisions, the most restrictive shall apply:

7.1 This Part 1 of the Contract and change orders and other amendments to this Contract signed by authorized representatives of the City 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 City and the Contractor.

7.3 The Special Provisions, Part 3 of the Contract, addenda to the Special Provisions signed by authorized representatives of the City and issued prior to bid opening, Equal Product Proposals accepted by the City 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 City and the Contractor.

7.4 Required Contract Provisions – Federal-Aid Construction Contracts

7.5 State of California, Department of Transportation, Special Provisions (Volume 4)

7.6 The Technical Specifications, addenda to the Technical Specifications signed by authorized representatives of the City and issued prior to bid opening, Equal Product Proposals accepted by the City and signed by authorized City representatives prior to bid opening, and change orders and other amendments to the Technical Specifications signed by authorized representatives of the City and the Contractor.

7.7 The Project Plans, addenda to the Project Plans signed by authorized representatives of the City and issued prior to bid opening, Equal Product Proposals accepted by the City and signed by authorized City representatives prior to bid opening, and change orders and other amendments to the Project Plans signed by authorized representatives of the City and the Contractor.

7.8 Notice Inviting Bids

7.9 Instructions to Bidders

7.10 The successful bidder’s completed Proposal Cover Page and Bid Schedule

7.11 The successful bidder’s completed Contractor License Information

7.12 The successful bidder’s completed List of Proposed Subcontractors

7.13 The successful bidder’s completed Construction Contract DBE Commitment

7.14 The successful bidder’s completed List of Subcontractors (DBE and NON-DBE)

7.15 The successful bidder’s Equal Employment Opportunity Certification

7.16 The successful bidder’s Workers Compensation Insurance Certification

7.17 The successful bidder’s completed Non-collusion Affidavit

7.18 The successful bidder's completed Federal Requirements for Federal-Aid Construction Projects

7.19 CEM 1210 Subcontractor Request

7.20 The successful bidder's Debarment Certification

7.21 The successful bidder's Public Contract Code Section 10285.1 Statement

7.22 The successful bidder's Public Contract Code Section 10162 Questionnaire

7.23 The successful bidder's Disclosure of Lobbying Activities

7.24 The successful bidder's completed Certificates of Insurance and Endorsements

7.25 The successful bidder's executed Performance Bond

7.26 The successful bidder's executed Payment Bond

7.27 The Maintenance Bond form included in the bid package that the Contractor must execute prior to release of final payment under the Contract

7.28 The successful bidder's Qualification Statement, if any

7.29 The successful bidder's signed Signature Form

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 City 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 City. 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 City and an authorized representative of Contractor's surety or sureties. Any such purported assignment or delegation without such written approval on behalf of the

City 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. The Contractor must be properly licensed as a contractor from contract award through Contract acceptance(Public Contract Code § 10164).

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 November ___, 2016, by

CONTRACTOR	CITY
_____	_____
By:_____	By: Linda Ruffing
Title:_____	Title: City Manager
[Attach Notary Acknowledgment Page]	Attest:
Approved as to form:	By:_____
By:_____	June Lemos
Samantha W. Zutler	City Clerk
City Attorney	

Rev: 05-23-16

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CITY OF FORT BRAGG
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 City: City of Fort Bragg

1.5 Construction Manager: The City'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 City, the Architect and/or Engineer, and the Contractor. The Construction Manager for this project shall be Associate City Engineer Nancy Atkinson.

1.6 Contract: The agreement between the City and Contractor concerning the Project, as evidenced by and comprised of the Contract Documents.

1.7 Contract Documents: All those documents listed in the Project agreement as comprising the entire agreement between the City and the Contractor.

1.8 Contractor: The successful bidder for the Project and party to the Project agreement with the City as specified in the Project agreement.

1.9 Days: Unless otherwise specified in the Contract Documents, days mean working days.

1.10 Project: The Chestnut Street Corridor Project as described in the Technical Specifications and Project Plans.

1.11 Project Inspector: The party or parties charged by the City with inspecting the Work for compliance with the requirements of the Contract Documents and applicable laws and regulations. The Project Inspector acts under the direction of the City and shall coordinate with the Construction Manager and Architect as directed by the City in accordance with the Contract Documents.

1.12 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 City representatives and issued prior to bid opening, Equal Product Proposals accepted by the City and signed by authorized City representatives prior to bid opening, and change orders and other amendments to the Project Plans signed by authorized representatives of the City and the Contractor in accordance with the requirements of the Contract Documents.

1.13 Standard Specifications: Caltrans construction manual entitled, "State of California, Department of Transportation, Standard Specifications," latest edition.

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 4 of the Bid Package and any addenda to the Technical Specifications signed by authorized City representatives and issued prior to bid opening, Equal Product Proposals accepted by the City and signed by authorized City representatives prior to bid opening, and change orders and other amendments to the Technical Specifications signed by authorized representatives of the City 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 City. The City 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 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 City contractors or representatives.

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

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 City 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 City 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

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 City, 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 City 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 as adopted by the City and other applicable law. Copies of all testing reports shall be distributed as required in the Technical Specifications.

3.3.5 The City 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 City 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 the City 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 City 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 City 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 City 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 City 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 City 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 City 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 useful life requirements. If the City 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 City, or with the use of existing City 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 City 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 City 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 City. 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 City 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 City may examine and audit at no additional cost to the City 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 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 City, or as part of any audit of the City, 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 City Review of Schedule. The City may review the Contractor's submitted schedule and may note any exceptions. The Contractor shall correct any exceptions noted by the City 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 City 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 City 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 City has taken uncorrected exceptions, the City 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 City 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 City's review of the schedule will not create scheduling obligations for the City.

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 City of Fort Bragg 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 City 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 City, 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 City 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 City 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 City.

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 City of Fort Bragg must be provided to and approved by the City, prior to placement.

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

4. CHANGES IN WORK

4.1 City Directed Change Orders. The City 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 in writing executed by authorized representatives of the City and the Contractor.

4.3 Contractor Proposed Change Orders. Unless the Construction Manager otherwise authorizes or the City 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 City. 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 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 City 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 City Directed Change Orders. If the Contractor disputes a City 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 City, 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 City to resolve the dispute, or within the time specified in the disputed City directed change order, whichever is later. In performing Work consistent with a disputed City-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 City disputes a Contractor proposed change order, the City 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 City. 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 City 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 City 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 City will promptly investigate any such conditions for which notice is given. If the City 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 City will issue a change order pursuant to Section 4 of these General Provisions. If a dispute arises between the City 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 City'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 City 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 City in the Technical Specifications and/or Project Plans. The City 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 City 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 City'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 City 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 City 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 City 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 City in the Technical Specifications and/or Project Plans, the Contractor must immediately notify the City and utility in writing.

5.3.6 Either the City 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.

5.4 Soils and Groundwater Management Plan. Contractor will perform required procedures for managing and disposing of contaminated waste soils (e.g., from construction excavations) and the required institutional controls to reduce potential risk to site workers from exposure to contaminants in soil and groundwater as defined in the Soils and Groundwater Management Plan.

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 City Rights of Access and Ownership. The City 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 City 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 City property subject to inspection and copying by the City 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 City'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 City and the Contractor agree that it will be difficult and/or impossible to determine the actual damage which the City 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 City and the Contractor agree in accordance with California Government Code Section 53069.85 that the Contractor will forfeit and pay to the City liquidated damages in the sum of $500 per day for each and every calendar day completion of the Work and/or performance of all of the Contractor's obligations that have accrued pursuant to the Agreement is delayed beyond the Time for Completion. The City 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 City 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 City, 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 City 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 City 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 City and Contractor agree will be deemed for purposes of California Public Contract Code Section

7102 either not caused by the City, and/or within the contemplation of the City and the Contractor, and/or reasonable under the circumstances:

7.5.1 Exercise of the City's right to sequence the Work in a manner that would avoid disruption to the City 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 City or any other governmental agency of competent jurisdiction of any government act or regulation, or enforcement by the City 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 City or its representatives in a reasonable time in accordance with the Contract Documents.

7.6 Delays Caused by the City and/or Its Privities. Delay caused by the City and/or other Contractors of the City will be deemed unavoidable delays. Either the City or the Contractor may propose a change in the Time for Completion for delays that are purported to be caused by the City and/or its privities and that are not reasonable under the circumstances involved and/or that are not within the contemplation of the City 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 City 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 City 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 City 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 City 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 City will be obligated to pay such daily rate or cap or lump sum only to the extent the Contractor actually incurs such cost impacts.

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 City'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 City 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 City, 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 City or any other contractor, the Contractor will, before proceeding with such Work, promptly report to the City 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 City'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 City, the Construction Manager, Architect or Engineer, and other authorized City 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 City 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 City, 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 City, 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 City 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 City. The superintendent may not be changed without the consent of the City. The superintendent will represent the Contractor and all directions given by the City 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 City determines that a Contractor employee does not satisfy the requirements of this provision, upon notice from the City, 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 City 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 City. 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 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 City 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 City will have all of the remedies that are specified in Section 11.

8.7.5 Subcontractor agrees to be bound to General Contractor and City in the same manner and to the same extent as General Contractor is bound to City 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 City'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 City.

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.

8.7.7 No subcontract releases the Contractor from the contract or relieves the Contractor of their responsibility for a subcontractor's work.

If the Contractor violates Pub Cont Code § 4100 et seq., the City of Fort Bragg may exercise the remedies provided under Pub Cont Code § 4110. The City of Fort Bragg may refer the violation to the Contractors State License Board as provided under Pub Cont Code § 4111.

The Contractor shall perform work equaling at least 50 percent of the value of the original total bid with the Contractor's own employees and equipment, owned or rented, with or without operators.

Each subcontract must comply with the contract.

Each subcontractor must have an active and valid State contractor's license with a classification appropriate for the work to be performed (Bus & Prof Code, § 7000 et seq.).

Submit copies of subcontracts upon request by the Engineer.

Before subcontracted work starts, submit a Subcontracting Request form.

Do not use a debarred contractor; a current list of debarred contractors is available at the Department of Industrial Relations' Web site.

Upon request by the Engineer, immediately remove and not again use a subcontractor who fails to prosecute the work satisfactorily.

Each subcontract and any lower tier subcontract that may in turn be made shall include the "Federal Requirements for Federal-Aid Construction Contracts" attached to this contract. Payment for subcontracted work involved will be withheld from progress payments due, or to become due, until correction is made. Failure to comply may result in termination of the contract.

8.7.8 Subcontractor and DBE Records: The Contractor shall maintain records showing the name and business address of each first-tier subcontractor. The records shall also show the name and business address of every DBE subcontractor, DBE vendor of materials and DBE trucking company, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all of these firms. DBE prime contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

Upon completion of the contract, a summary of these records shall be prepared on Form CEM-2402 (F) and certified correct by the Contractor or the Contractor's authorized representative, and shall be furnished to the Engineer. The form shall be furnished to the Engineer within 90 days from the date of contract acceptance. $10,000 will be withheld from payment until the Form CEM-2402 (F) is submitted. The amount will be returned to the Contractor when a satisfactory Form CEM-2402 (F) is submitted.

Prior to the fifteenth of each month, the Contractor shall submit documentation to the Engineer showing the amount paid to DBE trucking companies. The Contractor shall also obtain and submit documentation to the Engineer showing the amount paid by DBE

trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contractor may count only the fee or commission the DBE receives as a result of the lease arrangement.

The Contractor shall also obtain and submit documentation to the Engineer showing the truck number, owner's name, California Highway Patrol CA number, and if applicable, the DBE certification number of the owner of the truck for all trucks used during that month. This documentation shall be submitted on "Monthly DBE Trucking Verification" Form CEM-2404(F).

8.7.9 DBE Certification Status

If a DBE subcontractor is decertified during the life of the project, the decertified subcontractor shall notify the Contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the project, the subcontractor shall notify the Contractor in writing with the date of certification. The Contractor shall furnish the written documentation to the Engineer.

Upon completion of the contract, "Disadvantaged Business Enterprises (DBE) Certification Status Change" Form CEM-2403 (F) indicating the DBE's existing certification status shall be signed and certified correct by the Contractor. The certified form shall be furnished to the Engineer within 90 days from the date of contract acceptance.

8.7.10 Performance of DBE Subcontractors and Supplies:

The DBEs listed by the Contractor in response to the provisions in Section 2-1.02B, "Submission of DBE Information," and Section 3, "Award and Execution of Contract," of these special provisions, which are determined by the City to be certified DBEs, shall perform the work and supply the materials for which they are listed, unless the Contractor has received prior written authorization to perform the work with other forces or to obtain the materials from other sources.

Authorization to utilize other forces or sources of materials may be requested for the following reasons:

(1) The listed DBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract, when such written contract, based upon the general terms, conditions, plans and specifications for the project, or on the terms of such subcontractor's or supplier's written bid, is presented by the Contractor.

(2) The listed DBE becomes bankrupt or insolvent.

(3) The listed DBE fails or refuses to perform his subcontract or furnish the listed materials.

(4) The Contractor stipulated that a bond was a condition of executing a subcontract and the listed DBE subcontractor fails or refuses to meet the bond requirements of the Contractor.

(5) The work performed by the listed subcontractor is substantially unsatisfactory and is not in substantial conformance with the plans and specifications, or the subcontractor is substantially delaying or disrupting the progress of the work.

(6) It would be in the best interest of the State.

The Contractor shall not be entitled to any payment for such work or material unless it is performed or supplied by the listed DBE or by other forces (including those of the Contractor) pursuant to prior written authorization of the Engineer.

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 City 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 City 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
- 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 City for approval and shall not reduce the limits of liability.
- Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.
- 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 City (if agreed to in a written contract or agreement) before the City's own Insurance or self-insurance shall be called upon to protect it as a named insured.

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

City'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
	$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 City, 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 City, and that the City's insurance will be excess of and not contribute to the insurance required to be furnished by the Contractor; that the City 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 City. 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 City 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 City, 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 City, 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 City, the City'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 City 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 City 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 City, 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 City, its officials, officers, employees, agents, volunteers or consultants for any Claims. In the event the City, 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 City, 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 City, the City 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.

8.9.6 The Contractor will indemnify, hold harmless and defend, with legal counsel reasonably acceptable to the City, the City 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 City 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 City for its sole negligence, willful misconduct, or for defects in design furnished by the City. 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 City from liability for the City'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 City, 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 City $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 City 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:

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 City 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 City
- 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 City 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 City. 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 City 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 City's reasonable legal costs, if any, of recovering 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 City.

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 City 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 City, 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 City 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 City, the Construction Manager, the Architect or Engineer, and/or other representatives of the City 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 City 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 City 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 City 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 City standards. Specific notification procedures vary with the type of work and shall be coordinated with the City before work begins. The City 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. Unless otherwise 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 City 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 City, 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 City 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 City have executed an escrow agreement in accordance with the Public Contract Code and the Agreement, the City 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 City'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 City have executed an escrow agreement in accordance with the Public Contract Code and the Agreement, the City will make payments to the Contractor or the Contractor's escrow agent in accordance with such escrow agreement.

9.2.5 The RE will give the contractor a blank Exhibit 17-F, "Final Report Utilization of Disadvantaged Business Enterprises, First Tier

Subcontractors" and will explain to them that the document will be required at the end of the project, for which payment can be withheld, in conformance with the contract. The City 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 City 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 been released by valid release or release bond acceptable to the City.

9.2.5.2 No claim has been presented to the City 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 City 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 City 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 City fails to make a progress payment within thirty (30) days of receipt of an undisputed, properly submitted application for payment, the City 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 City 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 City has delayed return of an application for payment beyond the seven day return requirement set forth in Section 9.2.5.

9.2.7 The Contractor shall be responsible for making prompt payment to subcontractors, including prompt payment of withheld retention funds.

Attention is directed to the provisions of Section 10262 and 10262.5 of the Public Contract Code concerning prompt payment to subcontractors.

As noted in Section 9.2.5.1 above, the City will not release the final retention amount to the Contractor until the Contractor has furnished evidence satisfactory to the City that all claims for labor and material have been paid to the subcontractors.

9.2.8 Prompt Payment to Subcontractors.

9.2.8.1 Progress Payments. The prime contractor or subcontractor shall pay any subcontractor not later than 7 days of receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 7 days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the City's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanction and other remedies of that section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

9.2.8.2 Release of Retainage. The prime contractor agrees further to release retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City.

9.2.9 The City shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the City, of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the City. Federal law (49CFR26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the City's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. These requirements shall not be

construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontractor performance, or noncompliance by a subcontractor.

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 City. However, in no event will allowable direct labor charges under the agreement 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 City 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 City.

9.4.7 Damage to a third party.

9.4.8 Delay in the progress of the Work, which, in the City'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 City to ensure performance of the Work. At the Contractor's request and expense, securities equivalent to the amount withheld will be deposited with the City, or with a state or federally chartered bank in 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 City 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 City 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 City.

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 City 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 City's rights under the Agreement, any Agreement bonds, or at law or equity. Occupancy or use shall not waive the City'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 City's representative and are operational. The City and/or the City's authorized representatives will make an inspection to 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 City or the City'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.

10.4 Work Acceptance.

10.4.1 All finished Work will be subject to inspection and acceptance or rejection by the City, 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 City.

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

10.4.3 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.

10.4.4 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 City 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 City 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 City's notice and the Agreement. If the Contractor and/or the Contractor's sureties do not give the City written notice of intent to correct such Work and commence correction of such Work within ten (10) working days of receipt of the City's notice, then the City may correct such work and/or have such work 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 City for any resulting excess cost. The City may, in addition to all other remedies that the City 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 City may have under the Agreement, and at law or equity, the City 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 City, the Construction Manager, the Architect, or other authorized representatives of the City.

11.2.1.6 For any reason or for no reason, at the City's sole discretion.

11.2.2 If the City 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 City will immediately serve written notice to the Contractor and its sureties in accordance with the Contract Documents. Notice of the City'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 City'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 City 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 City 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 City 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 City for any resulting excess cost. The City may, in addition to all other available remedies that the City 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 Contactor.

11.2.3 Upon termination of the Contractor's control of the Work for any of the reasons specified in Sections 11.2.1.1 - 11.2.1.5, the Contractor will, if so directed by the City, 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 City 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 though 11.2.1.5, above, the City reserves the right to refuse tender of the Contractor by any surety to complete the Work.

11.2.5 If the City completes or has completed any portion of, or the whole of the Work, 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 City 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 City 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 City.

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 City 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 City:

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 City 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 City 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 City and the Contractor.

11.3.1.2.2 The City'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 City 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 City 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 City and the Contractor.

11.3.1.3.2 The City'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 City's written response, or the City fails to respond within the time prescribed, the Contractor may so notify the City, in writing, either within 15 days of receipt of the City's response or within 15 days of the City'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 City 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 City 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 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:

11.3.3.1 The City 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 City shall pay interest at the legal rate on any arbitration award or judgment. Such interest shall accrue from date the suit was filed.

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CITY OF FORT BRAGG
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 construction of a pedestrian and bike multi-use path along the north side of East Chestnut Street from South Franklin Street to Dana Street 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 City 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 of 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.

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 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:

1. 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 contacting storm water and with the intent of keeping all products of erosion from moving off site into receiving waters.
2. Elimination or reduction of non-storm water discharges to storm sewer systems and other waters of the nation.
3. 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, groundwaters, or a separate municipal storm sewer system.

Any fines, damages, Work delays or other impacts that result from failure of the Contractor or privities 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.

12.1.04 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 City 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 City 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.

12.1.05 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 City 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 City for, and the City 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 City or Construction Manager.

12.1.06 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 City 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 City. 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 City of Fort Bragg 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 City may take any actions necessary to protect such facilities from the Contractor's operations. Subject to Section 5 of the General Provisions, the City 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.

12.1.07 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.

12.1.08 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 <u>in writing in the form of a door hanger</u>, 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.

12.1.09 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 City Police Department dispatcher, and updated as required to provide 24-hour phone access.

12.1.10 Clean up.

Attention is directed to Section 4-1.13 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.

12.1.11 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.

12.1.12 Construction Staking.

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

12.1.13 Materials Testing Allowance.

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

12.1.14 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.

12.1.15 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. 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 City’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 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.

12.1.16 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.

12.1.17 Water For Construction and Dust Control.

Unless otherwise provided, the Contractor will be responsible for applying to the City's Utility Department to establish utility accounts and get a hydrant meter for all water necessary to perform the Work, at no cost. The Contractor must comply with all City requirements for 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 City water system. The Contractor must contact the City's utilities staff, a minimum of twenty-four (24) hours in advance, to operate these or any other components on the City water system.

12.1.18 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.

12.1.19 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 City elects to salvage certain objects that are determined to be of historical interest. The City 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.

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

12.1.21 Archaeological Discoveries.

If archaeological materials, including but not limited to human skeletal material and disarticulated human bone, are discovered at the job site, protect and leave undisturbed and in place archaeological materials in accordance with the following codes and these special provisions:

1. California Public Resources Code, Division 5, Chapter 1.7 § 5097.5
2. California Public Resources Code, Division 5, Chapter 1.75 § 5097.98 and § 5097.99
3. California Administrative Code, Title 14 § 4308
4. California Penal Code, Part 1, Title 14 § 622-1/2
5. California Health and Safety Code, Division 7, Part 1, Chapter 2, § 7050.5

Archaeological materials are the physical remains of past human activity and include historic-period archaeological materials and prehistoric Native American archaeological materials. Nonhuman fossils are not considered to be archaeological except when showing direct evidence of human use or alteration or when found in direct physical association with archaeological materials as described in these special provisions.
Historic-period archaeological materials include cultural remains beginning with initial European contact in California, but at least 50 years old. Historical archaeological materials include:

1. Trash deposits or clearly defined disposal pits containing tin cans, bottles, ceramic dishes, or other refuse indicating previous occupation or use of the site
2. Structural remains of stone, brick, concrete, wood, or other building material found above or below ground or
3. Human skeletal remains from the historic period, with or without coffins or caskets, including any associated grave goods

Prehistoric Native American archaeological materials include:

1. Human skeletal remains or associated burial goods such as beads or ornaments
2. Evidence of tool making or hunting such as arrowheads and associated chipping debris of fine-grained materials such as obsidian, chert, or basalt
3. Evidence of plant processing such as pestles, grinding slabs, or stone bowls
4. Evidence of habitation such as cooking pits, stone hearths, packed or burnt earth floors or
5. Remains from food processing such as concentrations of discarded or burnt animal bone, shellfish remains, or burnt rocks used in cooking

Immediately upon discovery of archaeological materials, stop all work within a 60-foot radius of the archaeological materials and immediately notify the Engineer. Archaeological materials found during construction are the property of the State. Do not resume work within the 60-foot radius of the find until the Engineer gives you written approval. If, in the opinion of the Engineer, completion of the work is delayed or interfered with by reason of an archeological find or investigation or recovery of archeological materials, you will be compensated for resulting losses and an extension of time will be granted in the same manner as provided for in Section 8-1.09, "Right of Way Delays," of the Standard Specifications.

The City may use other forces to investigate and recover archaeological materials from the location of the find. When ordered by the Engineer furnish labor, material, tools and equipment, to secure the location of the find, and assist in the investigation or recovery of archaeological materials and the cost will be paid for as extra work as provided in Section 4-1.03D, "Extra Work," of the Standard Specifications.

Full compensation for immediately notifying the Engineer upon discovery of archaeological materials and leaving undisturbed and in place archaeological materials

discovered on the job site shall be considered as included in the contract price paid for various items of work involved and no additional compensation will be allowed therefor.

12.1.22 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;
2. Historic-era site indicators: ceramic, glass, and/or metal.

12.1.23 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.

12.1.24 Changed Conditions

12.1.24.1. Differing Site Conditions

1. During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.

2. Upon written notification, the engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The engineer will notify the contractor of the determination whether or not an adjustment of the contract is warranted.

3. No contract adjustment which results in a benefit to the contractor will be allowed unless the contractor has provided the required written notice.

4. No contract adjustment will be allowed under this clause for any effects caused on unchanged work. (This provision may be omitted by the Local Agency, at their option.)

12.1.24.2 Suspensions of Work Ordered by the Engineer

1. If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

2. Upon receipt, the engineer will evaluate the contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The contractor will be notified of the engineer's determination whether or not an adjustment of the contract is warranted.

3. No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time prescribed.

4. No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

12.1.24.3 Significant Changes in the Character of Work

1. The engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.

2. If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.

3. If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

4. The term “significant change” shall be construed to apply only to the following circumstances:

- When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
- When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

SECTION 13 PROPOSAL REQUIREMENTS AND CONDITIONS FOR FEDERAL-AID PROJECTS

13.1 General. The bidder's attention is directed to the provisions in Section 2, "Proposal Requirements and Conditions," of the Standard Specifications and these special provisions for the requirements and conditions which the bidder must observe in the preparation of the proposal form and the submission of the bid.

In addition to the subcontractors required to be listed in conformance with Section 2-1.054, "Required Listing of Proposed Subcontractors," of the Standard Specifications, each proposal shall have listed therein the portion of work that will be done by each subcontractor listed. A sheet for listing the subcontractors is included in the Proposal.

The form of Bidder's Bond mentioned in the last paragraph in Section 2 1.07, "Proposal Guaranty," of the Standard Specifications will be found following the signature page of the Proposal.

In conformance with Public Contract Code Section 7106, a Noncollusion Affidavit is included in the Proposal. Signing the Proposal shall also constitute signature of the Noncollusion Affidavit.

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate. Each subcontract signed by the bidder must include this assurance.

13.2 Section 1352, Title 31, United States Code prohibits Federal funds from being expended by the recipient or any lower tier sub recipient of a Federal-aid contract to pay for any person for influencing or attempting to influence a Federal agency or Congress in connection with the awarding of any Federal-aid contract, the making of any Federal grant or loan, or the entering into of any cooperative agreement.

If any funds other than Federal funds have been paid for the same purposes in connection with this Federal-aid contract, the recipient shall submit an executed certification and, if required, submit a completed disclosure form as part of the bid documents.

A certification for Federal-aid contracts regarding payment of funds to lobby Congress or a Federal agency is included in the Bid book. Standard Form - LLL, "Disclosure of Lobbying Activities," with instructions for completion of the

Standard Form is also included in the Bid book. Signing the Bid book shall constitute signature of the Certification.

The above referenced certification and disclosure of lobbying activities shall be included in each subcontract and any lower-tier contracts exceeding $100,000. All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the Engineer.

The Contractor, subcontractors and any lower-tier contractors shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by the Contractor, subcontractors and any lower-tier contractors. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase if $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(3) A change in the officer(s), employees(s), or Member(s) contacted to influence or attempt to influence a covered Federal Action.

The U.S. Department of Transportation (DOT) provides a toll-free hotline to report bid rigging activities. Use the hotline to report bid rigging, bidder collusion, and other fraudulent activities. The hotline number is (800) 424-9071. The service is available 24 hours 7 days a week and is confidential and anonymous. The hotline is part of the DOT's effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General.

13.3 Disadvantaged Business Enterprise (DBE)

13.3.1 General

Under 49 CFR 26.13(b):

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Take necessary and reasonable steps to ensure that DBEs have opportunity to participate in the contract (49 CFR 26).

To ensure equal participation of DBEs provided in 49 CFR 26.5, the Agency shows a goal for DBEs.

Make work available to DBEs and select work parts consistent with available DBE subcontractors and suppliers.

Meet the DBE goal shown elsewhere in these special provisions or demonstrate that you made adequate good faith efforts to meet this goal.

It is your responsibility to verify that the DBE firm is certified as DBE at date of bid opening. For a list of DBEs certified by the California Unified Certification Program, go to:

http://www.dot.ca.gov/hq/bep/find_certified.htm

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal.

Credit for materials or supplies you purchase from DBEs counts towards the goal in the following manner:

1. 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
2. 60 percent counts if the materials or supplies are obtained from a DBE regular dealer.
3. Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer or regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

You receive credit towards the goal if you employ a DBE trucking company that performs a commercially useful function as defined in 49 CFR 26.55(d)(1) through (4) and (6).

3.3.2 DBE Commitment Submittal

Submit "Construction Contract DBE Commitment," Exhibit 15-G, form, included in the Bid book. If the form is not submitted with the bid, remove the form from the Bid book before submitting your bid.

If the DBE Commitment form is not submitted with the bid, the apparent low bidder, the 2nd low bidder, and the 3rd low bidder must complete and submit the DBE Commitment form to the Agency. DBE Commitment form must be received by the Agency no later than 4:00 p.m. on the 4th business day after bid opening.

Other bidders do not need to submit the DBE Commitment form unless the Agency requests it. If the Agency requests you to submit a DBE Commitment form, submit the completed form within 4 business days of the request.

Submit written confirmation from each DBE stating that it is participating in the contract. Include confirmation with the DBE Commitment form. A copy of a DBE's quote will serve as written confirmation that the DBE is participating in the contract.

If you do not submit the DBE Commitment form within the specified time, the Agency finds your bid nonresponsive.

3.3.3 Good Faith Efforts Submittal

If you have not met the DBE goal, complete and submit the DBE Information - Good Faith Efforts, Exhibit 15-H, form with the bid showing that you made adequate good faith efforts to meet the goal. Only good faith efforts directed towards obtaining participation by DBEs will be considered. If good faith efforts documentation is not submitted with the bid, it must be received by the Agency no later than 4:00 p.m. on the 4th business day after bid opening.

If your DBE Commitment form shows that you have met the DBE goal or if you are required to submit the DBE Commitment form, you must also submit good faith efforts documentation within the specified time to protect your eligibility for award of the contract in the event the Agency finds that the DBE goal has not been met.

Good faith efforts documentation must include the following information and supporting documents, as necessary:

1. Items of work you have made available to DBE firms. Identify those items of work you might otherwise perform with its own forces and those items that have been broken down into economically feasible units to facilitate DBE participation. For each item listed, show the dollar value and percentage of the total contract. It is your responsibility to demonstrate that sufficient work to meet the goal was made available to DBE firms.

2. Names of certified DBEs and dates on which they were solicited to bid on the project. Include the items of work offered. Describe the methods used for following up initial solicitations to determine with certainty if the DBEs were interested, and the dates of the follow-up. Attach supporting documents such as copies of letters, memos, facsimiles sent, telephone logs, telephone billing statements, and other evidence of solicitation. You are reminded to solicit certified DBEs through all reasonable and available means and provide sufficient time to allow DBEs to respond.

3. Name of selected firm and its status as a DBE for each item of work made available. Include name, address, and telephone number of each DBE that provided a quote and their price quote. If the firm selected for the item is not a DBE, provide the reasons for the selection.

4. Name and date of each publication in which you requested DBE participation for the project. Attach copies of the published advertisements.
5. Names of agencies and dates on which they were contacted to provide assistance in contacting, recruiting, and using DBE firms. If the agencies were contacted in writing, provide copies of supporting documents.
6. List of efforts made to provide interested DBEs with adequate information about the plans, specifications, and requirements of the contract to assist them in responding to a solicitation. If you have provided information, identify the name of the DBE assisted, the nature of the information provided, and date of contact. Provide copies of supporting documents, as appropriate.
7. List of efforts made to assist interested DBEs in obtaining bonding, lines of credit, insurance, necessary equipment, supplies, and materials, excluding supplies and equipment that the DBE subcontractor purchases or leases from the prime contractor or its affiliate. If such assistance is provided by you, identify the name of the DBE assisted, nature of the assistance offered, and date assistance was provided. Provide copies of supporting documents, as appropriate.
8. Any additional data to support demonstration of good faith efforts.

The Agency may consider DBE commitments of the 2nd and 3rd bidders when determining whether the low bidder made good faith efforts to meet the DBE goal.

3.3.4. Exhibit 15-G - Local Agency Bidder DBE Information (Construction Contracts)

Complete and sign Exhibit 15-G Local Agency Bidder DBE Commitment (Construction Contracts) included in the contract documents regardless of whether DBE participation is reported.

Provide written confirmation from each DBE that the DBE is participating in the Contract. A copy of a DBE's quote serves as written confirmation. If a DBE is participating as a joint venture partner, the Agency encourages you to submit a copy of the joint venture agreement.)

3.3.5. Subcontractor and Disadvantaged Business Enterprise Records

Use each DBE subcontractor as listed on Exhibit 12-B Bidder's List of Subcontractors (DBE and Non-DBE) and Exhibit 15-G Local Agency Bidder DBE Commitment (Construction Contracts) form unless you receive authorization for a substitution.

The Agency requests the Contractor to:

1. Notify the Engineer of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work
3. Maintain records including:
   - Name and business address of each 1st-tier subcontractor
   - Name and business address of each DBE subcontractor, DBE vendor, and DBE trucking company, regardless of tier
   - Date of payment and total amount paid to each business

If you are a DBE contractor, include the date of work performed by your own forces and the corresponding value of the work.

Before the 15th of each month, submit a Monthly DBE Trucking Verification form.

If a DBE is decertified before completing its work, the DBE must notify you in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify you in writing of the certification date. Submit the notifications. On work completion, complete a Disadvantaged Business Enterprises (DBE) Certification Status Change, Exhibit 17-O, form. Submit the form within 30 days of contract acceptance.

Upon work completion, complete Exhibit 17-F Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors. Submit it within 90 days of contract acceptance. The

Agency will withhold $10,000 until the form is submitted. The Agency releases the withhold upon submission of the completed form.

3.3.6. Performance of Disadvantaged Business Enterprises

DBEs must perform work or supply materials as listed in the Exhibit 15-G Local Agency Bidder DBE Commitment (Construction Contracts) form, included in the Bid.

Do not terminate or substitute a listed DBE for convenience and perform the work with your own forces or obtain materials from other sources without authorization from the Agency.

The Agency authorizes a request to use other forces or sources of materials if it shows any of the following justifications:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. You stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet your bond requirements.
3. Work requires a contractor's license and listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials.
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.
7. Listed DBE becomes bankrupt or insolvent.
8. Listed DBE voluntarily withdraws with written notice from the Contract
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. Agency determines other documented good cause.

Notify the original DBE of your intent to use other forces or material sources and provide the reasons. Provide the DBE with 5 days to respond to your notice and advise you and the Agency of the reasons why the use of other forces or sources of materials should not occur. Your request to use other forces or material sources must include:

1. One or more of the reasons listed in the preceding paragraph

2. Notices from you to the DBE regarding the request
3. Notices from the DBEs to you regarding the request

If a listed DBE is terminated or substituted, you must make good faith efforts to find another DBE to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet the DBE goal.

The substitute DBE must be certified as a DBE at the time of request for substitution.

Unless the Agency authorizes (1) a request to use other forces or sources of materials or (2) a good faith effort for a substitution of a terminated DBE, the Agency does not pay for work listed on the Exhibit 15-G Local Agency Bidder DBE Commitment (Construction Contracts) form unless it is performed or supplied by the listed DBE or an authorized substitute.

13.4 Buy America Requirements

Furnish steel and iron materials to be incorporated into the work with certificates of compliance. Steel and iron materials must be produced in the U.S. except:

1. Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478 (03/24/1995)];
2. If the total combined cost of the materials does not exceed the greater of 0.1 percent of the total bid or $2,500, materials produced outside the U.S. may be used.

Production includes:

1. Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending, grinding, and drilling) or chemical composition;
2. Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials.

13.5 Beginning of Work, Time of Completion, and Liquidated Damages

The Contractor shall begin work within 15 calendar days after the contract has been approved by the attorney appointed and authorized to represent the City of Fort Bragg.

This work shall be diligently prosecuted to completion before the expiration of 90 WORKING DAYS beginning on the date specified in the Notice to Proceed.

The Contractor shall pay to the City of Fort Bragg the sum of $500 per day, for each and every calendar day's delay in finishing the work in excess of the number of working days prescribed above.

13.6 Records

The Contractor shall maintain cost accounting records for the contract pertaining to, and in such a manner as to provide a clear distinction between, the following 6 categories of costs of work during the life of the contract:

A. Direct costs of contract item work.
B. Direct costs of changes in character in conformance with Section 4-1.03C, "Changes in Character of Work," of the Standard Specifications.
C. Direct costs of extra work in conformance with Section 4-1.03D, "Extra Work," of the Standard Specifications.
D. Direct costs of work not required by the contract and performed for others.
E. Direct costs of work performed under a notice of potential claim in conformance with the provisions in Section 9-1.04, "Notice of Potential Claim," of the Standard Specifications.
F. Indirect costs of overhead.

Cost accounting records shall include the information specified for daily extra work reports in Section 9-1.03C, "Records," of the Standard Specifications. The requirements for furnishing the Engineer completed daily extra work reports shall only apply to work paid for on a force account basis.
The cost accounting records for the contract shall be maintained separately from other contracts, during the life of the contract, and for a period of not less than 3 years after the date of acceptance of the contract. If the Contractor intends to file claims against the City, the Contractor shall keep the cost accounting records specified above until complete resolution of all claims has been reached.

13.7 Female and Minority Goals

To comply with Section II, "Nondiscrimination," of "Required Contract Provisions Federal-Aid Construction Contracts," the following are goals for female and minority utilization goals for Federal-aid construction contracts and subcontracts that exceed $10,000:
The nationwide goal for female utilization is 6.9 percent.
The goals for minority utilization [45 Fed Reg 65984 (10/3/1980)] are as follows:

MINORITY UTILIZATION GOALS

Economic Area		Goal (Percent)
174	Redding CA: Non-SMSA (Standard Metropolitan Statistical Area) Counties: CA Lassen; CA Modoc; CA Plumas; CA Shasta; CA Siskiyou; CA Tehama	6.8
175	Eureka, CA Non-SMSA Counties: CA Del Norte; CA Humboldt; CA Trinity	6.6
176	San Francisco-Oakland-San Jose, CA: SMSA Counties: 7120 Salinas-Seaside-Monterey, CA CA Monterey 7360 San Francisco-Oakland CA Alameda; CA Contra Costa; CA Marin; CA San Francisco; CA San Mateo 7400 San Jose, CA CA Santa Clara, CA 7485 Santa Cruz, CA CA Santa Cruz 7500 Santa Rosa CA Sonoma 8720 Vallejo-Fairfield-Napa, CA CA Napa; CA Solano Non-SMSA Counties: CA Lake; CA Mendocino; CA San Benito	 28.9 25.6 19.6 14.9 9.1 17.1 23.2
177	Sacramento, CA: SMSA Counties: 6920 Sacramento, CA CA Placer; CA Sacramento; CA Yolo Non-SMSA Counties CA Butte; CA Colusa; CA El Dorado; CA Glenn; CA Nevada; CA Sierra; CA Sutter; CA Yuba	 16.1 14.3
178	Stockton-Modesto, CA: SMSA Counties: 5170 Modesto, CA CA Stanislaus 8120 Stockton, CA CA San Joaquin Non-SMSA Counties CA Alpine; CA Amador; CA Calaveras; CA Mariposa; CA Merced; CA Tuolumne	 12.3 24.3 19.8
179	Fresno-Bakersfield, CA SMSA Counties: 0680 Bakersfield, CA CA Kern 2840 Fresno, CA CA Fresno Non-SMSA Counties: CA Kings; CA Madera; CA Tulare	 19.1 26.1 23.6

For each July during which work is performed under the contract, you and each non material-supplier subcontractor with a subcontract of $10,000 or more must complete Form FHWA PR-1391 (Appendix C to 23 CFR 230). Submit the forms by August 15.

13.8. TITLE VI ASSURANCES

During the performance of this Agreement, the contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONTRACTOR) agrees as follows:

(1) Compliance with Regulations: CONTRACTOR shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.

(2) Nondiscrimination: CONTRACTOR, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.

(3) Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONTRACTOR for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONTRACTOR of the CONTRACTOR'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the California Department of Transportation or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the California Department of Transportation or the FHWA as appropriate, and shall set forth what efforts CONTRACTOR has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of CONTRACTOR's noncompliance with the nondiscrimination provisions of this agreement, the California Department of Transportation shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

(a) withholding of payments to CONTRACTOR under the Agreement within a reasonable period of time, not to exceed 90 days; and/or

(b) cancellation, termination or suspension of the Agreement, in whole or in part.

(6) Incorporation of Provisions: CONTRACTOR shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

CONTRACTOR shall take such action with respect to any sub-agreement or procurement as the California Department of Transportation or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONTRACTOR may request the California Department of Transportation enter into such litigation to protect the interests of the State, and, in addition, CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

13.9 Use of United State-Flag Vessels

The CONTRACTOR agrees-

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carries, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

2. To Furnish within 20 days following the date of loading for shipments originating within the United State or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

3. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

(Exclusive of Appalachian Contracts)

I. General
II. Nondiscrimination
III. Nonsegregated Facilities
IV. Davis-Bacon and Related Act Provisions
V. Contract Work Hours and Safety Standards Act Provisions
VI. Subletting or Assigning the Contract
VII. Safety: Accident Prevention
VIII. False Statements Concerning Highway Projects
IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
X. Compliance with Governmentwide Suspension and Debarment Requirements
XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding $10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith

effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor

collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 “Contract provisions and related matters” with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress,

expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or

she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term “perform work with its own organization” refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
(2) the prime contractor remains responsible for the quality of the work of the leased employees;
(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost $25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1**. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. “First Tier Covered Transactions” refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. **Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost $25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. “First Tier Covered Transactions” refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and

information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

parole, supervised release, or probation.

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This section applies if a number of trainees or apprentices are specified in the special provisions.

As part of your equal opportunity affirmative action program, provide on-the-job training to develop full journeymen in the types of trades or job classifications involved.

You have primary responsibility for meeting this training requirement.

If you subcontract a contract part, determine how many trainees or apprentices are to be trained by the subcontractor.

Include these training requirements in your subcontract.

Where feasible, 25 percent of apprentices or trainees in each occupation must be in their 1st year of apprenticeship or training.

Distribute the number of apprentices or trainees among the work classifications on the basis of your needs and the availability of journeymen in the various classifications within a reasonable recruitment area.

Before starting work, submit to the Agency:

1. Number of apprentices or trainees to be trained for each classification
2. Training program to be used
3. Training starting date for each classification

Obtain the Agency's approval for this submitted information before you start work. The Agency credits you for each apprentice or trainee you employ on the work who is currently enrolled or becomes enrolled in an approved program.

The primary objective of this section, "Training," is to train and upgrade minorities and women toward journeymen status. Make every effort to enroll minority and women apprentices or trainees, such as conducting systematic and direct recruitment through public and private sources likely to yield minority and women apprentices or trainees, to the extent they are available within a reasonable recruitment area. Show that you have made the efforts. In making these efforts, do not discriminate against any applicant for training.

Do not employ as an apprentice or trainee an employee:

1. In any classification in which the employee has successfully completed a training course leading to journeyman status or in which the employee has been employed as a journeyman
2. Who is not registered in a program approved by the US Department of Labor, Bureau of Apprenticeship and Training

Ask the employee if the employee has successfully completed a training course leading to journeyman status or has been employed as a journeyman. Your records must show the employee's answers to the questions.

In your training program, establish the minimum length and training type for each classification. The Agency and FHWA approves a program if one of the following is met:

1. It is calculated to:
   - 1.1. Meet the your equal employment opportunity responsibilities
   - 1.2. Qualify the average apprentice or trainee for journeyman status in the classification involved by the end of the training period

2. It is registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training and it is administered in a way consistent with the equal employment responsibilities of federal-aid highway construction contracts

Obtain the Agency's approval for your training program before you start work involving the classification covered by the program.

Provide training in the construction crafts, not in clerk-typist or secretarial-type positions. Training is allowed in lower level management positions such as office engineers, estimators, and timekeepers if the training is oriented toward construction applications. Training is allowed in the laborer classification if significant and meaningful training is provided and approved by the division office. Off-site training is allowed if the training is an integral part of an approved training program and does not make up a significant part of the overall training.

The Agency reimburses you 80 cents per hour of training given an employee on this contract under an approved training program:

1. For on-site training
2. For off-site training if the apprentice or trainee is currently employed on a federal-aid project and you do at least one of the following:

    2.1. Contribute to the cost of the training
    2.2. Provide the instruction to the apprentice or trainee
    2.3. Pay the apprentice's or trainee's wages during the off-site training period

3. If you comply with this section, "Training"

Each apprentice or trainee must:

1. Begin training on the project as soon as feasible after the start of work involving the apprentice's or trainee's skill
2. Remain on the project as long as training opportunities exist in the apprentice's or trainee's work classification or until the apprentice or trainee has completed the training program

Furnish the apprentice or trainee:

1. Copy of the program you will comply with in providing the training
2. Certification showing the type and length of training satisfactorily completed

Maintain records and submit reports documenting your performance under this section, "Training."

CITY OF FORT BRAGG
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 City Council of the City of Fort Bragg has awarded to **AKEFF CONSTRUCTION SERVICES, INC.** (designated as the "PRINCIPAL") a contract for the Chestnut Street Corridor Project, Project No. 2015-04, 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 City (designated as "OBLIGEE"), in the penal sum of **One Million Three Hundred Seventy-nine Thousand Three Hundred Thirteen Dollars** (**$1,379,313.00)**, 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

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 _____, 2016, 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.)

CITY OF FORT BRAGG
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 City Council of the City of Fort Bragg has awarded to **AKEFF CONSTRUCTION SERVICES, INC.** (designated as the "PRINCIPAL") a contract for the Chestnut Street Corridor Project, Project No. 2015-04, 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 **One Million Three Hundred Seventy-nine Thousand Three Hundred Thirteen Dollars (**$1,379,313.00**),** 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 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 _____, 2016, 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.)

CITY OF FORT BRAGG
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 City Council of the City of Fort Bragg has awarded to **AKEFF CONSTRUCTION SERVICES, INC.** (designated as the "PRINCIPAL") a contract for the Chestnut Street Corridor Project, Project No.2015-04, 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 City of Fort Bragg, (designated as the "OBLIGEE"), in the penal sum of **One Hundred Thirty-Seven Thousand Nine Hundred Thirty-One Dollars ($137,931.00)**, 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 _____, 2016, the name and corporate

seals 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.)

CITY OF FORT BRAGG
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 City of Fort Bragg, whose address is 416 North Franklin Street, Fort Bragg, California 95437, hereinafter called "City", AKEFF CONSTRUCTION SERVICES, INC., whose address is 31201 Thomas Lane, Fort Bragg, CA 95437, hereinafter called "Contractor", and _____, whose address is _____, hereinafter called “Escrow Agent”

For consideration hereinafter set forth, the City, 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 City pursuant to the Construction Contract entered into between the City and Contractor for the project entitled Chestnut Street Corridor Project in the amount of **One Million Three Hundred Seventy-nine Thousand Three Hundred Thirteen Dollars** (**$1,379,313.00)** dated _____ (hereinafter referred to as the "Contract'). Alternatively, on written request of the Contractor, the City 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 City 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 City and Contractor. Securities shall be held in the name of _____ and shall designate the Contractor as the beneficial owner.
2. The City 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 City 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 City pays the escrow agent directly.

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 City. These expenses and payment terms shall be determined by the City, 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 City.
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 City to the Escrow Agent that City consents to the withdrawal of the amount sought to be withdrawn by Contractor.
7. The City 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 City of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the City.
8. Upon receipt of written notification from the City 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 City and the Contractor pursuant to Sections (5) to (8) inclusive, of this Contract and the City 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 City and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures, are as follows:

On behalf of City:	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 City 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.

City:	Contractor:
_____	_____
Title	Title
_____	_____
Name	Name
_____	_____
Signature	Signature
_____	_____
Address	Address

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BIDDER: Akeff Construction Services, Inc

BID SCHEDULE

Chestnut Street Corridor Project, Project No. 2015-04

BIDDER agrees to perform all the work described in the Contract Documents for the following unit price or lump sum.

NOTE: Bids shall include sales tax and all other applicable taxes and fees.

Base Bid

NO.	ITEM	EST. QTY.	UNIT	UNIT PRICE	TOTAL
1	Traffic Control Plan	1	LS	32,000.00	32,000.00
2	Mobilization	1	LS	155,000.00	155,000.00
3	Clearing and Grubbing	1	LS	13,000.00	13,000.00
4	Erosion & Sediment Control &SWPPP	1	LS	27,000.00	27,000.00
5	Remove AC Pavement	8,120	SF	2.25	18,270.00
6	Remove Curb and Gutter	4,050	LF	3.54	14,337.00
7	Remove Sidewalks and Driveways	15,700	SF	2.90	45,530.00
8	Remove Traffic Striping & Signage	1	LS	17,800.00	17,800.00
9	Remove or Relocate Roadside Signs	23	EA	115.00	2,645.00
10	Remove Drainage Structures	9	EA	2,600.00	23,400.00
11	Remove Wood Fence	125	LF	7.00	875.00
12	Relocate Fire Hydrant	1	EA	5,650.00	5,650.00
13	Remove (E) Pedestrian Crossing Islands	1	LS	0	0
14	Earthwork	1,000	CY	145.00	145,000.00
15	Class 2 AB	995	TN	74.00	73,630.00
16	Type A AC	530	TN	294.00	155,820.00
17	Metal Asphalt Edging	3,265	LF	13.50	44,077.50
18	Storm Drain Inlets	18	EA	5400.00	97,200.00
19	Storm Drain Manholes	9	EA	5,800.00	52,200.00
20	Reconstruct (E) SDDI w/SDMH cover	3	EA	2,700.00	8,100.00
21	Sanitary Sewer Manhole	2	EA	6,700.00	13,400.00
22	12" RCP Storm Drain Pipe	250	LF	97.00	24,250.00
23	12" HDPE Storm Drain Pipe	30	LF	97.00	2,910.00
24	18" RCP Storm Drain Pipe	45	LF	97.00	4,365.00
25	Through the Walk Drains	18	EA	190.00	3,420.00
26	PCC Curb & Gutter	4,100	LF	34.00	139,400.00
27	PCC Sidewalks	333	SF	10.00	3,330.00

NO.	ITEM	EST. QTY.	UNIT	UNIT PRICE	TOTAL
28	PCC Ramps	4,060	SF	18.00	73080.00
29	PCC Driveway	3,422	SF	16.00	54,752.00
30	Detectable Warning Surface	27	EA	1216.00	32,832.00
31	Curb Bump Outs	5	EA	1350.00	6,750.00
32	Type 2 Striping	3,875	LF	.60	2325.00
33	Type 16 Striping	320	LF	1.25	400.00
34	Type 22 Striping	860	LF	1.50	1290.00
35	Type 27B Striping	3,555	LF	1.00	3555.00
36	Type 38 Striping	175	LF	1.50	262.50
37	Curb Painting	1,460	LF	1.75	2555.00
38	12" Limit Lines	235	LF	5.00	1175.00
39	High Visibility Crosswalk Striping	25	EA	1500.00	37,500.00
40	Pavement Markings	1,524	SF	6.50	9906.00
41	Signs	96	EA	195.00	18720.00
42	Wood Fence	125	LF	53.00	6,625.00
43	Electronic Speed Feedback Sign	1	EA	1	6,800.00
44	Adjust Water Meter Boxes to Grade	13	EA	175.00	2,275.00
45	Adjust Manhole to Grade	1	EA	1200.00	1200.00
46	Convex Traffic Mirror	1	EA	1,500.00	1,500.00

Total Base Bid: one million three hundred eighty six thousand one hundred twelve **dollars ($** 1,386,112.00 **)**

1,379,313

ALTERNATES

NO.	ITEM	EST. QTY.	UNIT	UNIT PRICE	TOTAL
1	Slurry Seal	11,633	SY	~~7.80~~ 7.00	~~90,751.40~~ 81,431.00
2	High Visibility Crosswalk Striping	4	EA	1500-	6000.00

Total Alternates: eighty ~~two~~ seven thousand four hundred thirty **dollars ($** 87,430.00 **)**

87,431

Total Bid Including Base Bid and Alternates:
One million four hundred seventy three thousand five hundred forty two & no/100 **dollars ($** 1,473,542.00 **)**

1,466,744.00

City of Fort Bragg

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

Text File

File Number: 16-461

Agenda Date: 11/14/2016 **Version:** 1 **Status:** Business

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

Agenda Number: 7E.

Receive Report and Adopt Resolution Authorizing Execution of a Grant Agreement, Committing Match Funding of $27,368, and Amending the FY 2016-17 Budget (Budget Amendment No. 2017-12) for Purchase of Up To Twenty Body-Worn Cameras and Associated Equipment for the Body-Worn Camera Policy and Implementation Program (Amount Not to Exceed $25,219.00; Account No.110-4200-0381)

AGENCY:	City Council
MEETING DATE:	November 14, 2016
DEPARTMENT:	FBPD
PREPARED BY:	J. Owen
PRESENTED BY:	F. Lizarraga

AGENDA ITEM SUMMARY REPORT

TITLE:
RECEIVE REPORT AND CONSIDER ADOPTION OF CITY COUNCIL RESOLUTION AUTHORIZING EXECUTION OF A GRANT AGREEMENT, COMMITTING MATCH FUNDING OF $27,368, AND AMENDING THE FY 2016-17 BUDGET (BUDGET AMENDMENT NO. 2017-12) FOR PURCHASE OF UP TO TWENTY BODY-WORN CAMERAS AND ASSOCIATED EQUIPMENT FOR THE BODY-WORN CAMERA POLICY AND IMPLEMENTATION PROGRAM (AMOUNT NOT TO EXCEED $25,219.00, ACCOUNT NO. 110-4200-0381)

ISSUE:
In April 2016, Fort Bragg Police Department staff submitted an application to the Office of Justice Programs' Bureau of Justice Assistance's (BJA) Fiscal Year 2016 Small Agency Body-Worn Camera Policy and Implementation grant program. The grant proposal includes development of body-worn camera policies, practices and evaluation methods using match funds, followed by purchase of up to twenty body-worn cameras and associated equipment with grant funding. After cameras are purchased, match expenditures will pay for DVD and digital storage. Costs of software licenses and digital storage will result in ongoing costs that are anticipated to range from approximately $6,000 to $10,000 per year, depending upon actual number of cameras purchased. In September 2016, the FBPD was notified of a grant award. In order to accept the grant funds, the Grant Award and Special Conditions documents must be executed and the expenditure of match funding must be approved.

RECOMMENDED ACTION:
Adopt Resolution Authorizing Execution of a Grant Agreement, Committing Match of $27,368, and Amending the FY 2016-17 Budget (Budget Amendment No. 2017-12) for Purchase of Up to Twenty Body-Worn Cameras and Associated Equipment for the Body-Worn Camera Policy and Implementation Program (Amount Not to Exceed $25,219.00, Account No. 110-4200-0381).

ALTERNATIVE ACTION(S):
Decline the award. If the award is declined, financial assistance for purchase of body-worn cameras and linked structured training, technical assistance, and policy development would be forfeited.

ANALYSIS:
The Small Agency Body-Worn Camera Policy and Implementation Program is funded through the U.S. Department of Justice (DOJ), Office of Justice Programs (OJP), Bureau of Justice Assistance (BJA), and by the Department of Justice Appropriation Act of 2016. The FY 2016 Small Agency Body-Worn Camera (BWC) Policy and Implementation Program is specifically designed to support the implementation of body-worn camera programs in small law enforcement agencies across the country. The intent of the program is to help agencies with 25 or fewer sworn officers develop, implement, and evaluate a BWC program as a tool in a law enforcement agency's approach to enhance officer interactions with the public and build community trust.

Per the BWC grant announcement, "Law enforcement agencies' use of BWC programs has shown BWCs to be a promising practice to improve law enforcement's interactions with the public… cameras are an important tool that can be an integrated part of a jurisdiction's holistic problem-

solving and community-engagement strategy, helping to increase both trust and communication between the police and the communities they serve. BWCs can be highly effective, providing an objective audio and visual record of interactions that can capture empirical evidence in the event of a crime, police-citizen interaction, or use-of-force incident."[1] The Program was launched in response to a recommendation by the President's Task Force on 21st Century Policing, that law enforcement agencies use technology to strengthen relations with communities.

The 2016 DOJ awards totaled over $20 million to 106 state, city, tribal and municipal law enforcement agencies. Maximum "small agency" grants were $40,000. The grant program requires at least 50% local match. The Fort Bragg Police Department's application for $52,587 in direct costs was awarded with an allocation of $25,219 in grant funding and $27,368 in local match funding.

Award recipients are required to work with the BJA-funded BWC training and technical assistance provided as part of a BWC policy development process. Funding will not be released for purchase of cameras until the related BWC is developed. Per the grant announcement, award recipients must attend one mandatory, national BWC training. Applicants were also required to demonstrate a partnership with the local prosecutor's office (District Attorney) to be eligible for consideration.

The grant announcement provides specific activities to occur in months one through six and months seven through twelve of the 12-month grant period. In the first six months, focus is on development of policies and training programs, to be evaluated by a BJA technical assistance provider. In the second six months of the grant period, grantees are to deploy the BWCs with continued training and collection of outcome measures.

Per the application budget, the City will provide match funding of $27,368 from personnel/staff time and purchase of supplies. FBPD staff time will total $12,315, and District Attorney's office staff time will total $2,855. Staff time will be focused on policy development, training, and data processing. Match supplies expenditures will include data transmittal and storage, including physical (DVD) storage and digital storage at a specialized site (Evidence.com).

Grant-funded items include purchase of up to 20 body-worn cameras and related docking/charging stations, holsters, software licenses, and software installation. The number of cameras and accessories purchased will depend upon actual costs as limited by the grant award. The camera license budget is estimated at $9,660 for the grant period.

After the grant period, camera license costs and storage costs will be ongoing and will require future budget allocations of $6,000 to $10,000 per year, depending upon the actual number of cameras purchased.

FISCAL IMPACT:

The BWC grant funding provides $25,219 to purchase body-worn cameras and accessories. Expenditure of grant funds requires expenditure of match funding of at least $27,368 for program-specific training, policy development, and data storage. Source of match is primarily expected to be personnel costs that are already included in the Police Department's Operations budget. Up to $6,000 in additional funding is available from Asset Forfeiture funds. In addition, implementation of the full BWC program may require ongoing training, license renewals, and data storage costs. On-going licensing and data storage costs are currently estimated at $6,000 to $10,000 per year, depending upon actual number of cameras purchased.

CONSISTENCY:

The BWC Program, including policy development and practice implementation, is new to the City of Fort Bragg and reflects a Department of Justice goal to provide integrated and holistic problem-

[1] Grant Announcement, release date March 8, 2016, page 4, https://www.bja.gov/funding/BWCSmallAgency16.pdf

solving and community engagement, to increase trust and communication between the police and the communities they serve.

IMPLEMENTATION/TIMEFRAMES:
If grant execution and match expenditure is approved, staff will send executed documents to the DOJ by Tuesday November 15, 2016. Once approval to proceed is received, grant tasks will commence. Program policy development work must be completed and approved by the funding agency before grant equipment funds will be released. All grant and match expenditures must be completed by September 30, 2017.

ATTACHMENTS:
1. Resolution
2. Grant Award Documents

NOTIFICATION:
1. None.

City Clerk's Office Use Only

Agency Action ☐ Approved ☐ Denied ☐ Approved as Amended

Resolution No.: _____ Ordinance No.: _____

Moved by: _____ Seconded by: _____

Vote: _____

☐ Deferred/Continued to meeting of: _____

☐ Referred to: _____

RESOLUTION NO. ___*-2016*

RESOLUTION OF THE FORT BRAGG CITY COUNCIL AUTHORIZING EXECUTION OF A GRANT AGREEMENT, COMMITTING MATCH FUNDING OF $27,368, AND AMENDING THE FY 2016-17 BUDGET (BUDGET AMENDMENT NO. 2017-12) FOR PURCHASE OF UP TO TWENTY BODY-WORN CAMERAS AND ASSOCIATED EQUIPMENT FOR THE BODY-WORN CAMERA POLICY AND IMPLEMENTATION PROGRAM (AMOUNT NOT TO EXCEED $25,219, ACCOUNT 110-4200-0381)

WHEREAS, the U.S. Department of Justice funded the FY16 Small Agency Body-Worn Camera Policy and Implementation Program to encourage small law enforcement agencies to establish or enhance Body-Worn Camera (BWC) programs; and

WHEREAS, the City of Fort Bragg submitted a grant application in April 2016 and has been notified of a grant award of up to $25,219 to purchase up to twenty body-worn cameras; and

WHEREAS, use of grant funds is contingent on expenditure of 50% local match, and the City's application identified $27,368 in match expenditures to implement the BWC program; and

WHEREAS, use of grant funds is also contingent on development and approval of a local BWC policy and program including training of officers; and

WHEREAS, the City's grant application identified match expenditures for staff time, to be funded from the Fort Bragg Police Department's current operating budget, and for supplies to be funded with up to $6,000 from Asset Forfeiture funds; and

WHEREAS, ongoing costs related to equipment licensing and data storage will range from $6,000 to $10,000 per year depending upon actual number of cameras purchased (approximately $520 per BWC per year), and future budgets will include these allocations.

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

1. The City of Fort Bragg understands the Grant Award and Special Conditions Documents and its legal obligations upon execution of the Grant.
2. Match funding has been identified in the Fort Bragg Police Department FY2016-2017 Operations budget and up to $6,000 in match funding will be provided from Asset Forfeiture funds and will be committed to the Program.
3. The City Manager or any designee(s) is authorized to conduct all negotiations, execute and submit all documents including, but not limited to Applications, agreements, policies, amendments, payment request, and so on, which may be necessary for completion of the Project.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby authorize execution of a Grant Agreement, Committing Match Funding of $27,368, and Amending the FY 2016-17 Budget (Budget Amendment No. 2017-12) for Purchase of up to Twenty Body-Worn Cameras and Associated Equipment for the Body-Worn

Camera Policy and Implementation Program (Amount Not to Exceed $25,219, Account 110-4200-0381).

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 14th day of November, 2016, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSED:

_____
DAVE TURNER,
Mayor

ATTEST:

_____
June Lemos
City Clerk

U.S. Department of Justice

Office of Justice Programs

Office of the Assistant Attorney General *Washington, D.C. 20531*

September 26, 2016

Chief Fabian E. Lizarraga
City of Fort Bragg
416 N. Franklin Street
Fort Bragg, CA 95437-3210

Dear Chief Lizarraga:

On behalf of Attorney General Loretta Lynch, it is my pleasure to inform you that the Office of Justice Programs has approved your application for funding under the FY 16 Small Agency Body-Worn Camera Policy and Implementation Program in the amount of $25,219 for City of Fort Bragg.

Enclosed you will find the Grant Award and Special Conditions documents. This award is subject to all administrative and financial requirements, including the timely submission of all financial and programmatic reports, resolution of all interim audit findings, and the maintenance of a minimum level of cash-on-hand. Should you not adhere to these requirements, you will be in violation of the terms of this agreement and the award will be subject to termination for cause or other administrative action as appropriate.

If you have questions regarding this award, please contact:

- Program Questions, Flora D. Lawson, Program Manager at (202) 305-9216; and
- Financial Questions, the Office of the Chief Financial Officer, Customer Service Center (CSC) at (800) 458-0786, or you may contact the CSC at ask.ocfo@usdoj.gov.

Congratulations, and we look forward to working with you.

Sincerely,

Karol V. Mason

Karol Virginia Mason
Assistant Attorney General

Enclosures

OFFICE FOR CIVIL RIGHTS

Office of Justice Programs

U.S. Department of Justice

810 7th Street, NW
Washington, DC 20531

Tel: (202) 307-0690
TTY: (202) 307-2027
E-mail: askOCR@usdoj.gov
Website: www.ojp.usdoj.gov/ocr

September 26, 2016

Chief Fabian E. Lizarraga
City of Fort Bragg
416 N. Franklin Street
Fort Bragg, CA 95437-3210

Dear Chief Lizarraga:

Congratulations on your recent award. In establishing financial assistance programs, Congress linked the receipt of federal funding to compliance with federal civil rights laws. The Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) is responsible for ensuring that recipients of financial assistance from the OJP, the Office of Community Oriented Policing Services (COPS), and the Office on Violence Against Women (OVW) comply with the applicable federal civil rights laws. We at the OCR are available to help you and your organization meet the civil rights requirements that come with DOJ funding.

Ensuring Access to Federally Assisted Programs

Federal laws that apply to recipients of financial assistance from the DOJ prohibit discrimination on the basis of race, color, national origin, religion, sex, or disability in funded programs or activities, not only in employment but also in the delivery of services or benefits. A federal law also prohibits recipients from discriminating on the basis of age in the delivery of services or benefits.

In March of 2013, President Obama signed the Violence Against Women Reauthorization Act of 2013. The statute amends the Violence Against Women Act of 1994 (VAWA) by including a nondiscrimination grant condition that prohibits discrimination based on actual or perceived race, color, national origin, religion, sex, disability, sexual orientation, or gender identity. The new nondiscrimination grant condition applies to certain programs funded after October 1, 2013. The OCR and the OVW have developed answers to some frequently asked questions about this provision to assist recipients of VAWA funds to understand their obligations. The Frequently Asked Questions are available at http://ojp.gov/about/ocr/vawafaqs.htm.

Enforcing Civil Rights Laws

All recipients of federal financial assistance, regardless of the particular funding source, the amount of the grant award, or the number of employees in the workforce, are subject to prohibitions against unlawful discrimination. Accordingly, the OCR investigates recipients that are the subject of discrimination complaints from both individuals and groups. In addition, based on regulatory criteria, the OCR selects a number of recipients each year for compliance reviews, audits that require recipients to submit data showing that they are providing services equitably to all segments of their service population and that their employment practices meet equal opportunity standards.

Providing Services to Limited English Proficiency (LEP) Individuals

In accordance with DOJ guidance pertaining to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, recipients of federal financial assistance must take reasonable steps to provide meaningful access to their programs and activities for persons with limited English proficiency (LEP). See U.S. Department of Justice, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455 (2002). For more information on the civil rights responsibilities that recipients have in providing language services to LEP individuals, please see the website http://www.lep.gov.

Ensuring Equal Treatment for Faith-Based Organizations

The DOJ regulation, Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38, requires State Administering Agencies (SAAs) to treat faith-based organizations the same as any other applicant or recipient. The regulation prohibits SAAs from making awards or grant administration decisions on the basis of an organization's religious character or affiliation, religious name, or the religious composition of its board of directors.

The regulation also prohibits faith-based organizations from using financial assistance from the DOJ to fund inherently (or explicitly) religious activities. While faith-based organizations can engage in non-funded inherently religious activities, they must hold them separately from the program funded by the DOJ, and recipients cannot compel beneficiaries to participate in them. The Equal Treatment Regulation also makes clear that organizations participating in programs funded by the DOJ are not permitted to discriminate in the provision of services on the basis of a beneficiary's religion. For more information on the regulation, please see the OCR's website at http://www.ojp.usdoj.gov/about/ocr/equal_fbo.htm.

SAAs and faith-based organizations should also note that the Omnibus Crime Control and Safe Streets Act (Safe Streets Act) of 1968, as amended, 42 U.S.C. § 3789d(c); the Victims of Crime Act of 1984, as amended, 42 U.S.C. § 10604(e); the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. § 5672(b); and VAWA, Pub. L. No. 113-4, sec. 3(b)(4), 127 Stat. 54, 61-62 (to be codified at 42 U.S.C. § 13925(b)(13)) contain prohibitions against discrimination on the basis of religion in employment. Despite these nondiscrimination provisions, the DOJ has concluded that it may construe the Religious Freedom Restoration Act (RFRA) on a case-by-case basis to permit some faith-based organizations to receive DOJ funds while taking into account religion when hiring staff, even if the statute that authorizes the funding program generally forbids recipients from considering religion in employment decisions.
Please consult with the OCR if you have any questions about the regulation or the application of RFRA to the statutes that prohibit discrimination in employment.

Using Arrest and Conviction Records in Making Employment Decisions

The OCR issued an advisory document for recipients on the proper use of arrest and conviction records in making hiring decisions. See Advisory for Recipients of Financial Assistance from the U.S. Department of Justice on the U.S. Equal Employment Opportunity Commission's Enforcement Guidance: Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964 (June 2013), available at http://www.ojp.usdoj.gov//about/ocr/pdfs/UseofConviction_Advisory.pdf. Recipients should be mindful that the misuse of arrest or conviction records to screen either applicants for employment or employees for retention or promotion may have a disparate impact based on race or national origin, resulting in unlawful employment discrimination. In light of the Advisory, recipients should consult local counsel in reviewing their employment practices. If warranted, recipients should also incorporate an analysis of the use of arrest and conviction records in their Equal Employment Opportunity Plans (EEOPs) (see below).

Complying with the Safe Streets Act

An organization that is a recipient of financial assistance subject to the nondiscrimination provisions of the Safe Streets Act, must meet two obligations: (1) complying with the federal regulation pertaining to the development of an EEOP (see 28 C.F.R. pt. 42, subpt. E) and (2) submitting to the OCR findings of discrimination (see 28 C.F.R. §§ 42.204(c), .205(c)(5)).

Meeting the EEOP Requirement

If your organization has less than fifty employees or receives an award of less than $25,000 or is a nonprofit organization, a medical institution, an educational institution, or an Indian tribe, then it is exempt from the EEOP requirement. To claim the exemption, your organization must complete and submit Section A of the Certification Form, which is available online at http://www.ojp.usdoj.gov/about/ocr/pdfs/cert.pdf.

If your organization is a government agency or private business and receives an award of $25,000 or more, but less than $500,000, and has fifty or more employees (counting both full- and part-time employees but excluding political appointees), then it has to prepare a Utilization Report (formerly called an EEOP Short Form), but it does not have to submit the report to the OCR for review. Instead, your organization has to maintain the Utilization Report on file and make it available for review on request. In addition, your organization has to complete Section B of the Certification Form and return it to the OCR. The Certification Form is available at http://www.ojp.usdoj.gov/about/ocr/pdfs/cert.pdf.

If your organization is a government agency or private business and has received an award for $500,000 or more and has fifty or more employees (counting both full- and part-time employees but excluding political appointees), then it has to prepare a Utilization Report (formerly called an EEOP Short Form) and submit it to the OCR for review within sixty days from the date of this letter. For assistance in developing a Utilization Report, please consult the OCR's website at http://www.ojp.usdoj.gov/about/ocr/eeop.htm. In addition, your organization has to complete Section C of the Certification Form and return it to the OCR. The Certification Form is available at http://www.ojp.usdoj.gov/about/ocr/pdfs/cert.pdf.

To comply with the EEOP requirements, you may request technical assistance from an EEOP specialist at the OCR by telephone at (202) 307-0690, by TTY at (202) 307-2027, or by e-mail at EEOsubmisson@usdoj.gov.

Meeting the Requirement to Submit Findings of Discrimination

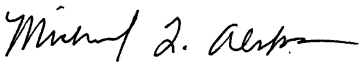
If in the three years prior to the date of the grant award, your organization has received an adverse finding of discrimination based on race, color, national origin, religion, or sex, after a due-process hearing, from a state or federal court or from a state or federal administrative agency, your organization must send a copy of the finding to the OCR.

Ensuring the Compliance of Subrecipients

SAAs must have standard assurances to notify subrecipients of their civil rights obligations, written procedures to address discrimination complaints filed against subrecipients, methods to monitor subrecipients' compliance with civil rights requirements, and a program to train subrecipients on applicable civil rights laws. In addition, SAAs must submit to the OCR every three years written Methods of Administration (MOA) that summarize the policies and procedures that they have implemented to ensure the civil rights compliance of subrecipients. For more information on the MOA requirement, see http://www.ojp.usdoj.gov/funding/other_requirements.htm.

If the OCR can assist you in any way in fulfilling your organization's civil rights responsibilities as a recipient of federal financial assistance, please contact us.

Sincerely,



Michael L. Alston
Director

cc: Grant Manager
Financial Analyst

U.S. Department of Justice
Office of Justice Programs
Office of the Chief Financial Officer

Washington, D.C. 20531

September 26, 2016

Chief Fabian E. Lizarraga
City of Fort Bragg
416 N. Franklin Street
Fort Bragg, CA 95437 - 3210

Reference Grant Number: 2016-BC-BX-K027

Dear Chief Lizarraga:

I am pleased to inform you that my office has approved the following budget categories for the aforementioned grant award in the cost categories identified below:

Category	Budget
Personnel	$15,170
Fringe Benefits	$0
Travel	$0
Equipment	$25,219
Supplies	$12,198
Construction	$0
Contractual	$0
Other	$0
Total Direct Cost	$52,587
Indirect Cost	$0
Total Project Cost	$52,587
Federal Funds Approved:	$25,219
Non-Federal Share:	$27,368
Program Income:	$0

Match is required at 50% for this grant program. The applicant exceeded the required match amount by $2,149. The non-federal share that has been incorporated in the approved budget is mandatory and subject to audit.

If you have questions regarding this award, please contact:

- Program Questions, Flora D. Lawson, Program Manager at (202) 305-9216

- Financial Questions, the Office of Chief Financial Officer, Customer Service Center(CSC) at (800) 458-0786, or you may contact the CSC at ask.ocfo@usdoj.gov.

Congratulations, and we look forward to working with you.

Sincerely,

Leigh Benda
Chief Financial Officer

U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Assistance

Cooperative Agreement

1. RECIPIENT NAME AND ADDRESS (Including Zip Code)

City of Fort Bragg
416 N. Franklin Street
Fort Bragg, CA 95437-3210

4. AWARD NUMBER: 2016-BC-BX-K027

5. PROJECT PERIOD: FROM 10/01/2016 TO 09/30/2017

BUDGET PERIOD: FROM 10/01/2016 TO 09/30/2017

6. AWARD DATE 09/26/2016

7. ACTION

Initial

2a. GRANTEE IRS/VENDOR NO.

946000369

8. SUPPLEMENT NUMBER

00

2b. GRANTEE DUNS NO.

089683569

9. PREVIOUS AWARD AMOUNT $ 0

3. PROJECT TITLE

Fort Bragg Police Department Body Worn Camera Implementation Program

10. AMOUNT OF THIS AWARD $ 25,219

11. TOTAL AWARD $ 25,219

12. SPECIAL CONDITIONS

THE ABOVE GRANT PROJECT IS APPROVED SUBJECT TO SUCH CONDITIONS OR LIMITATIONS AS ARE SET FORTH ON THE ATTACHED PAGE(S).

13. STATUTORY AUTHORITY FOR GRANT

This project is supported under Consolidated and Further Continuing Appropriations Act 2016

14 . CATALOG OF DOMESTIC FEDERAL ASSISTANCE (CFDA Number)

16.835 - Body Worn Camera Policy and Implementation Program

15. METHOD OF PAYMENT

GPRS

[redacted] AGENCY APPROVAL [redacted]

16. TYPED NAME AND TITLE OF APPROVING OFFICIAL

Karol Virginia Mason

Assistant Attorney General

17. SIGNATURE OF APPROVING OFFICIAL

Karol V. Mason

[redacted] GRANTEE ACCEPTANCE [redacted]

18. TYPED NAME AND TITLE OF AUTHORIZED GRANTEE OFFICIAL

Fabian E. Lizarraga
Chief of Police

19. SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL

19A. DATE

[redacted] AGENCY USE ONLY [redacted]

20. ACCOUNTING CLASSIFICATION CODES

FISCAL YEAR	FUND CODE	BUD. ACT.	OFC.	DIV. REG.	SUB.	POMS	AMOUNT
X	B	BC	80	00	00		25219

21. RBCUGT0168

OJP FORM 4000/2 (REV. 5-87) PREVIOUS EDITIONS ARE OBSOLETE.

SPECIAL CONDITIONS

1. Applicability of Part 200 Uniform Requirements

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, as adopted and supplemented by the Department of Justice (DOJ) in 2 C.F.R. Part 2800 (together, the "Part 200 Uniform Requirements") apply to this 2016 award from the Office of Justice Programs (OJP).

The Part 200 Uniform Requirements were first adopted by DOJ on December 26, 2014. If this 2016 award supplements funds previously awarded by OJP under the same award number (e.g., funds awarded in 2014 or earlier years), the Part 200 Uniform Requirements apply with respect to all funds under that award number (regardless of the award date, and regardless of whether derived from the initial award or a supplemental award) that are obligated on or after the acceptance date of this 2016 award.

For more information and resources on the Part 200 Uniform Requirements as they relate to OJP awards and subawards ("subgrants"), see the Office of Justice Programs (OJP) website at http://ojp.gov/funding/Part200UniformRequirements.htm.

In the event that an award-related question arises from documents or other materials prepared or distributed by OJP that may appear to conflict with, or differ in some way from, the provisions of the Part 200 Uniform Requirements, the recipient is to contact OJP promptly for clarification.

2. Compliance with DOJ Grants Financial Guide

The recipient agrees to comply with the Department of Justice Grants Financial Guide as posted on the OJP website (currently, the "2015 DOJ Grants Financial Guide"), including any updated version that may be posted during the period of performance.

3. Required training for Point of Contact and all Financial Points of Contact

Both the Point of Contact (POC) and all Financial Points of Contact (FPOCs) for this award must have successfully completed an "OJP financial management and grant administration training" by 120 days after the date of the recipient's acceptance of the award. Successful completion of such a training on or after January 1, 2015, will satisfy this condition.

In the event that either the POC or an FPOC for this award changes during the period of performance, the new POC or FPOC must have successfully completed an "OJP financial management and grant administration training" by 120 calendar days after -- (1) the date of OJP's approval of the "Change Grantee Contact" GAN (in the case of a new POC), or (2) the date the POC enters information on the new FPOC in GMS (in the case of a new FPOC). Successful completion of such a training on or after January 1, 2015, will satisfy this condition.

A list of OJP trainings that OJP will consider "OJP financial management and grant administration training" for purposes of this condition is available at http://www.ojp.gov/training/fmts.htm. All trainings that satisfy this condition include a session on grant fraud prevention and detection

The recipient should anticipate that OJP will immediately withhold ("freeze") award funds if the recipient fails to comply with this condition. The recipient's failure to comply also may lead OJP to impose additional appropriate conditions on this award.

SPECIAL CONDITIONS

4. Requirements related to "de minimis" indirect cost rate

   A recipient that is eligible under the Part 200 Uniform Requirements and other applicable law to use the "de minimis" indirect cost rate described in 2 C.F.R. 200.414(f), and that elects to use the "de minimis" indirect cost rate, must advise OJP in writing of both its eligibility and its election, and must comply with all associated requirements in the Part 200 Uniform Requirements. The "de minimis" rate may be applied only to modified total direct costs (MTDC) as defined by the Part 200 Uniform Requirements.

5. Requirement to report potentially duplicative funding

   If the recipient currently has other active awards of federal funds, or if the recipient receives any other award of federal funds during the period of performance for this award, the recipient promptly must determine whether funds from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items for which funds are provided under this award. If so, the recipient must promptly notify the DOJ awarding agency (OJP or OVW, as appropriate) in writing of the potential duplication, and, if so requested by DOJ awarding agency, must seek a budget-modification or change-of-project-scope grant adjustment notice (GAN) to eliminate any inappropriate duplication of funding.

6. Requirements related to System for Award Management and Unique Entity Identifiers

   The recipient must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at http://www.sam.gov. This includes applicable requirements regarding registration with SAM, as well as maintaining the currency of information in SAM.

   The recipient also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "subgrantees"), including restrictions on subawards to entities that do not acquire and provide (to the recipient) the unique entity identifier required for SAM registration.

   The details of the recipient's obligations related to SAM and to unique entity identifiers are posted on the OJP web site at http://ojp.gov/funding/Explore/SAM.htm (Award condition: System for Award Management (SAM) and Universal Identifier Requirements), and are incorporated by reference here.

   This special condition does not apply to an award to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

7. All subawards ("subgrants") must have specific federal authorization

   The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements for authorization of any subaward. This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a "subaward" (and therefore does not consider a procurement "contract").

   The details of the requirement for authorization of any subaward are posted on the OJP web site at http://ojp.gov/funding/Explore/SubawardAuthorization.htm (Award condition: Award Condition: All subawards ("subgrants") must have specific federal authorization), and are incorporated by reference here.

SPECIAL CONDITIONS

8. Specific post-award approval required to use a noncompetitive approach in any procurement contract that would exceed $150,000

   The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements to obtain specific advance approval to use a noncompetitive approach in any procurement contract that would exceed the Simplified Acquisition Threshold (currently, $150,000). This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a procurement "contract" (and therefore does not consider a subaward).

   The details of the requirement for advance approval to use a noncompetitive approach in a procurement contract under an OJP award are posted on the OJP web site at http://ojp.gov/funding/Explore/NoncompetitiveProcurement.htm (Award condition: Specific post-award approval required to use a noncompetitive approach in a procurement contract (if contract would exceed $150,000)), and are incorporated by reference here.

9. Requirements pertaining to prohibited conduct related to trafficking in persons (including reporting requirements and OJP authority to terminate award)

   The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of recipients, subrecipients ("subgrantees"), or individuals defined (for purposes of this condition) as "employees" of the recipient or of any subrecipient.
   The details of the recipient's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP web site at http://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm (Award condition: Prohibited conduct by recipients and subrecipients related to trafficking in persons (including reporting requirements and OJP authority to terminate award)), and are incorporated by reference here.

10. Compliance with applicable rules regarding approval, planning, and reporting of conferences, meetings, trainings, and other events

    The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable laws, regulations, policies, and official DOJ guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds for expenses related to conferences (as that term is defined by DOJ), including the provision of food and/or beverages at such conferences, and costs of attendance at such conferences.

    Information on the pertinent DOJ definition of conferences and the rules applicable to this award appears in the DOJ Grants Financial Guide (currently, as section 3.10 of "Postaward Requirements" in the "2015 DOJ Grants Financial Guide").

11. Requirement for data on performance and effectiveness under the award

    The recipient must collect and maintain data that measure the performance and effectiveness of activities under this award. The data must be provided to OJP in the manner (including within the timeframes) specified by OJP in the program solicitation or other applicable written guidance. Data collection supports compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act, and other applicable laws.

12. OJP Training Guiding Principles

    Any training or training materials that the recipient -- or any subrecipient ("subgrantee") at any tier -- develops or delivers with OJP award funds must adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at http://ojp.gov/funding/ojptrainingguidingprinciples.htm.

SPECIAL CONDITIONS

13. Effect of failure to address audit issues

The recipient understands and agrees that the DOJ awarding agency (OJP or OVW, as appropriate) may withhold award funds, or may impose other related requirements, if (as determined by the DOJ awarding agency) the recipient does not satisfactorily and promptly address outstanding issues from audits required by the Part 200 Uniform Requirements (or by the terms of this award), or other outstanding issues that arise in connection with audits, investigations, or reviews of DOJ awards.

14. The recipient agrees to comply with any additional requirements that may be imposed by the DOJ awarding agency (OJP or OVW, as appropriate) during the period of performance for this award, if the recipient is designated as "high-risk" for purposes of the DOJ high-risk grantee list.

15. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 42

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 42, specifically including any applicable requirements in Subpart E of 28 C.F.R. Part 42 that relate to an equal employment opportunity program.

16. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 38

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 38, specifically including any applicable requirements regarding written notice to program beneficiaries and prospective program beneficiaries. Part 38 of 28 C.F.R., a DOJ regulation, was amended effective May 4, 2016.

Among other things, 28 C.F.R. Part 38 includes rules that prohibit specific forms of discrimination on the basis of religion, a religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. Part 38 also sets out rules and requirements that pertain to recipient and subrecipient ("subgrantee") organizations that engage in or conduct explicitly religious activities, as well as rules and requirements that pertain to recipients and subrecipients that are faith-based or religious organizations.

The text of the regulation, now entitled "Partnerships with Faith-Based and Other Neighborhood Organizations," is available via the Electronic Code of Federal Regulations (currently accessible at http://www.ecfr.gov/cgi-bin/ECFR?page=browse), by browsing to Title 28-Judicial Administration, Chapter 1, Part 38, under e-CFR "current" data.

17. Restrictions on "lobbying"

Federal funds may not be used by the recipient, or any subrecipient ("subgrantee") at any tier, either directly or indirectly, to support or oppose the enactment, repeal, modification or adoption of any law, regulation, or policy, at any level of government.

Should any question arise as to whether a particular use of Federal funds by a recipient (or subrecipient) would or might fall within the scope of this prohibition, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

SPECIAL CONDITIONS

18. Compliance with general appropriations-law restrictions on the use of federal funds (FY 2016)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes. Pertinent restrictions, including from various "general provisions" in the Consolidated Appropriations Act, 2016, are set out at http://ojp.gov/funding/Explore/FY2016-AppropriationsLawRestrictions.htm, and are incorporated by reference here.

Should a question arise as to whether a particular use of federal funds by a recipient (or a subrecipient) would or might fall within the scope of an appropriations-law restriction, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

19. Reporting Potential Fraud, Waste, and Abuse, and Similar Misconduct

The recipient and any subrecipients ("subgrantees") must promptly refer to the DOJ Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent, subrecipient, contractor, subcontractor, or other person has, in connection with funds under this award -- (1) submitted a claim that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct.

Potential fraud, waste, abuse, or misconduct involving or relating to funds under this award should be reported to the OIG by-- (1) mail directed to: Office of the Inspector General, U.S. Department of Justice, Investigations Division, 950 Pennsylvania Avenue, N.W. Room 4706, Washington, DC 20530; (2) e-mail to: oig.hotline@usdoj.gov; and/or (3) the DOJ OIG hotline: (contact information in English and Spanish) at (800) 869-4499 (phone) or (202) 616-9881 (fax).

Additional information is available from the DOJ OIG website at http://www.usdoj.gov/oig.

SPECIAL CONDITIONS

20. Restrictions and certifications regarding non-disclosure agreements and related matters

No recipient or subrecipient ("subgrantee") under this award, or entity that receives a procurement contract or subcontract with any funds under this award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.

The foregoing is not intended, and shall not be understood by the agency making this award, to contravene requirements applicable to Standard Form 312 (which relates to classified information), Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

1. In accepting this award, the recipient--

a. represents that it neither requires nor has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

b. certifies that, if it learns or is notified that it is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

2. If the recipient does or is authorized under this award to make subawards ("subgrants"), procurement contracts, or both--

a. it represents that--

(1) it has determined that no other entity that the recipient's application proposes may or will receive award funds (whether through a subaward ("subgrant"), procurement contract, or subcontract under a procurement contract) either requires or has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

(2) it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation; and

b. it certifies that, if it learns or is notified that any subrecipient, contractor, or subcontractor entity that receives funds under this award is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds to or by that entity, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

SPECIAL CONDITIONS

21. Compliance with 41 U.S.C. 4712 (including prohibitions on reprisal; notice to employees)

    The recipient must comply with, and is subject to, all applicable provisions of 41 U.S.C. 4712, including all applicable provisions that prohibit, under specified circumstances, discrimination against an employee as reprisal for the employee's disclosure of information related to gross mismanagement of a federal grant, a gross waste of federal funds, an abuse of authority relating to a federal grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal grant.

    The recipient also must inform its employees, in writing (and in the predominant native language of the workforce), of employee rights and remedies under 41 U.S.C. 4712.

    Should a question arise as to the applicability of the provisions of 41 U.S.C. 4712 to this award, the recipient is to contact the DOJ awarding agency (OJP or OVW, as appropriate) for guidance.

22. Encouragement of policies to ban text messaging while driving

    Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), DOJ encourages recipients and subrecipients ("subgrantees") to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this award, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

23. The award recipient agrees to participate in a data collection process measuring program outputs and outcomes. The data elements for this process will be outlined by the Office of Justice Programs.

24. Grantee agrees to comply with all confidentiality requirements of 42 U.S.C. section 3789g and 28 C.F.R. Part 22 that are applicable to collection, use, and revelation of data or information. Grantee further agrees, as a condition of grant approval, to submit a Privacy Certificate that is in accord with requirements of 28 C.F.R. Part 22 and, in particular, section 22.23.

25. The recipient agrees to cooperate with any assessments, national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this project.

26. Approval of this award does not indicate approval of any consultant rate in excess of $650 per day. A detailed justification must be submitted to and approved by the Office of Justice Programs (OJP) program office prior to obligation or expenditure of such funds.

27. The recipient agrees to comply with applicable requirements to report first-tier subawards of $25,000 or more and, in certain circumstances, to report the names and total compensation of the five most highly compensated executives of the recipient and first-tier subrecipients of award funds. Such data will be submitted to the FFATA Subaward Reporting System (FSRS). The details of recipient obligations, which derive from the Federal Funding Accountability and Transparency Act of 2006 (FFATA), are posted on the Office of Justice Programs web site at http://ojp.gov/funding/Explore/FFATA.htm (Award condition: Reporting Subawards and Executive Compensation), and are incorporated by reference here. This condition, and its reporting requirement, does not apply to grant awards made to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

SPECIAL CONDITIONS

28. Award recipients must verify Point of Contact(POC), Financial Point of Contact (FPOC), and Authorized Representative contact information in GMS, including telephone number and e-mail address. If any information is incorrect or has changed, a Grant Adjustment Notice (GAN) must be submitted via the Grants Management System (GMS) to document changes.

29. The recipient agrees to comply with OJP grant monitoring guidelines, protocols, and procedures, and to cooperate with BJA and OCFO on all grant monitoring requests, including requests related to desk reviews, enhanced programmatic desk reviews, and/or site visits. The recipient agrees to provide to BJA and OCFO all documentation necessary to complete monitoring tasks, including documentation related to any subawards made under this award. Further, the recipient agrees to abide by reasonable deadlines set by BJA and OCFO for providing the requested documents. Failure to cooperate with BJA's/OCFO's grant monitoring activities may result in sanctions affecting the recipient's DOJ awards, including, but not limited to: withholdings and/or other restrictions on the recipient's access to grant funds; referral to the Office of the Inspector General for audit review; designation of the recipient as a DOJ High Risk grantee; or termination of an award(s).

30. The recipient acknowledges that the Office of Justice Programs (OJP) reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use (in whole or in part, including in connection with derivative works), for Federal purposes: (1) any work subject to copyright developed under an award or subaward; and (2) any rights of copyright to which a recipient or subrecipient purchases ownership with Federal support.

    The recipient acknowledges that OJP has the right to (1) obtain, reproduce, publish, or otherwise use the data first produced under an award or subaward; and (2) authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes. "Data" includes data as defined in Federal Acquisition Regulation (FAR) provision 52.227-14 (Rights in Data - General).

    It is the responsibility of the recipient (and of each subrecipient, if applicable) to ensure that this condition is included in any subaward under this award.

    The recipient has the responsibility to obtain from subrecipients, contractors, and subcontractors (if any) all rights and data necessary to fulfill the recipient's obligations to the Government under this award. If a proposed subrecipient, contractor, or subcontractor refuses to accept terms affording the Government such rights, the recipient shall promptly bring such refusal to the attention of the OJP program manager for the award and not proceed with the agreement in question without further authorization from the OJP program office.

31. Any Web site that is funded in whole or in part under this award must include the following statement on the home page, on all major entry pages (i.e., pages (exclusive of documents) whose primary purpose is to navigate the user to interior content), and on any pages from which a visitor may access or use a Web-based service, including any pages that provide results or outputs from the service: "This Web site is funded in whole or in part through a grant from the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. Neither the U.S. Department of Justice nor any of its components operate, control, are responsible for, or necessarily endorse, this Web site (including, without limitation, its content, technical infrastructure, and policies, and any services or tools provided)." The full text of the foregoing statement must be clearly visible on the home page. On other pages, the statement may be included through a link, entitled "Notice of Federal Funding and Federal Disclaimer," to the full text of the statement.

SPECIAL CONDITIONS

32. The recipient agrees to submit to BJA for review and approval any curricula, training materials, proposed publications, reports, or any other written materials that will be published, including web-based materials and web site content, through funds from this grant at least thirty (30) working days prior to the targeted dissemination date. Any written, visual, or audio publications, with the exception of press releases, whether published at the grantee's or government's expense, shall contain the following statements: "This project was supported by Grant No. 2016-BC-BX-K027 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice." The current edition of the OJP Financial Guide provides guidance on allowable printing and publication activities.

33. All program authority and responsibility inherent in the Federal stewardship role shall remain with the Bureau of Justice Assistance (BJA). BJA will work in conjunction with the recipient to routinely review and refine the work plan so that the program's goals and objectives can be effectively accomplished. BJA will monitor the project on a continual basis by maintaining ongoing contact with the recipient and will provide input to the program's direction, in consultation with the recipient, as needed.

34. Recipient understands and agrees that it must submit quarterly Federal Financial Reports (SF-425) and semi-annual performance reports through GMS (https://grants.ojp.usdoj.gov), and that it must submit quarterly performance metrics reports through BJA's Performance Measurement Tool (PMT) website (www.bjaperformancetools.org). For more detailed information on reporting and other requirements, refer to BJA's website. Failure to submit required reports by established deadlines may result in the freezing of grant funds and High Risk designation.

SPECIAL CONDITIONS

35. Within 45 calendar days after the end of any conference, meeting, retreat, seminar, symposium, training activity, or similar event funded under this award, and the total cost of which exceeds $20,000 in award funds, the recipient must provide the program manager with the following information and itemized costs:

1) name of event;

2) event dates;

3) location of event;

4) number of federal attendees;

5) number of non-federal attendees;

6) costs of event space, including rooms for break-out sessions;

7) costs of audio visual services;

8) other equipment costs (e.g., computer fees, telephone fees);

9) costs of printing and distribution;

10) costs of meals provided during the event;

11) costs of refreshments provided during the event;

12) costs of event planner;

13) costs of event facilitators; and

14) any other costs associated with the event.

The recipient must also itemize and report any of the following attendee (including participants, presenters, speakers) costs that are paid or reimbursed with cooperative agreement funds:

1) meals and incidental expenses (M&IE portion of per diem);

2) lodging;

3) transportation to/from event location (e.g., common carrier, Privately Owned Vehicle (POV)); and,

4) local transportation (e.g., rental car, POV) at event location.

Note that if any item is paid for with registration fees, or any other non-award funding, then that portion of the expense does not need to be reported.

Further instructions regarding the submission of this data, and how to determine costs, are available in the OJP Financial Guide Conference Cost Chapter.

SPECIAL CONDITIONS

36. The recipient is authorized to obligate, expend, or draw down funds in an amount not to exceed 10% of this award for the sole purpose of developing a Body-Worn Camera (BWC) policy. The BWC policy must be submitted no later than 180 days of award acceptance, unless an extension for good cause shown has been granted by BJA. The recipient is not authorized to incur any additional obligations, make any additional expenditures, or draw down any additional funds until BJA has approved the recipient's completed BWC policy and has issued a Grant Adjustment Notice (GAN) removing this condition.

37. The recipient agrees to participate in BJA-sponsored training events, technical assistance events, or conferences held by BJA or its designees, upon BJA's request.

38. The recipient may not obligate, expend, or draw down any award funds until: (1) it has provided to the grant manager for this OJP award either an "applicant disclosure of pending applications" for federal funding or a specific affirmative statement that no such pending applications (whether direct or indirect) exist, in accordance with the detailed instructions in the program solicitation, (2) OJP has completed its review of the information provided and of any supplemental information it may request, (3) the recipient has made any adjustments to the award that OJP may require to prevent or eliminate any inappropriate duplication of funding (e.g., budget modification, project scope adjustment), (4) if appropriate adjustments to a discretionary award cannot be made, the recipient has agreed in writing to any necessary reduction of the award amount in any amount sufficient to prevent duplication (as determined by OJP), and (5) a Grant Adjustment Notice has been issued removing this special condition.

39. Recipient may not obligate, expend or drawdown funds until the Bureau of Justice Assistance, Office of Justice Programs has received and approved the required application attachment(s) and has issued a Grant Adjustment Notice (GAN) releasing this special condition.

40. Withholding - Completion of "OJP financial management and grant administration training" required

    The recipient may not obligate, expend, or draw down funds under this award until-- (1) OJP determines that the recipient's Point of Contact (POC) and all Financial Points of Contact (FPOCs) for this award have successfully completed an "OJP financial management and grant administration training" on or after January 1, 2015, and (2) OJP issues a Grant Adjustment Notice (GAN) to modify or remove this special condition.

    Once both the POC and all FPOCs have successfully completed the training required by this condition, the recipient may contact the designated grant manager for the award to request initiation of a GAN to remove this condition.

    A list of the OJP trainings that OJP will consider an "OJP financial management and grant administration training" for purposes of this condition is available at http://www.ojp.gov/training/fmts.htm. All trainings that satisfy this condition include a session on grant fraud prevention and detection.

U.S. Department of Justice

Office of Justice Programs

Bureau of Justice Assistance

Washington, D.C. 20531

Memorandum To: Official Grant File

From: Orbin Terry, NEPA Coordinator

Subject: Categorical Exclusion for City of Fort Bragg

Awards under this program will be used to plan or implement a body worn camera program. None of the following activities will be conducted whether under the Office of Justice Programs federal action or a related third party action:
(1) New construction.
(2) Any renovation or remodeling of a property located in an environmentally or historically sensitive area, including property (a) listed on or eligible for listing on the National Register of Historic Places, or (b) located within a 100-year flood plain, a wetland, or habitat for an endangered species.
(3) A renovation which will change the basic prior use of a facility or significantly change its size.
(4) Research and technology whose anticipated and future application could be expected to have an effect on the environment.
(5) Implementation of a program involving the use of chemicals.

Additionally, the proposed action is neither a phase nor a segment of a project which when reviewed in its entirety would not meet the criteria for a categorical exclusion. Consequently, the subject federal action meets the Office of Justice Programs' criteria for a categorical exclusion as contained in paragraph 4(b) of Appendix D to Part 61 of Title 28 of the Code of Federal Regulations.

U.S. Department of Justice
Office of Justice Programs

Bureau of Justice Assistance

GRANT MANAGER'S MEMORANDUM, PT. I: PROJECT SUMMARY

Cooperative Agreement

PROJECT NUMBER
2016-BC-BX-K027

This project is supported under Consolidated and Further Continuing Appropriations Act 2016

1. STAFF CONTACT (Name & telephone number)

Flora D. Lawson
(202) 305-9216

2. PROJECT DIRECTOR (Name, address & telephone number)

Andrew Kendl
Police Sergeant
416 N. Franklin Street
Fort Bragg, CA 95437
(707) 961-8200

3a. TITLE OF THE PROGRAM

Small Agency Body-Worn Camera Policy and Implementation Program

3b. POMS CODE (SEE INSTRUCTIONS ON REVERSE)

4. TITLE OF PROJECT

Fort Bragg Police Department Body Worn Camera Implementation Program

5. NAME & ADDRESS OF GRANTEE

City of Fort Bragg
416 N. Franklin Street
Fort Bragg, CA 95437-3210

6. NAME & ADRESS OF SUBGRANTEE

7. PROGRAM PERIOD

FROM: 10/01/2016 TO: 09/30/2017

8. BUDGET PERIOD

FROM: 10/01/2016 TO: 09/30/2017

9. AMOUNT OF AWARD

$ 25,219

10. DATE OF AWARD

09/26/2016

11. SECOND YEAR'S BUDGET

12. SECOND YEAR'S BUDGET AMOUNT

13. THIRD YEAR'S BUDGET PERIOD

14. THIRD YEAR'S BUDGET AMOUNT

15. SUMMARY DESCRIPTION OF PROJECT (See instruction on reverse)

The Body Worn Camera Small Agency Policy and Implementation program (SA-BWC PIP) provides funding to limited public agencies (i.e., states, units of local government, (including tribal government, recognized by the Secretary of the Interior), combinations of such states or units, or any department, agency, or instrumentality of the foregoing), that perform criminal justice functions.

The SA-BWC PIP, funded under the 2016 Department of Justice Appropriations Act (P.L. 114-113), will support the implementation of body-worn camera programs for small (25 or fewer officers) law enforcement agencies across the country. The intent of the program is help agencies develop, implement, and evaluate a BWC program as one tool in a law enforcement agency's comprehensive problem solving approach to enhance officer interactions with the public and build community trust. Elements of such an approach include; Implementation of a BWC program developed in a planned and phased approach; Collaboration that leverages partnerships with cross-agency criminal justice stakeholders including prosecutors and advocacy organizations; Implementation of appropriate privacy

policies; Implementation of operational procedures and tracking mechanisms; Training of officers, administrators, and associated agencies requiring access to digital multimedia evidence (DME); Adoption of practices and deployment of BWC programs appropriately addressing operational requirements.

CA/NCF

City of Fort Bragg

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

Text File

File Number: 16-457

Agenda Date: 11/14/2016 **Version:** 1 **Status:** Business

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

Agenda Number: 7F.

Receive Report and Provide Direction to Staff Regarding Proposed Amendments to Article 3 and Article 4 of the Fort Bragg Municipal Code Title 18, the Inland Land Use and Development Code (ILUDC)

AGENCY:	City Council
MEETING DATE:	November 14, 2016
DEPARTMENT:	CDD
PRESENTED BY:	M. Jones/S. Perkins

AGENDA ITEM SUMMARY REPORT

TITLE:
RECEIVE REPORT AND PROVIDE DIRECTION TO STAFF REGARDING PROPOSED AMENDMENTS TO ARTICLE 3 AND ARTICLE 4 OF THE FORT BRAGG MUNICIPAL CODE TITLE 18, THE INLAND LAND USE AND DEVELOPMENT CODE (ILUDC)

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. 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. Additionally staff met with the Community Development Committee to review the Land Use and Development Use Tables to identify uses that could potentially be allowed more flexibility within zoning districts.

RECOMMENDED ACTION:
Provide direction to staff regarding proposed amendments to Article 3 and Article 4 of the 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:
Article 3 of the zoning ordinance provides general land use regulations related to setback, landscaping, parking and sign standards. This chapter also includes the inclusionary housing ordinances, which staff has not reviewed as part of this update as the inclusionary ordinance was adopted in 2009 after much City Council input. If City Council would like to provide direction to change the inclusionary housing ordinance, this would require significant policy discussions. Perhaps the best path forward for any changes to the inclusionary ordinance would be to send this matter to the Community Development Committee for further discussion.

Article 4 addresses standards for specific land uses. This article also includes a large subchapter on adult businesses, which was not reviewed by staff as part of this update. The standards for specific land uses which were addressed include a wide variety of uses - everything from animal keeping to second units.

Staff made a variety of changes to both Article 3 and Article 4 that were focused on the following general goals:
1. Bring the ordinance into compliance with state law. State land use law often changes, and the zoning ordinance must be kept in compliance with current law. For example new state regulations regarding second units have resulted in a complete rewrite of this section.

2. Simplify and Modernize the Standards. The ILUDC includes a fine grain of detail for certain uses which is unnecessary and types of uses that are not likely to occur in our small town. These have been combined and/or eliminated where appropriate. Additionally, many of the definitions include examples of businesses that are passé, in which case current business examples have been substituted.
3. Provide for More Flexibility. Staff has carefully considered the suitability of each standard and has revised various standards so that they are performance based rather than proscriptive and to provide for more flexibility where that flexibility would not impact either the environment or neighboring uses. Some changes have also been recommended to deal with the relatively small average parcel size in Fort Bragg that constrains reuse where standards have little flexibility.
4. Implement Direction Provided by Council. City Council has provided direction in the past to achieve certain policy objectives, such as reducing water use, moving towards native plants in landscaping, encouraging business growth, etc. Staff has sought to partially implement this previous policy direction through proposed changes to Articles 3 and 4.
5. Improve Effectiveness of Ordinance. Staff has also proposed rewording and reorganizing some sections of the ordinance to improve ease of understanding.

Staff has annotated all changes in both Article 3 (Attachment 1) and Article 4 (Attachment 2), using track changes to help City Council and the public track the proposed changes. Additionally, staff has included comments (bubble text) next to each change to help City Council and the public understand the rationale for each proposed change. Please review these attachments to see the proposed changes and the rationale for each change.

FISCAL IMPACT:
All development projects and changes of use that involve an intensification of use must pay permit fees commensurate with the cost to process those fees. Additionally, the General Plan Maintenance fee, which is collected on all Building Permits, is General Fund revenue that funds staff time associated with General Plan and Zoning Ordinance updates.

IMPLEMENTATION/TIMEFRAMES:
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, with an anticipated completion date of March 2017.

Staff anticipates updating the Coastal Land Use and Development Code (CLUDC) this 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 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.

ATTACHMENTS:
1. Attachment 1: Article 3 – Site Planning and Project Design
2. Attachment 2: Article 4 – Standards for Specific Land Uses

NOTIFICATIONS:
None.

City Clerk's Office Use Only

Agency Action ☐ Approved ☐ Denied ☐ Approved as Amended

Resolution No.: _____ Ordinance No.: _____

Moved by: _____ Seconded by: _____

Vote: _____

☐ Deferred/Continued to meeting of: _____

☐ Referred to: _____

Article 3

Site Planning and Project Design Standards

Chapter 18.30 STANDARDS FOR ALL DEVELOPMENT AND LAND USES
18.30.010 Purpose
18.30.020 Applicability
18.30.050 Fences, Walls, and Screening
18.30.060 Height Limits and Exceptions
18.30.070 Outdoor Lighting
18.30.080 Performance Standards
18.30.090 Public Improvement Requirements
18.30.100 Setback Requirements and Exceptions
18.30.110 Solid Waste/Recyclable Materials Storage
18.30.120 Underground Utilities

Chapter 18.31 DENSITY BONUSES AND AFFORDABLE HOUSING INCENTIVES
18.31.010 Purpose
18.31.020 Definitions
18.31.030 Density Bonus and Incentives Eligibility
18.31.040 Types of Density Bonuses
18.31.045 Incentives and Waivers/Modifications of Development Standards
18.31.050 Density Bonus and Incentive Procedures
18.31.060 Affordable Housing Regulatory Agreement.

Chapter 18.32 INCLUSIONARY HOUSING REQUIREMENTS
18.32.010 Purpose
18.32.020 Definitions
18.32.030 Inclusionary Housing Applicability and Exempt Projects
18.32.040 Inclusionary Housing Requirements
18.32.050 Alternative Equivalent Action
18.32.060 Inclusionary Housing Phasing, Agreements and Affordability
18.32.070 Inclusionary Housing Incentives
18.32.080 Inclusionary Housing Plan
18.32.085 Inclusionary Housing Regulatory Agreement
18.32.090 Inclusionary Housing Trust Fund
18.32.100 Enforcement of Affordable Housing Requirements

Chapter 18.34 LANDSCAPING STANDARDS
18.34.010 Purpose
18.34.020 Applicability
18.34.030 Definitions
18.34.040 Landscape and Irrigation Plans
18.34.050 Landscape Location Requirements
18.34.060 Landscape Standards
18.34.070 Maintenance of Landscape Areas

Chapter 18.36 PARKING AND LOADING
18.36.010 Purpose
18.36.020 Applicability
18.36.030 General Parking Regulations
18.36.040 Number of Parking Spaces Required
18.36.050 Disabled Parking Requirements
18.36.060 Bicycle Parking
18.36.070 Motorcycle Parking

18.36.080 Reduction of Parking Requirements
18.36.090 Parking Design and Development Standards
18.36.100 Driveways and Site Access
18.36.110 Loading Space Requirements

Chapter 18.38 SIGNS
18.38.010 Purpose
18.38.020 Applicability
18.38.030 Sign Permit Requirements
18.38.040 Exemptions from Sign Permit Requirements
18.38.050 Prohibited Signs
18.38.060 General Requirements for All Signs
18.38.070 Zoning District Sign Standards
18.38.080 Standards for Specific Sign Types
18.38.090 Nonconforming Signs
18.38.100 Violations, Enforcement, Abatement
18.38.110 Judicial Review
18.38.120 Partial Invalidation

Chapter 18.30

STANDARDS FOR ALL DEVELOPMENT AND LAND USES

Sections:

18.30.010 Purpose
18.30.020 Applicability
18.30.050 Fences, Walls, and Screening
18.30.060 Height Limits and Exceptions
18.30.070 Outdoor Lighting
18.30.080 Performance Standards
18.30.090 Public Improvement Requirements
18.30.100 Setback Requirements and Exceptions
18.30.110 Solid Waste/Recyclable Materials Storage

18.30.010 - Purpose

This Chapter expands upon the zoning district development standards of Article 2 by addressing additional details of site planning, project design, and the operation of land uses. The intent of these standards is to ensure that proposed development is compatible with existing and future development on neighboring properties, and produces an environment of stable and desirable character, consistent with the General Plan and any applicable specific plan.

18.30.020 - Applicability

The requirements of this Chapter shall apply to all proposed development and new land uses, except as specified in Chapter 18.90 (Nonconforming Uses, Structures, and Parcels), and shall be considered in combination with the standards for the applicable zoning district in Article 2 (Zoning Districts and Allowable Land Uses) and those in Article 4 (Standards for Specific Land Uses). If there is a conflict, the standards in Article 4 shall control.

18.30.050 - Fences, Walls, and Screening

A. Applicability. The requirements of this Section apply to all fences and walls unless otherwise stated.

1. Fences or walls in flood hazard area. A fence or wall in an area subject to flooding identified on a Federal Flood Insurance Rate Map (FIRM) on file in the Department shall require a Building Permit, and shall comply with all requirements of the Director of Public Works in addition to the requirements of this Section.

2. Exemptions. These regulations do not apply to fences or walls required by regulations of a State or Federal agency, or by the City for reasons of public safety.

B. Height limits.

1. General height limit. Each fence, wall, and hedge shall comply with the height limits shown in Table 3-1.

TABLE 3-1 - MAXIMUM HEIGHT OF FENCES, WALLS, AND HEDGES

Location	Maximum Height
Within front or street side setback	**Open fence:** 6 ft (open fencing must be of a minimum 42-inch wire mesh or equivalent). **View-obscuring fence:** 42 inches (31/2 ft) within a traffic safety visibility area (see Section 18.30.060.E), 6 ft elsewhere. Trellises, arbors and similar entry features are not permitted within a traffic safety visibility area, but are allowed up to 8 ft elsewhere (a height greater than 6 ft requires a Building

Comment (M31): Cyclone fencing is not permitted within the front yard setback.

Comment (M32): Clarifying language.

Location	Maximum Height
	Permit).
Within interior side or rear setback	8 ft with Minor Use Permit approval; 6 ft otherwise.
Outside of required setbacks	8 ft (a height greater than 6 ft requires a Building Permit).

2. Requirements for increased height. Where Table 3-1 allows increased fence height with Minor Use Permit approval, the approval shall be subject to the following requirements.

a. Each fence shall comply with the traffic safety visibility area requirements in Section 18.30.060.E (Height Limits and Exceptions - Height limit at street corners).

b. The review authority may require conditions to address aesthetic issues and neighborhood concerns.

C. Measurement of fence and wall height.

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Comment [MJ3]: These reference image locations and will be replaced with actual images in the final document. There is no need to review or edit these and they appear throughout the document.

1. Fence height shall be measured as the vertical distance between the finished grade at the base of the fence and the top edge of the fence material.

2. The height of fencing atop a wall shall be measured from the base of the wall.

3. In cases where elevation of the finished grade within six feet of the base of the fence differs from one side of the fence to the other (as when a fence is placed at the top of a slope or on a retaining wall), the height shall be measured from the side with the lowest natural grade; except that a safety fence with a height of 48 inches shall be allowed in all cases. See Figure 3-1.

D. Specific fencing and wall requirements.

1. Fencing between different land uses. Fencing between different land uses shall be provided in compliance with Subsection F. (Screening).

2. Outdoor equipment, storage, and work areas. Screening of nonresidential outdoor uses and equipment adjacent to a residential use shall be provided in compliance with Subsection F. (Screening).

3. Retaining walls. Any embankment to be retained that is over 48 inches in height shall be benched so that no individual retaining wall exceeds a height of 36 inches, and each bench is a minimum width of 36 inches.

4. Swimming pools, spas, and similar features. Swimming pools/spas and other similar water features shall be fenced in compliance with Uniform Building Code (UBC) requirements, regardless of the other requirements of this Section.

5. Temporary fencing. Temporary fencing may be necessary to protect construction sites, archaeological resources, ~~or~~ historic resources, trees, rare plants and/or other similar sensitive features during site preparation and construction. This fencing shall be approved administratively by the Director.

E. Prohibited materials. The following fence materials are prohibited unless approved by the Director for animal control, special security needs, or required by a City, State, or Federal law or regulation.

1. Barbed wire, or electrified fence, except within the RR zoning district;

2. Razor or concertina wire in conjunction with a fence or wall, or by itself within any zoning district;

3. Chain link fencing within the front and street side yards and/or visible from the public right-of-way in any zoning district, or a fence of similar material, as determined by the Director; and

4. Chain link fencing or fence of similar material, as determined by the Director; anywhere within the Central Business District.

Comment (SP4): This would cover corrugated metal or other unique but potentially unattractive fencing.

Comment (M35): See above.

F. Screening. This Subsection establishes standards for the screening and separation of adjoining residential and nonresidential land uses, equipment and outdoor storage areas, and surface parking areas.

1. Screening between different land uses. ~~A commercial or industrial~~ non-residential land use proposed on a site adjacent to a residential zoning district shall provide screening at the parcel boundary as follows, and as directed by the review authority~~. Other nonresidential uses adjacent to a residential use may also be required by the applicable review authority to comply with these requirements~~.

a. The screen shall consist of plant materials and a solid, decorative fence or wall of masonry or similar durable material, a minimum of six feet in height.

Comment (M36): Sometimes a fence is preferable to a masonry wall. This change would allow the director to require whichever is most appropriate for the situation.

b. The maximum height of the fence or wall shall comply with the provisions of Subsection B. (Height limits).

c. The decorative fence or wall shall be architecturally treated on both sides, subject to the approval of the review authority.

d. A landscaping strip with a minimum width of five feet shall be installed adjacent to a screening wall, except that ~~10~~ five feet of landscaping shall be provided between a parking lot and a screening wall, in compliance with Section 18.34.050.C (Landscape Location Requirements - Parking areas).

Comment (M37): While eight feet is required by 18.34.050C, staff recommends that both sections refer to a five foot landscaping buffer. With relatively narrow lots of 50 feet in width, this requirement has been difficult to achieve and has constrained development for little apparent benefit.

e. The review authority may waive or approve a substitute for this requirement if the review authority first determines that:

i) The relationship of the proposed uses make the required screening unnecessary;

ii) The intent of this Section can be successfully met by means of alternative screening methods;

iii) Physical constraints on the site make the required screening infeasible; or

iv) The physical characteristics of the site or adjoining parcels make the required screening unnecessary.

2. Mechanical equipment, loading docks, and refuse areas.

a. Roof or ground mounted mechanical equipment (e.g., air conditioning, heating, ventilation ducts, back flow devises, and exhaust, etc.), loading docks, refuse storage areas, and utility services (electrical transformers, gas meters, etc.) shall be screened from public view from adjoining public streets and rights-of-way and adjoining areas zoned for residential uses. Utility services are not allowed within any front setback, except for underground installations (i.e., vaults).

b. The method of screening shall be architecturally compatible with other on-site development in terms of colors, materials, and architectural style.

3. Outdoor storage and work setbacks. Land uses with outdoor storage of materials, recycling facility-processing centers, waste resource and waste recycling operations, and similar uses shall comply with the screening requirements established by Section 18.42.140 (Outdoor Storage).

4. Outdoor building materials and garden supply areas. Outdoor building materials and garden supply areas shall be screened with fencing, landscaping, walls, or similar material to minimize visibility of the storage area, with the screening plan first approved by the review authority.

18.30.060 - Height Limits and Exceptions

A. Purpose. This Section describes the required methods for measuring the height of structures in compliance with the height limits established by this Development Code, and exceptions to those height limits.

B. Maximum height of structures. The height of each structure shall not exceed the height limit established for the applicable zoning district by Article 2 (Zoning Districts and Allowable Land Uses), except as otherwise provided by this Section, or by Article 4 (Standards for Specific Land Uses).

C. Height measurement. The maximum allowable height shall be measured as the vertical distance from the natural grade of the site to an imaginary plane located the allowed number of feet above and parallel to the grade. See Figure 3-2. The location of natural grade shall be determined by the Director, and shall not be artificially raised to gain additional building height.

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Figure 3-2 - Height Measurement

D. Exceptions to height limits. The following structures and structural features may exceed the height limits of this Development Code as noted:

1. Architectural features. A chimney, cupola, monument, mechanical equipment, or vent may exceed the height limits by a maximum of three feet. A spire, theater scenery loft, tower, or roof-mounted water tank may exceed the height limits by eight feet.

2. Telecommunications facilities. The height of communications facilities, including antennas, poles, towers, and necessary mechanical appurtenances shall comply with Chapter 18.44 (Telecommunications Facilities).

E. Height limit at street corners. Development proposed adjacent to any public or private street or alley intersection, or the intersection of a driveway with a street, in other than the CBD zoning district shall be designed to provide a traffic safety visibility area for pedestrian and traffic safety. See Figure 3-3.

1. Measurement of visibility area. A traffic safety visibility area is a triangle measured as follows, and may include private property and/or public right-of-way.

a. Street intersections. The visibility area shall be defined by measuring 20 feet from the intersection of the front and street side right-of-way lines (i.e., edge of pavement or curb), and connecting the lines across the property.

b. Driveways. The visibility area shall be defined by measuring 15 feet along the driveway from the intersection of the driveway with the street right-of-way line, and 15 feet along the street line, away from the driveway, and connecting the lines across the intervening property.

2. Height limit. No structure, sign, or landscape element shall exceed 42 inches in height within the traffic safety visibility area, unless approved by the Public Works Director, except for trees with their canopy trimmed to a minimum of six feet above grade.

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Figure 3-3 - Required Traffic Safety Visibility Area

18.30.070 - Outdoor Lighting

Outdoor lighting on the site of a multi-family or non-residential structure or use shall comply with the following requirements.

A. An outdoor light fixture shall be limited to a maximum height of 18 feet.

B. Outdoor lighting shall utilize energy-efficient (high pressure sodium, low pressure sodium, hard-wired compact florescent, or other lighting technology that is of equal or greater energy efficiency) fixtures and lamps.

C. Lighting fixtures shall be shielded or recessed to minimize light bleed to adjoining properties, by:

1. Directing each light fixture downward and away from adjoining properties and public rights-of-way, so that no on-site light fixture directly illuminates an area off the site;

2. Ensuring that the light source (e.g., bulb, etc.) is not visible from off the site;

3. Confining glare and reflections within the boundaries of the site to the maximum extent feasible; and

4. Incorporating a cut-off shield to prevent light spill for any light sources over 10 feet high.

D. No lighting on private property shall produce an illumination level greater than one footcandle on any property within a residential zoning district except on the site of the light source.

E. No ~~permanently installed~~ lighting or lighted signs shall blink, flash, or be of unusually high intensity or brightness, as determined by the Director.

Comment [1438]: All blinking signs are prohibited by the code see section 18.38.059. This makes this section consist with that section.

F. Up lit ~~L~~lighting shall not be used to illuminate a building's architectural features. ~~except as determined by the review authority.~~ However l~~L~~ighting may be used to keynote special features such as towers and decorative cornices as determined by the review authority. ~~, but no features should be uplit. Full lighting of building facades is prohibited.~~.

Comment [1439]: Simplify language so that we clearly describe what is allowed.

18.30.080 - Performance Standards

A. Purpose. This Section provides performance standards that are designed to minimize various potential operational impacts of land uses and development within the City and promote compatibility with adjoining areas and land uses.

B. Applicability. The provisions of this Section apply to all new and existing land uses, including permanent and temporary uses in all zoning districts, unless an exemption is specifically provided. Uses existing on the effective date of this Section shall not be altered or modified thereafter to conflict with these standards.

C. Combustibles and explosives. The use, handling, storage, and transportation of combustibles and explosives shall comply with Title 24 of the California Code of Regulations.

D. Dust. Please see requirements related to dust control and grading in chapter 17.62. A~~ctivities that may~~ generate dust emissions (e.g., construction, grading, commercial gardening, and similar operations) shall be ~~conducted to limit the emissions beyond the site boundary to the maximum extent feasible. Appropriate methods of dust management shall include the following, subject to approval by the Director, Public Works.~~

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~~**1 Stockpiling**~~ ~~[illegible]~~ ~~grading will not be required, and that c~~completion of the dust generating activity (e.g., construction, paving or

~~**2 Grading**~~
~~cease when the wind speed exceeds 25 miles per hour averaged over one hour.~~

~~**3 Hauling**~~
~~operations or grading shall be minimized at all times.~~

~~**4 Dust control**~~ ~~[illegible]~~

~~5 Regular Grade and~~
~~be graded so as not to divert drainage onto~~
~~to minimize erosion. Drainage from roofs and other impervious surfaces shall be collected and disposed of in a manner~~

~~6 Grading Permit~~
~~Director, Public Works.~~

Comment [MJ10]: Delete this section as it is covered by 18.62

E. Ground vibration. No ground vibration shall be generated that is perceptible without instruments by a reasonable person at the property lines of the site, except for vibrations from temporary construction or demolition activities, and motor vehicle operations.

F. Hazardous materials. As required by the Safety Element of the General Plan, an applicant for a proposed non-residential project that will involve the generation, use, transportation, and/or storage of hazardous substances shall comply with the following requirements.

1. The applicant shall notify the fire protection authority of all hazardous substances that are to be transported, stored, treated, or that could be accidentally released into the environment on the site.

2. The planning permit application for the project shall include detailed information on hazardous waste reduction, recycling, transportation, and storage, and a plan for emergency response to a release or threatened release of a hazardous material.

3. The site shall be provided with secondary containment facilities and a buffer zone adequate to protect public health and safety on a site with hazardous materials storage and/or processing activities, as required by the review authority.

G. Light and glare. Outdoor lighting shall comply with the requirements of Section 18.30.070 (Outdoor Lighting).

H. Liquid waste. No liquid shall be discharged into a public or private body of water, sewage system, watercourse, or into the ground, except in compliance with applicable regulations of the Regional Water Quality Control Board.

I. Noise. Noise emanating from the site shall comply with the City's noise standards in Municipal Code Chapter 9.44 (Noise).

J. Odor. No obnoxious odor or fumes shall be emitted that are perceptible without instruments by a reasonable person at the property line of the site.

K. Radioactivity, electrical disturbance or electromagnetic interference. None of the following shall be emitted:

1. Radioactivity, in a manner that does not comply with all applicable State and Federal regulations; or

2. Electrical disturbance or electromagnetic interference that interferes with normal radio or television reception, or with the function of other electronic equipment beyond the property line of the site; or that does not comply with all applicable Federal Communications Commission (FCC) and other applicable State and Federal regulations.

L. Sediment Control and Stormwater Management. All projects shall comply with Chapter 17.62 and Chapter 17.64 with regard to erosion and sediment control and stormwater runoff management.

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Comment [MJ11]: For consistency.

18.30.090 - Public Improvement Requirements

The development of an approved project shall include the construction of improvements to each public street frontage of the site as required by the review authority, the subdivision improvement requirements in Chapter 18.88 (Subdivision Design and Improvement Requirements), and/or the City's public improvement standards, as applicable. These improvements may include the widening of an existing street, and/or the installation or bike lanes, reinstallation of curb, gutter, and sidewalk; the installation of street trees and other landscaping within the public

right-of-way; the installation of drainage facilities as required by the Director, Public Works, and/or other improvements determined by the review authority to be reasonably related to the needs for pedestrian and vehicle circulation, and community infrastructure demands created by the project.

18.30.100 - Setback Requirements and Exceptions

A. Purpose. This Section provides standards for the location, required size, and allowable uses of front, side, and rear setbacks. Setback standards provide open areas around structures for: visibility and traffic safety; access to and around structures; access to natural light, ventilation and direct sunlight; separation between potentially conflicting activities; and space for privacy, landscaping and recreation.

B. Setback requirements.

1. Minimum setbacks for all structures. Each structure shall comply with the front, interior side, street side, and rear setback requirements of the applicable zoning district, except:

a. Where a different setback requirement is established for a specific land use by Article 4 (Standards for Specific Land Uses);

b. Where a different setback requirement is established by Article 5 (Resource Management); and

c. As otherwise provided by this Section.

No portion of any structure, including eaves or roof overhangs, shall extend beyond a property line, or into an access easement or street right-of-way, except as provided by this Section.

2. Exemptions from setback requirements. The minimum setback requirements of this Development Code do not apply to the following (please see table 3-2 for additional details):

a. A projection into a required setback allowed by Subsection F.;

b. A fence or wall six feet or less in height, when located outside of a front or street side setback;

c. A fence or wall 42 inches in height or less within a front or street side setback when located outside of the traffic visibility area required by Section 18.30.060.E (Height limit at street corners);

d. A deck, earthwork, step, terrace, and other site design element that is placed directly upon grade and does not exceed a height of 18 30 inches above the surrounding grade at any point;

e. A sign in compliance with Chapter 18.38 (Signs);

f. A retaining wall less than 30 inches in height above finished grade. Any embankment to be retained that is over 48 inches in height shall be benched so that no individual retaining wall exceeds a height of 36 inches, and each bench is a minimum width of 36 inches; and

g. An arbor or trellis (i.e., gateway) eight feet or less in height.

Comment (MJ12): For conformance with section 18.30.050 regarding fence heights.

Comment (MJ13): See above.

Comment (MJ14): This allows for more flexibility. Anything less than 30 inches in height does not require a railing, and so could be accommodated in the setback. This matches table 3-2 below

C. Measurement of setbacks. Setbacks shall be measured and applied as follows, except that the Director may require different setback measurement methods where the Director determines that unusual parcel configuration makes the following infeasible or ineffective. See Figure 3-4.

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Figure 3-4 - Location and Measurement of Setbacks

1. Front setback. A front setback shall be measured at right angles from the nearest point on the front property line of the parcel (or edge of access easement on a private street) to the nearest point of the wall of the

structure, except as provided in following Subsections C.1.a through C.1.e. The front property line is the narrowest dimension of a lot adjacent to a street.

a. Averaging. In a residential zone where 50 percent or more of the parcels on the same block and on the same side of the street are developed with buildings, the front setback required for the applicable zoning district ~~shall not apply, and the required front setback shall instead be not less than may be r~~educed tothe average depth of the front setbacks of the developed parcels., to a minimum of 12 feet.

Comment (M315]: This allows us to reduce setbacks where neighboring building are closer to the street than the setback requires. There is no reason to require development further back than ten feet if the average on the block is already less than that.

b. Mapped street with future improvements. If the City has established a plan that identifies a right-of-way for the future construction of a new street or the widening of an existing street, a required front or street side setback shall be measured from the plan line.

c. Infill development within previously approved project. Where the City has established specific setback requirements for individual vacant parcels through the approval of a specific plan, subdivision map, or other entitlement, those setbacks shall apply to continuing development within the approved project instead of the setbacks required by this Development Code.

d. Flag lot. For a parcel with a fee ownership strip extending from a street or right-of-way to the building area of the parcel, the front setback shall be the same as the back yard setback for the zoning district. ~~be measured from the nearest point of the wall of the structure to the point where the access strip meets the bulk of the parcel; establishing a setback line parallel to the lot line nearest to the public street or rightofway.~~

Comment (M316]: Flag lots do not need as much of a front setback as regular lots. The front parcels' backyard setback combines with the back parcels front yard setback to yield a 20 foot distance between residences. Flag lots are generally small and the existing requirement makes them difficult to develop.

e. Corner lot. The front setback shall be measured from the nearest point of the wall of the structure to the nearest point of the most narrow street frontage property line. If the property lines on both street frontages are of the same length, the property line to be used for the front setback measurement shall be determined by the Director.

2. Side setback. The side setback shall be measured at right angles from the nearest point on the side property line of the parcel to the nearest point of the wall of the structure; establishing a setback line parallel to the side property line, which extends between the front and rear setbacks.

3. Street side setback. The side setback on the street side of a corner parcel shall be measured from the nearest point on the side property line bounding the street, or the edge of an easement for a private road, or the inside edge of the sidewalk whichever results in the greatest setback from the existing or future roadway.

4. Rear setback. The rear setback shall be measured at right angles from the nearest point on the rear property line to the nearest line of the structure, establishing a setback line parallel to the rear property line.

a. The Director shall determine the location of the required rear setback on a double-frontage parcel.

b. Where a parcel has no rear lot line because its side lot lines converge to a point, an assumed line five feet long within the parcel, parallel to, and at a maximum distance from the front lot line, shall be deemed to be the rear lot line for the purpose of determining the depth of the required rear setback.

D. Limitations on the use of setbacks.

1. Structures. A required setback area shall not be occupied by a structure other than those identified by Subsection B.3 as being exempt from the setback requirements of this Chapter.

2. Storage. No front or street side setback shall be used for the accumulation, placement or storage of ~~automobiles~~vehicles, large motor vehicles, non-motorized vehicles (as defined in Section 10.02.010)~~, or other motor vehicles,~~ building materials, scrap, junk or machinery except for the following:

a. ~~Automobiles and trucks~~Vehicles, not in excess of one-ton capacity, regularly in use, that are parked within a designated driveway; and

b. Building materials and construction trailers required for construction on the parcel, immediately before and during a construction project which has a valid Building Permit in force; and/or.

c. Trailers, large motor vehicles and non-motorized vehicles stored or parked in a front or street side setback area in any nonresidential zoning district where limited display areas are authorized through Minor Use Permit approval (Section 18.71.060).

3. Parking. See Section 18.36.090.A. (Parking Design and Development Standards - Location of parking).

4. [illegible]

5. Mechanical and utility equipment. See Subsection F.5 (Setback requirements for specific structures - Mechanical Equipment).

6. Exceptions to setback requirements. See section 18.30.100 B 2 for structures that are exempt from setback requirements.

E. Allowed projections into setbacks. An architectural feature attached to a primary structure may extend beyond the wall of the structure and into a required front, side, or rear setback in compliance with Table 3-2. See also Section 18.30.100 B 2 and Figure 3-5. These requirements do not apply to accessory structures, which are

TABLE 3-2 - ALLOWED PROJECTIONS INTO SETBACKS

Projecting Feature	Allowed Projection into Specified Setback		
	Front Setback	Side Setback	Rear Setback
Balcony, deck, landing, porch, stairway - Uncovered, unenclosed., and less than 30 in. above grade	25% of setback	May project to property line	
Balcony, deck, landing, porch, stairway - Which may be roofed but is otherwise unenclosed	25% of setback to a maximum of 6 ft	20% of side setback	20% of setback
Balcony, deck, landing, porch, stairway - Covered and enclosed	Not allowed in setback		
Balcony, deck, landing, porch, stairway - Uncovered and unenclosed, 30 in. or more above grade	6 ft	30 in (1)	6 ft (1)
Landing & stairway – covered or uncovered, but not enclosed.	40% of setback	May project to property line	
Bay window, or similar projecting feature	30 in	20% of setback (but no more than 36 inches1)	30 in
Chimney/fireplace, 6 ft. or less in breadth	30 in	30 in (1)	30 in (1)
Cornice, eave, awning, roof overhang	30 in	30 in (1)	5 ft (1)

Notes:

(1) Feature may project no closer than 36 inches to any side property line.

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Comment [M317]: This would allow commercial businesses to park boats and other large vehicles in the front setback with a minor use permit. Alternatively, council could consider deleting this exception which would make storage of large vehicles not allowed within the front setback on commercial properties.

Comment [M318]: This has been reworded and included as 2c above.

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Comment [M319]: Add cross reference for clarity.

Comment [M320]: Consider allowing secondary structures the same setback projections.

Comment [M321]: A landing and set of stairs typically requires more than 5 feet (which would be 25% of the setback (see above). The landing is usually 4 feet and the stairs an additional four feet, so 8 feet (40% of 20 feet) would be a useable projection into the setback. Alternatively, Council could make landings and stairways permissible within the entirety of the front set back.

Figure 3-5 - Examples of allowed projections into side setback

F. Setback requirements for specific structures:

1. Accessory structures. See Section 18.42.030 (Agricultural Accessory Structures), and 18.42.160 (Residential Accessory Uses and Structures).

2. Fences. See Section 18.30.050 (Fences and Walls).

3. Decks and other site design elements. A detached deck, freestanding solar device, steps, terrace, or other site design element that is placed directly upon the grade, and that exceeds a height of 3018 inches above the surrounding grade at any point, shall comply with the setback requirements of this Development Code for detached accessory structures. (Note: a site design element less than 18 inches above grade is exempt.)

4. Swimming pool, hot tub, etc. A swimming pool, hot tub, or spa on a parcel of 10,000 square feet or less shall be set back a minimum of ten feet from side and rear property lines, and shall not be located within a front setback. A swimming pool, hot tub, or spa on a parcel larger than 10,000 square feet shall comply with the setback requirements of the applicable zoning district. All equipment associated with a pool, hot tub and/or spa on any parcel shall comply with the setback requirements of the applicable zoning district.

5. Mechanical equipment. Ground-mounted mechanical equipment located outside of a structure shall comply with the setback requirements of the applicable zoning district. Examples of this equipment include: swimming pool pumps and filters, heating, ventilation, and air conditioning, and similar equipment; and transformers, cable television distribution boxes, and similar utility equipment that is not underground. The Director may approve an exception to this requirement for the installation of propane or oil tanks within a required side or rear setback area, where there is no feasible alternative location that complies with the setback requirements.

18.30.110 - Solid Waste/Recyclable Materials Storage

A. Purpose. This Section provides standards which recognize the City's support for and compliance with the California Solid Waste Reuse and Recycling Access Act (Public Resources Code Sections 42900 through 42911).

B. Applicability. These requirements apply to new multi-family residential and nonresidential development, or changes to existing multi-family residential or nonresidential development that increase gross floor area by 25 percent or more.

C. Extent of storage area required. Solid waste and recyclables storage areas shall be provided in the number, dimensions, types, and locations required by the Department or review authority. Additional storage areas may be required, as deemed necessary by the Director.

D. Enclosure requirements. Storage areas shall be fully enclosed by a six-foot high decorative masonry wall or other solid enclosure that is architecturally compatible with adjacent structures. Gates shall be solid and continuously maintained in working order. A concrete apron shall be installed. Landscaping shall be provided to soften and screen the enclosure in compliance with Chapter 18.34 (Landscaping Standards). See Figure 3-6.

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Figure 3-6 - Solid Waste Enclosure

18.30.120 Underground Utilities

Utility connections to new structures shall be installed underground; except that in a neighborhood where utilities are located overhead, a proposed structure of less than 3,000 square feet may take its service from the existing overhead facilities.

Comment [MJ22]: This requirement is very expensive. Consider deleting.

Chapter 18.31

DENSITY BONUSES AND AFFORDABLE HOUSING INCENTIVES

Comment [MJ23]: No changes have been made to this chapter. Please skip to page 26.

Sections:

18.31.010 Purpose
18.31.020 Definitions
18.31.030 Density Bonus Eligibility
18.31.040 Types of Density Bonuses and Incentives Allowed
18.31.050 Density Bonus Procedures

18.31.010 - Purpose

A. This Chapter is intended to implement the requirements of State law (Government Code Sections 65915, et seq.) and the Housing Element of the General Plan, by offering a density bonus and other incentives for the development of housing that is affordable to the types of households and qualifying residents identified in Section 18.31.030 (Density Bonus Eligibility), and for development of senior housing, all as further provided for in Government Code section 65915.

B. This chapter also sets forth density bonus and housing incentives in addition to State law which encourage the development of housing that is affordable to a range of households with varying income levels.

18.31.020 - Definitions

The specialized and technical terms and phrases used in this Chapter are defined in Article 10 (Glossary & Index), under "Affordable and Inclusionary Housing Requirements."

18.31.030 - Density Bonus and Incentives Eligibility

In order to be eligible for a density bonus and/or other incentives as provided by this Chapter, a proposed housing development shall comply with the following requirements, and satisfy all other applicable provisions of this Development Code and State law, except as provided by Section 18.31.040 (Types of Density Bonuses), below.

A. Housing development. In order to qualify for a density bonus and incentives, the housing development shall meet Government Code Section 65915(b) requirements with regard to affordability, household income levels, and senior housing.

B. Minimum project size to qualify for density bonus. The density bonus shall be available only to a housing development o that provides affordable housing in compliance with Section 18.32 (Inclusionary Housing Requirements), or in compliance with State law.

C. Condominium conversion projects. A condominium conversion project is eligible for a density bonus or incentives, if it complies with the eligibility and other requirements in State law (Government Code Section 65915.5).

D. "Sweat equity" developments. A "sweat equity" housing development is eligible for incentives in compliance with Subsection 18.31.045(B5) (Types of Density Bonuses and Incentives Allowed, Incentives for "sweat equity" developments).

E. Donations of Land. The donation of land makes a project eligible for a Density Bonus if it satisfies all of the requirements of Government Code section 65915(g).

18.31.040 - Types of Density Bonuses

The amount of a density bonus and the extent of other incentives allowed for a proposed housing development shall be determined by the Review Authority in compliance with State law and this Section.

A. Amount of Density Bonus. The amount of density bonus provided by the City of Fort Bragg shall comply with State law 65915(f).

B. Additional density bonus. Housing developments that qualify for a density bonus under State law may be eligible for an additional density bonus by the Review Authority, as outlined below:

1. Bonus for preferred design and/or green design. An additional five percent density bonus may be granted to developments with preferred design features and or green/environmentally sustainable design features as determined by the Planning Commission and defined in the General Plan and the Citywide Design Guidelines.

2. Relation to maximum statutory bonus density. Bonus densities under State law are limited to an aggregate amount of 35%. The above local density bonus shall be in addition to, and does not count towards calculating the aggregate statutory density bonus.

3. Bonus or incentives allowed for housing development with child care facility. A housing development that complies with the resident requirements of State law, and also includes a childcare facility on the premises shall be eligible for an additional bonus or incentives, subject to compliance with the requirements as stipulated by Government Code Section 65915(h).

18.31.045 - Incentives and Waivers/Modifications of Development Standards

A. Waivers/Modifications of Development Standard. If a density bonus and/or other incentives cannot be accommodated on a site due to strict compliance with the development standards of this Development Code, the applicant may request and the Council shall modify or waive such development standards as necessary to accommodate all bonus units and other incentives to which the development is entitled, unless the waiver or modification would have an adverse impact as further defined in Government Code Section 65915(e)(1).

B. Incentives for Affordable Housing Projects.

1. Available concessions or incentives. A housing development qualifying for a density bonus under Government Code section 65915(b) shall be entitled to concessions or incentives identified by Government Code Section 65915[k], with the number of incentives as established in Government Code section 65915(d).

2. Preferred or Pre-Approved Council incentives. The City has established a set of preferred incentives by resolution from which developers may select an incentive with certainty of approval by the Council.

3. Applicant specified concessions or incentives. An applicant may submit to the City a request for specific concessions or incentives in compliance with this Section and State law.

4. Required findings to reject concession or incentive. The City shall grant the concession or incentive requested by the applicant unless the Council makes a written finding, based upon substantial evidence, of any of the following:

a. The concession or incentive is not required in order to provide for affordable housing costs, as defined in Health and Safety Code Section 50052.5, or for rents for the targeted units to be set as affordable to very low, low, or median or moderate income households as required; or

b. The concession or incentive would have a specific adverse impact, as defined by Government Code Section 65589.5(d)(2), upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low and moderate income households; or

c. The concession or incentive would be contrary to State or Federal law.

5. Incentives for “sweat equity” developments. A “sweat equity” development in compliance with Section 18.31.030.D (Density Bonus Eligibility, “sweat equity” developments) may be granted incentives only as follows:

a. One incentive will be granted to a development where 100 percent of the units are provided to low income households; or

b. Two incentives maybe granted to a development where 100 percent of the units are provided to very low income households.

18.31.050 - Density Bonus and Incentive Procedures

A. Processing requirements. A request for a density bonus and/or incentives shall be evaluated and decided concurrently with the related housing development project and in compliance with Government Code Section 65915.

B. Application Procedures. The project applicant shall submit the following to the Review Authority so that the Review Authority can determine if the project is eligible for a density bonus and/or incentives:

1. A written request specifying how the proposed housing development or senior housing qualifies for a density bonus under 65915(b);

2. A written proposal for specific incentives or concessions under 65915(d);

3. A written request for waiver or modification of incentives under 65915(e);

4. A draft affordable housing agreement consistent with C below and 65915(c); and

5. A project pro forma.

C. Affordable Housing Regulatory Agreement. An Affordable Housing Regulatory Agreement shall be recorded against the relevant property consistent with the requirements of Government Code Section 65915(c). An applicant requesting a density bonus and/or incentives under this ordinance or under State law shall draft, and agree to enter into, an Affordable Housing Regulatory Agreement with the City ("agreement"). The agreement shall include the contents and provisions as described in Subsection 18.32.85 as applicable. The terms of the draft agreement shall be reviewed as appropriate by the City Manager and/or the City Attorney.

D. Control of Affordable Unit Resale. In order to maintain the availability of the for-sale affordable units constructed in compliance with this Chapter, the resale conditions established in Subsection 18.32.060D shall apply. Any abuse in the resale provisions shall be referred to the City Attorney for appropriate action.

18.31.060 - Affordable Housing Regulatory Agreement.

A. Affordable Housing Regulatory Agreement. The applicant shall execute and cause to be recorded a Density Bonus Regulatory Agreement ("agreement") between the City and the developer. The agreement shall be executed by the City Manager, and shall be recorded against the property receiving the Density Bonus.

1. Agreement contents. The agreement shall include at least the following information:

a. Number of dwelling units. The total number of dwelling units approved for the housing development project, including the number of density bonus units;

b. Description and location of units. The location, unit sizes (in square feet), and number of bedrooms of the dwelling units;

c. Use of property. A description of the use of the property stating that the units shall be used to provide housing to qualifying households under the provisions of this Chapter and Government Code 65915(f).;

d. Description of targeted income group. A description of the household income group to be accommodated by the housing development project, and the standards and methodology for determining the corresponding affordability consistent with this Chapter and State law;

e. Non-discrimination clause. The clause shall state that there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, marital status, sexual-orientation, national origin or ancestry in the sale, transfer, use, occupancy, or enjoyment of an affordable unit, or any part thereof. Nor shall any developer establish or permit any such practice or

practices of discrimination or segregation with reference to the selection, location, use, or occupancy of purchasers or occupants of the affordable units, or parts thereof;

f. Length of affordability. Description of the affordability restrictions for the affordable dwelling units in compliance with 65915(c), requiring 15 years of continuing affordability;

g. Description of concessions and/or incentives. A description of the additional concessions and/or incentives sought of the City;

h. Remedies for breach of the agreement. A description of the remedies for breach of the Affordable Housing Regulatory Agreement by the owners, developers, and/or successors-in-interest of the development project;

i. Other provisions. Other provisions to ensure successful implementation and compliance with this Chapter.

2. Agreement provisions. The agreement shall include at least the following provisions:

a. Continuing right-of-first-refusal. The developer shall give the City the continuing right-of-first-refusal to purchase any or all of the affordable dwelling units at a sales price for the affordable dwelling unit consistent with the limits established for low, very low, or moderate income households, as published by HUD;

b. Written approval of City required prior to transfer of unit. The deeds to the affordable dwelling units shall contain a covenant stating that the developer or successors-in-interest shall not assign sell or otherwise transfer any interests for the affordable dwelling units without the prior written approval of the City;

c. Confirmation of price by City. When providing the written approval, the City shall confirm that the sales price of the affordable dwelling unit is consistent with the limits established in Section 18.30.060D1;

d. Occupied by eligible households. The City shall have the authority to enter into other agreements with the developer, or purchasers of the affordable dwelling units, to ensure that the required dwelling units are occupied by eligible households for the minimum time of continued affordability as described in Section 18.31.060 (A) 1f (above);

e. Enforcement of compliance. Applicable deed restrictions, in a form satisfactory to the City Attorney, shall contain provisions for the enforcement of owner or developer compliance;

f. Failure to comply. Any default or failure to comply may result in daily penalties, liens, foreclosure, specific performance, or withdrawal of the Certificates of Occupancy;

g. Recovery of all City-related costs. In any action taken to enforce compliance with deed restrictions, the City Attorney shall, if compliance is ordered by a court of competent jurisdiction, take all action that may be allowed by law to recover all of the City's costs of action including legal services;

h. Eligible and qualified residents. The affordable dwelling units shall be owner-occupied by eligible moderate or median income households, or by qualified residents in the case of senior housing;

i. Mandatory contents of instrument or agreement. The initial purchaser of each affordable dwelling unit shall execute an instrument or agreement approved by the City which:

i) Restricts the sale of the unit in compliance with this Chapter during the affordability restriction period. If the unit is sold, the City shall be entitled to receive the amount of the sales price which exceeds the maximum sales price (as defined in Section 18.30.060D1) less reasonable costs of the sale plus the value of substantial structural or permanent fixed improvements;

ii) Contains provisions as the City may require to ensure continued compliance with this Chapter and State law; and

iii) Shall be recorded against the parcel(s) containing the affordable dwelling unit(s); and

j. Affordability restriction period. The applicable affordability restriction period shall be in compliance with 65915(c), requiring 15 years of continuing affordability for for-sale units and 25 years of continuing affordability for rental units.

3. Execution of agreement.

a. Timing of approval and recordation. The approval and recordation of the agreement shall take place at the same time as the final or parcel map or, where a map is not being processed, before issuance of Certificates of Occupancy for the inclusionary dwelling units.

b. Binding on all parties. The agreement shall be binding on all future owners, developers, and/or successors-in-interest.

B. Effect of plan and agreement. After the approval of the Density Bonus and the recording of an Affordable Housing Regulatory Agreement, each affordable housing unit shall be constructed as required, and shall be sold and maintained as an affordable unit, in compliance with the plan and agreement.

Chapter 18.32

INCLUSIONARY HOUSING REQUIREMENTS

Sections:

18.32.010 Purpose
18.32.020 Definitions
18.32.030 Inclusionary Housing Applicability
18.32.040 Inclusionary Housing Requirements
18.32.050 Alternative Equivalent Action
18.32.060 Requirements for Inclusionary Units
18.32.070 Inclusionary Housing Incentives
18.32.080 Inclusionary Housing Plan and Housing Regulatory Agreement
18.32.090 Inclusionary Housing Trust Fund
18.32.100 Enforcement of Inclusionary Housing Requirements

18.32.010 - Purpose

This Chapter requires the development of affordable housing in new development projects providing five or more housing units that are intended for sale or rent.

A. This Chapter establishes standards and procedures to implement the inclusionary housing requirements identified in Section 18.32.040 (Inclusionary Housing Requirements).

B. This Chapter is intended to implement the requirements of Government Code Sections 65583 and 65913, and the Housing Element of the General Plan, by increasing the production of residential units affordable to low, moderate and median income households. This Chapter complements the density bonus provisions of Chapter 18.31 and assures that new housing development contributes to attaining the City's housing goals.

18.32.020 - Definitions

The specialized and technical terms and phrases used in this Chapter are defined in Article 10 (Glossary), under "Affordable and Inclusionary Housing Requirements."

18.32.030 - Inclusionary Housing Applicability and Exempt Projects

A. Applicability. The requirements of this Chapter apply to all housing developments proposed with five or more dwelling units or a subdivision proposing five or more lots, except as noted in Subsection C.

B. Conversion of rental project to for-sale project. Residential projects approved as rental developments after the effective date of this Chapter shall be subject to its inclusionary requirements if the project or any of the rental units therein are proposed to convert to for-sale units.

C. Exempt projects. The following residential projects are exempt from the inclusionary housing requirements of this Chapter.

1. Project with vested rights. A residential project for which the City has entered into a development agreement before the effective date of this Chapter, or which otherwise demonstrates a vested right to proceed without complying with this Chapter.

2. Involuntarily damaged or destroyed dwelling unit. Any dwelling unit(s) in existence prior to the effective date of this Chapter that is (are) damaged or destroyed by fire or natural catastrophe so long as the square footage and use of the replacement or repaired structure remain(s) the same.

3. Affordable Housing Units. All affordable units shall be exempt from the inclusionary housing requirement, including those in mixed-income developments, mixed-use developments, sweat equity projects, senior housing projects, housing projects for people with special needs, and other affordable housing units as determined by the director. In order to be exempt from the Inclusionary Housing requirements the affordable housing units shall be affordable for a minimum of 15 years.

4. Small Project. A residential development project with four of fewer dwelling units or a minor subdivision.

5. One-bedroom Residential Units. One-bedroom residential units that are less than 600 square feet shall be exempt from the inclusionary requirement in order to encourage the production of small units.

6. Other exemptions as approved by City Council.

18.32.040 - Inclusionary Housing Requirements

A. Number of inclusionary housing units required for non- subdivision projects with five or more residential units.

1. All developments that include 5 - 10 residential units. All rental and **"**for sale**"** developments of five to ten units must construct 20 percent of residential units to be "affordable by design" as defined in Article 10 (Glossary).

2. Developments that include more than 10 residential units to be sold shall include inclusionary units as follows:

a. If 11 - 20 residential units, the applicant shall construct 10 percent of all new dwellings as inclusionary units, or complete an approved alternative equivalent action, subject to all requirements in compliance with this Chapter.

b. If 21 or more residential units, the applicant shall construct 15 percent of all new dwellings as inclusionary units, or complete an approved alternative equivalent action, subject to all requirements in compliance with this Chapter.

3. Development projects that include more than 10 residential rental units shall comply with requirements below, only if the developer enters into a contract with the City of Fort Bragg and requests and receives one or more incentives or a density bonus;

a. If the project includes 11 - 20 residential rental units, the applicant shall construct 10 percent of all new dwellings as inclusionary units, or an approved alternative equivalent action, subject to all requirements in compliance with this Chapter.

b. If 21 or more residential units for sale, the applicant shall construct 15 percent of all new dwellings as inclusionary units, or an approved alternative equivalent action, subject to all requirements in compliance with this Chapter.

c. As an alternative to constructing inclusionary units, the developer may pay an in-lieu fee that is calculated based on the requirements outlined in subsections 1 & 2 above.

4. Fractional Units. If the calculation of the required number of units results in a fraction of units, the developer must construct the additional inclusionary unit, pay a proportional fraction of the in-lieu fee, or perform an alternative equivalent action approved by the Council in compliance with Section 18.32.050 (Alternative Equivalent Action) for the fraction.

B. Inclusionary requirement for subdivision projects with five or more residential lots.

1. If a proposal involves the major subdivision of a residentially zoned parcel the inclusionary requirement shall be met either through: 1) the construction of inclusionary housing; 2) the donation of net land for the construction of inclusionary housing; or 3) an Alternative Equivalent Action (18.32.050).

a. All major subdivisions that result in the creation of five to ten lots shall be deed restricted such that 20 percent of the lots must include residential units to be "affordable by design" as defined in Article 10 (Glossary).

b. All major subdivisions that result in the creation of 11 to 20 lots shall require: 1) that 10 percent of the net land be donated to the City or its designated agency for the construction of inclusionary units; 2) the construction of 10 percent of the units as inclusionary units; or 3) an approved alternative equivalent action. Land donations must have the appropriate General Plan designation, zoning, and development standards to permit the feasible development of inclusionary units and be served by adequate public facilities and infrastructure.

c. All major subdivisions that result in the creation of more than 20 lots shall require: 1) that 15 percent of the net land be donated to the City or its designated agency for the construction of inclusionary units; 2) the construction of 15 percent of the units as inclusionary units; or 3) an approved alternative equivalent action. Land donations must have the appropriate General Plan designation, zoning, and development standards to permit the feasible development of inclusionary units and be served by adequate public facilities and infrastructure.

2. The satisfaction of the inclusionary requirement for major subdivisions shall be included in and described on the tentative map at the time of application. The description shall include acreage and location of any proposed land donation.

18.32.050 - Alternative Equivalent Action

A developer of a project with residential units may comply with the requirements of Subsection 18.32.040 (Inclusionary Housing Requirements) above by an alternative equivalent action approved by the City Council in compliance with this Section.

A. Scope of alternative proposals. A proposal for an alternative equivalent action may include:

1. Construction of secondary units. For single-family subdivision projects of between 11 and 30 lots, a developer may build small secondary units in lieu of inclusionary units. Two “small secondary units” are equal to one inclusionary unit. Single-family subdivision projects with 30 lots or more may only utilize secondary units as an alternative equivalent action for the first 30 lots of the project; or

2. Donation of vacant land. Land donations for the construction of inclusionary units as part of a subdivision without development or as an alternative equivalent action, must meet the following requirements:

a) Have the appropriate General Plan designation, zoning, and development standards to permit the feasible development of affordable units in an amount equal to at least 15 percent of the units in the residential development;

b) Be served by adequate public facilities and infrastructure; and

c) Be subject to an affordability covenant or deed restriction to ensure continued affordability; or

3. Construction of inclusionary units on another site subject to Council approval; or

4. Payment of an Inclusionary Housing In-Lieu Fee, in an amount as set forth in a resolution of the City Council, which may be amended from time to time to reflect inflation and changed conditions in the City and the region; or

5. Any on site or off site alternative equivalent action recommended by the Community Development Committee and approved by City Council; or

6. A combination of the above strategies, as approved by City Council.

B. Content of proposal. A proposal for an alternative equivalent action shall show how the alternative action proposed will further affordable housing opportunities in the City to an equal or greater extent than compliance with the requirements of Subsection 18.32.040 (Inclusionary Housing Requirements). If required by the City, the applicant shall provide or pay for an independent third party review/analysis of the equivalence of the proposed alternative action.

C. Review and approval. A proposal for an alternative equivalent action shall be specified in the Inclusionary Housing Plan submitted with the applications for the residential development. The proposal shall be processed concurrently with the residential development applications except that the review authority for an alternative equivalent action shall be the Council.

D. Criteria for approval. A proposal for an alternative equivalent action to satisfy the requirements of this Chapter may be approved at the Council's discretion, if the Council first determines that the alternative action will further affordable housing opportunities in the City to an equal or greater extent than compliance with the otherwise applicable requirements of Subsection 18.32.040 (Inclusionary Housing Requirements).

18.32.060 - Inclusionary Housing Phasing, Agreements and Affordability

A. Timing and Phasing of Unit Construction. All inclusionary units within a residential project shall be constructed concurrent with, or before, the construction of the market rate dwelling units. If the City approves a phased project, the required inclusionary units shall be provided within each phase of the residential project with their number in proportion to the total number of units in the phase in relation to the total number of units in the project, or phased in another sequence acceptable to the City as approved by the Review Authority. Certificates of Occupancy will be issued for increments of no more than seven market rate units before Certificates of Occupancy are issued for the corresponding inclusionary unit(s).

B. Recordation of Inclusionary Housing Agreement. The recordation of the Inclusionary Housing Regulatory Agreement, as described in Section 18.32.085, shall take place at the same time as the final or parcel map or, where a map is not being processed, before issuance of any Certificates of Occupancy.

C. Affordability Requirements.

1. For Sale Units. One-half of the required inclusionary units shall be available at sales prices affordable to households whose annual household income does not exceed 100 percent of area median income as defined in Article 10 (Glossary). The remaining one-half of the required inclusionary units shall be available at sales prices affordable to moderate-income households whose annual household income does not exceed 120 percent of area median income with priority given to essential public service employees within the City as defined in Article 10 (Glossary).

2. Rental Units. One-half of the required units shall be available at rents affordable to low-income households whose annual household income does not exceed 80 percent of area median income; and, the remaining half of the inclusionary units shall be available at affordable rents to moderate households whose annual household income does not exceed 120 percent of area median income, with priority for rental given to essential public service employees within the City as defined in Article 10 (Glossary), who meet income eligibility requirements.

D. Continued Affordability. The procedures to maintain the continued affordability of the inclusionary units shall be included in the Inclusionary Housing Plan submitted with the development project application and shall be subject to approval by the City as described in Section 18.32.080.

1. Term of affordability.

a) For-sale inclusionary units shall be affordable for 15 years. If a "for sale" inclusionary unit is resold during this term, the equity accrued shall be apportioned as follows:

i. Equity accrual to the property owner during the first five years shall be limited to equity accrued through the mortgage and down payments (less all outstanding mortgage, taxes and liens); it shall not include market related appreciation. At the resale of an inclusionary unit within the first five years of the term, all market rate equity shall be paid to the City's Housing Trust Fund.

ii. Equity accrual to the property owner who sells an inclusionary unit in years 6 through 15 shall include 10 percent of the market appreciation per year of ownership, after repayment of the mortgage, taxes and any outstanding liens. The remaining market rate equity shall be paid to the City's Housing Trust Fund.

iii. After 15 years the unit will not be an inclusionary housing unit, and resale may proceed without a payment to the City's Housing Trust Fund.

b) Inclusionary Housing Rental Units shall be affordable for 25 years.

2. Resale restrictions. In order to maintain the availability of the for-sale inclusionary units constructed in compliance with this Chapter, resale of the units shall be restricted as follows.

a) Written notice of intent to sell, City option. Resale restrictions shall provide that, before offering an inclusionary unit for sale, the seller shall provide written notice to the Director, by certified mail, of their intent to sell. The City or its designee shall be granted an option to purchase the unit for sale, with a maximum of 60 days to exercise the option, and a maximum of 120 days to conclude the purchase, in addition to the time for exercising the option.

b) Payment of Inclusionary Housing In Lieu fee. If the unit is sold prior to the 15 year term of affordability, the seller shall pay to the City's Housing Trust Fund an Inclusionary Housing Fee in the amount calculated according to section 18.32.060D1a. This fee shall be paid as part of the escrow process for the resale of the unit.

3. Rental restrictions. An inclusionary unit may be leased or subleased to an income qualified eligible renter (per 18.32.060 C.2 Affordability Requirements for Rental Units) upon review of the renter's income qualifications by the Director.

E. Eligibility of households.

1. No household shall be allowed to purchase an inclusionary unit, unless the City or its designee has approved the household's eligibility, or has failed to make a determination of eligibility within the time or other limits provided by an inclusionary housing agreement or resale restrictions.

2. The eligibility of potential occupants of inclusionary units shall be determined on the basis of household income at the time of purchase as defined in this Chapter, the relationship between household size and the size of the available units, and any further criteria required by law and/or established by the City Council. The housing developer shall use an equitable selection method established in conformance with the terms of this Chapter and in compliance with State and Federal law. Selection from eligible households shall be based on the affordable housing priorities established below:

a) Priority 1. Essential public service employees as defined in Article 10 (Glossary), City of Fort Bragg employees, or child care workers employed in Fort Bragg. If essential public service employees do not purchase the inclusionary units, the units shall be made available to other eligible Priority 1 applicants, prior to being made available to Priority 2 applicants.

b) Priority 2. Other eligible households who live in Fort Bragg and who are also employed within Fort Bragg City limits. When the list of Priority 2 applicants is exhausted, units may be sold to Priority 3 households.

c) Priority 3. Other eligible households.

F. Annual monitoring.

1. Inclusionary units shall be monitored on an annual basis by the City (or its designee) to ensure that units have not been re-sold to an unqualified owner (on the basis of income).

2. Monitoring may be achieved by a third party, may include self-certification, may involve review of utility records, or may include any other reasonable method of monitoring as approved by the Director.

3. All owners that initially qualified for inclusionary housing retain their right to inhabit their inclusionary housing unit should their income increase above qualifying levels.

G. Discretionary permit and map requirements for projects subject to this chapter.

1. Discretionary permits. Each discretionary permit for a residential project that is subject to this Chapter and approved after the effective date of this Chapter shall contain a condition detailing the method of compliance with this Chapter.

2. Final or Parcel Maps. Each Final or Parcel Map shall have a written notation indicating that compliance with the requirements of this Chapter shall be met for each parcel created by the map, unless the requirements of this Chapter have been satisfied by an alternative equivalent action approved by the City.

H. Requirements for Certificate of Occupancy or Final Building Inspection. A temporary or permanent Certificate of Occupancy shall not be issued, or a Final Building Inspection approved, for any new residential project with more than four dwelling units of a major subdivision until:

1. The developer has satisfactorily completed the requirements of this Chapter (e.g., on-site construction of affordable units or alternative equivalent actions); or

2. The developer has demonstrated to the satisfaction of the Director that an exemption as described in Section 18.32.030 (Inclusionary Housing Applicability and Exempt Projects) is applicable.

18.32.070 - Inclusionary Housing Incentives

A. Authority for incentives. A residential development that complies with the inclusionary housing requirements in Subsection 18.32.040, through the actual construction of inclusionary units, shall be entitled to the following procedures and incentives.

1. Voluntary Pre-Application Review of Requested Incentives.

a. Before the submittal of any formal application for a housing development, the developer may request a pre-application review by the Director or the City Council of requested incentives.

b. Voluntary Pre-application Review shall not bind the Director or City Council, but rather shall be subject to the discretion of the review authority to accept, reject, or modify any preliminary recommendations based upon a full review of the formal application, including all pertinent project information and any CEQA analysis, presented at the public hearing on the application.

2. Priority processing of applications. Project applications that include the construction of inclusionary units shall be expedited by each City department involved with the application.

3. Pre-Approved incentives. The Council has adopted by resolution a set of pre-approved incentives, which may be amended from time to time. Project applicants with projects that include inclusionary housing may select an incentive from this resolution without the need of further approval for the selected incentive.

18.32.080 - Inclusionary Housing Plan

A. Inclusionary Housing Plan. The applicant for a residential project that is subject to this Chapter shall submit an Inclusionary Housing Plan as part of the project application(s), detailing how the provisions of this Chapter will be implemented. The Inclusionary Housing Plan shall include the number and income level of any required inclusionary units, any related occupancy restrictions, any resale or other controls to ensure continued affordability of the inclusionary units, a detailed pro forma if requested by the Director, any requested incentives or waivers, any proposed alternative equivalent action, and any other information necessary to review compliance with the requirements of this Chapter. The Inclusionary Housing Plan shall be considered and acted upon by the review authority at the same time as the residential development that is the subject of the plan.

B. Conditions of approval. Any tentative map, use permit or other permit approving residential development projects subject to this Chapter shall contain conditions sufficient to ensure compliance with the provisions of this Chapter. Such conditions shall include but not be limited to the number of inclusionary units required, the schedule of construction for the inclusionary units, the applicant's manner of compliance with this Chapter, and shall require the execution and recordation of an agreement imposing appropriate resale and other controls to maintain continued affordability of the inclusionary units for the required time.

18.32.085 - Inclusionary Housing Regulatory Agreement

A. Inclusionary Housing Regulatory Agreement. The applicant shall execute and cause to be recorded an Affordable Housing Regulatory Agreement ("agreement") between the City and the developer to implement the provisions of this Chapter and any approved Inclusionary Housing Plan. The agreement once approved and executed by the City Manager shall be recorded against the property containing the inclusionary units.

18.32.090 - Inclusionary Housing Trust Fund

A. Inclusionary Housing Trust Fund established. There is hereby established the City of Fort Bragg Inclusionary Housing Trust Fund (the "Housing Fund"). Inclusionary housing In-lieu fees collected pursuant to this Chapter shall be deposited into the Housing Fund. Separate accounts within the Housing Fund may be created as necessary to avoid commingling as required by law, or as deemed appropriate to further the purposes of the Fund.

B. Use of funds. The City's use of the Housing Fund shall comply with the following requirements.

1. Monies deposited in the Housing Fund along with any interest earnings shall be used solely to increase and improve the supply of affordable housing in the City, including:

   a. The acquisition of property and property rights;

   b. The cost of construction including costs associated with planning, administration, and design, actual building or installation, and any other costs associated with the construction or financing of affordable housing beyond that which is required by this ordinance for a specific development;

   c. Reimbursement to the City for costs if funds were advanced by the City from other sources; and

   d. Reimbursement of developers or property owners who have constructed affordable housing units beyond that which is required by this ordinance for a specific development.

2. To the maximum extent possible, all monies should be used to provide for additional affordable housing and services.

3. No portion of the Housing Fund may be diverted to other purposes by way of loan or otherwise.

18.32.100 - Enforcement of Affordable Housing Requirements

A. Enforcement by City Manager. The City Manager shall enforce the provisions of this Chapter and may initiate revocation of any building permit or development approval in accordance with Section 18.98.070. The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Chapter, including civil action, injunctive relief, and any other proceeding or method allowed by Article 18.98 or other law.

B. Remedies cumulative not exclusive. The remedies available to the City shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

C. Recovery of costs. In any action to enforce this Chapter, or an Affordable Housing Regulatory Agreement recorded in compliance with this Chapter, the prevailing party in such action shall be entitled to recover its reasonable attorney's fees and related costs.

Chapter 18.34

LANDSCAPING STANDARDS

Sections:

18.34.010 Purpose
18.34.020 Applicability
18.34.030 Definitions
18.34.040 Landscape and Irrigation Plans
18.34.050 Landscape Location Requirements
18.34.060 Landscape Standards
18.34.070 Maintenance of Landscape Areas

18.34.010 - Purpose

This Chapter establishes requirements for landscaping to enhance the appearance of development projects, reduce heat and glare, control soil erosion, conserve water, screen potentially incompatible land uses, preserve the integrity of neighborhoods, improve air quality, and improve pedestrian and vehicular traffic and safety.

18.34.020 - Applicability

The provisions of this Chapter apply to all land uses as follows:

A. New projects. Each new nonresidential and multi-family residential project shall provide landscaping in compliance with this Chapter. All residential development projects shall provide street trees in compliance with Section 18.34.060.B.2.d.(iii.).

B. Existing development. The approval of a Minor Use Permit, Use Permit, Minor Variance, Variance, or application for Design Review for physical alterations and/or a change in use within an existing development may include conditions of approval requiring compliance with specific landscaping and irrigation requirements of this Chapter.

C. Timing of installation. Required landscape and irrigation improvements shall be installed before final building inspection. The installation of landscaping for a residential project may be deferred for a maximum of 90 days in compliance with Section 18.76.060 (Performance Guarantees).

D. Alternatives to requirements. The review authority may modify the standards of this Chapter to accommodate alternatives to required landscape materials or methods, where the review authority first determines that the proposed alternative will be equally or more effective in achieving the purposes of this Chapter. The review authority may also modify the requirements of this Chapter to accommodate an affordable housing project in compliance with Chapters 18.31 (Density Bonuses and Affordable Housing Incentives), and 18.32 (Inclusionary Housing Requirements).

18.34.030 - Definitions

Definitions of certain technical terms and phrases used in this Chapter are under “Landscaping Standards” in Article 10 (Glossary) of this Development Code.

18.34.040 - Landscape and Irrigation Plans

A. Preliminary Landscape Plan. A Preliminary Landscape Plan shall be submitted as part of each application for new development, or the significant expansion (e.g., 25 percent or more of floor area), or redevelopment of an existing use, as determined by the Director.

B. Final Landscape Plan. After planning permit approval, a Final Landscape Plan shall be submitted as part of the application for a Building Permit. A Final Landscape Plan shall be approved by the review authority before the start of grading or other construction, and before the issuance of a Building Permit.

C. Content and preparation.

1. Required information. Preliminary Landscape Plans and Final Landscape Plans shall contain the information required for landscape plans by the Department. However, at a minimum, the plans shall include the following information:

a. Preliminary Landscape Plans. Location of proposed materials, including the identification of ground covers, shrubs, and trees.

b. Final Landscape Plans. Detailed drawings and specifications clearly identifying the name, size, and location of all materials, and a description and detail drawing of the irrigation system and its individual components.

Comment (M324): Generally landscaping plans no longer include irrigation as the City has moved towards requiring drought tolerate landscaping.

2. Preparation by qualified professional. Each landscape plan for five or more dwelling units, or a non-residential project submitted in compliance with this Chapter shall be prepared by a California licensed landscape architect, licensed landscape contractor, certified nurseryman, or other professional determined by the Director to be qualified.

D. Review and approval. After initial application, the Director shall review each Preliminary Landscape Plan and Final Landscape Plan to verify its compliance with the provisions of this Chapter. The Director may approve the submittal in compliance with this Chapter, or may disapprove or require changes to a submittal if it is not in compliance.

E. Statement of surety. When required by the Director, security in the form of cash, performance bond, letter of credit, or instrument of credit, in an amount equal to 150 percent of the total value of all plant materials, irrigation, installation, and maintenance shall be posted with the City for a two-year period. The Director may require statements of surety for phased development projects, a legitimate delay in landscape installation due to seasonal requirements (including adverse weather conditions) and similar circumstances where it may not be advisable or desirable to install all approved landscaping before occupancy of the site.

F. Changes to approved landscape plans. The Director may authorize minor changes from the requirements of this Chapter and the approved landscaping plan.

1. For purposes of this Section, minor changes shall be defined as changes to the Final Landscape Plans that are not visible and do not affect the landscaping theme/ or character established for the subject development project.

Comment (M325): This is silly. All landscaping changes would be visible. Suggest striking this limitation on director approvals.

2. If the Director determines that a requested change does not comply with the definition of minor in Subsection F.1, above, the requested change may only be approved by the review authority that originally approved the plans.

G. Projects with 2,500 SF or more of Landscaped Area. All projects with 2,500 SF or more of landscaped area must comply with the State of California Model Water Efficient Landscaping Ordinance (Government Code Sections 65595 and 65596). The model ordinance is available from the Community Development Department or can be found online.

18.34.050 - Landscape Location Requirements

Landscaping shall be provided in all areas of a site subject to development with structures, grading, or the removal of natural vegetation, as follows.

A. Setbacks. The setback and open space areas required by this Development Code and easements for utilities and drainage courses shall be landscaped, except where:

1. Occupied by approved structures or paving;

2. They are retained in their natural state, and the review authority determines that landscaping is not necessary to achieve the purposes of this Chapter.

B. Unused areas. Any area of a project site not intended for a specific use, including a commercial pad site intended for future development, shall be landscaped unless retained in its natural state, and the review authority determines that landscaping is not necessary to achieve the purposes of this Chapter.

C. Parking areas. All ~~P~~parking areas shall be landscaped as follows:. -

1. Landscape materials. Landscaping shall be provided throughout the parking lot as a combination of ground cover, shrubs, and trees.

2. Curbing. Areas containing plant materials ~~shall~~ may be bordered by a ~~concrete~~ curb ~~at least six inches high and six inches wide~~when constructed as part of a parking lot. However ~~The review authority may~~ approve alternative barrier designs, to protect landscaped areas from damage by vehicles, and to allow infiltration of parking lot stormwater runoff into landscaped areas, are preferred.

Comment (M326]: Clarifies that curbs are not preferred and that infiltration of stormwater into landscaped areas is preferred.

3. Runoff detention, retention, or infiltration. The design of landscaped areas for parking lots shall consider, and may, where appropriate, be required to include provisions for the on-site detention, retention, and/or infiltration of stormwater runoff, which reduces and slows runoff, and provides pollutant cleansing and groundwater recharge. Where landscaped areas are designed for detention, retention, and/or infiltration of stormwater runoff from the parking lot, the following provisions shall apply:

a. Recess landscaped areas. Landscaped areas shall be recessed below the surface of the pavement, to
allow stormwater runoff from the parking lot to flow into the landscaped area and infiltrate into the

b. Provide curb cuts. Curb cuts shall be placed in curbs bordering landscaped areas, or else curbs shall not be installed, to allow stormwater runoff to flow from the parking lot into landscaped areas.

4. Perimeter parking lot landscaping. All surface parking areas shall be provided a fence, or landscape buffer between the parking area, and streets and adjoining properties, and the open areas between the property line and the public street right-of-way shall be landscaped.

a. Adjacent to streets and only where allowed by Section 18.36.090 or preexisting conditions.

i) A parking area for a nonresidential use adjoining a public street, where allowed by Section 18.36.090.A (Parking Design and Development Standards - Location) shall be designed to provide a landscaped planting strip between the street right-of-way and parking area equal in depth to the setback required by the applicable zoning district or 15 feet, whichever is more.

ii) A parking area for a residential use, except for a single-family dwelling or duplex, shall be designed to provide a landscaped planting strip between the street right-of-way and parking area equal in depth to the setback required by the applicable zoning district.

iii) The landscaping shall be designed and maintained to screen cars from view from the street to a minimum height of 36 inches, but shall not exceed any applicable height limit for landscaping within a setback.

iv) Screening materials may include a combination of plant materials, earth berms, solid decorative masonry walls, raised planters, or other screening devices which meet the intent of this requirement.

v) Shade trees shall be provided at a minimum rate of one for every 25 linear feet of landscaped area, or other spacing as determined by the review authority to be appropriate to the site and surrounding development.

vi) Plant materials, signs, or structures within a traffic safety sight area of a driveway shall comply with Section 18.30.060.E (Height limit at street corners).

b. Adjacent to side or rear property lines. Parking areas for nonresidential uses shall provide a perimeter landscape strip at least ~~eight~~ five feet wide (inside dimension) where the parking area adjoins a

Comment (M327]: An eight foot wide landscaping strip is difficult to achieve on small lots of 50 feet in width and still accommodate the parking isles and drive isles. Suggest reducing this requirement to 5 five.

side or rear property line. The requirement for a landscape strip may be satisfied by a setback or buffer area that is otherwise required. Trees shall be provided at the rate of one for each 25 linear feet of landscaped area, or other spacing as determined by the review authority to be appropriate to the site

Comment [M328]: This is confusing.

c. Adjacent to structures. When a parking area is located adjacent to a nonresidential structure, a minimum eight-foot wide (inside dimension) landscape strip shall be provided adjacent to the structure, exclusive of any building entries, or areas immediately adjacent to the wall of the structure that serve as pedestrian accessways. The required width of the landscape strip may be reduced by the review authority where it determines that overall site area is insufficient to accommodate allowable structures and required parking.

d. Adjacent to residential use. A parking area for a nonresidential use adjoining a residential use shall provide a landscaped buffer setback with a minimum 10-foot width between the parking area and the common property line bordering the residential use.

i) A solid decorative masonry wall or solid fence, except for approved pedestrian access, and landscape buffer shall be provided along the property line to address land use compatibility issues (e.g., nuisance noise and light/glare) as determined by the review authority.

ii) Trees shall be provided at the rate of one for each 25 linear feet of landscaped area, or other spacing as determined by the review authority to be appropriate to the site and surrounding development.

5. Interior parking lot landscaping.

a. Amount of landscaping. Multi-family, commercial, and industrial uses shall provide landscaping within each outdoor parking area at a minimum ratio of 10 percent of the gross area of the parking lot. The review authority may grant an exception for small, infill parking lots where compliance with this standard is not feasible without significantly reducing the number of parking spaces. Trees not less than five feet in height and 15-gallon container in size shall be planted throughout the parcel and along any street frontage as required by the review authority. At a minimum, one shadetree shall be provided for every five parking

Comment [M329]: This is a prohibitive requirement and unnecessary in Fort Bragg where we never have hot days.

b. Location of landscaping. Landscaping shall be evenly dispersed throughout the parking area, as follows.

i) Orchardstyle planting (the placement of trees in uniformlyspaced rows) is encouraged for larger parking areas.

ii) Parking lots with more than 50 spaces shall provide a concentration of landscape elements at primary entrances, including, at a minimum, specimen trees, flowering plants, enhanced paving, and project identification.

iii) Landscaping shall be located so that pedestrians are not required to cross unpaved landscaped areas to reach building entrances from parked cars. This shall be achieved through proper orientation of the landscaped fingers and islands, and by providing pedestrian access through landscaped areas that would otherwise block direct pedestrian routes.

c. Groundwater recharge. The design of parking lot landscape areas shall consider, and may, where appropriate, be required to include provisions for the on site detention of stormwater runoff, pollutant cleansing, and groundwater recharge.see requirements 1-3 above.

D. Subdivisions. A new subdivision shall be designed and constructed to provide landscaping as follows.

1. Residential subdivisions. A residential subdivision shall be provided:

a. Landscaping in the form of one street tree for each30 feet of street frontage, in the planter strip or other location approved by the review authority, or a windrow elsewhere on the site as authorized by the review authority based on the character of streets in the site vicinity and the location of the site relative to existing development;

b. [illegible] subdivision; and

c. Any additional landscaping required by the review authority.

The species of street trees shall be as required by the review authority, and plantings within a public rightofway shall comply with the City's standard specifications.

2. Nonresidential subdivisions. Nonresidential subdivisions shall be provided landscaping as required by the review authority.

18.34.060 - Landscape Standards

A. Landscape design. The required landscape plan shall be designed to integrate all elements of the project (e.g., buildings, parking lots, and streets) to achieve their aesthetic objectives, desirable microclimates, stormwater runoff infiltration, and minimize water and energy demand.

1. Plant selection and grouping. Plant materials shall be selected for: low water demand and drought tolerance; adaptability and relationship to the Fort Bragg environment, and the geological and topographical conditions of the site; color, form, and pattern; ability to provide shade; and soil retention capability. At least 50 percent of landscaping plants shall be locally native plants. Invasive plants are prohibited.

a. Plants having similar water use shall be grouped together in distinct hydrozones.

b. The protection and preservation of native species and natural areas is encouraged, and may be required by conditions of approval as a result of project review in compliance with the California Environmental Quality Act (CEQA).

c. Fire prevention shall be addressed on sites in any wooded or vegetated area of the City identified by the Fire Department as being fire prone, by reducing fuel between development areas and naturally vegetated areas, as identified by the Director.

2. Minimum dimensions. Each area of landscaping shall have a minimum interior width of eight feet within the residential and commercial zoning districts, and five feet in the industrial zoning districts. These dimensions may be reduced where the review authority determines they are infeasible because of limited site area. Wherever this Development Code requires a landscaped area of a specified width, the width shall be measured within any curb or wall bordering the landscaping area.

3. Height limits. Landscape materials shall be selected, placed on a site, and maintained to not:

a. Exceed a maximum height of 42 inches within a traffic safety visibility area required by Section 18.30.060.E, except for one or more trees with the lowest portion of their canopy maintained at a minimum height of six feet above grade; or

b. Interfere with the proper operation of solar energy equipment or passive solar design on adjacent parcels.

4. Protective curbing. Required landscaping shall be protected with a minimum six-inch high concrete curb or other barrier, except where adjacent to bicycle paths, or where the landscaped area is designed to infiltrate stormwater runoff from adjacent impermeable surfaces, or where otherwise deemed unnecessary by the Director.

5. Safety requirements. Landscape materials shall be located so that at maturity they do not:

Comment [MJ30]: We have not generally required street trees for every 30 feet of street frontage. This requirement should be moved to the subdivision section of the ILUDC, as it is hidden away here. Thus I suggest deleting it from this section.

Comment [MJ31]: City is moving away from requiring irrigation.

a. Interfere with safe sight distances for vehicular, bicycle, or pedestrian traffic;

b. Conflict with overhead utility lines, overhead lights, or walkway lights; or

c. Block pedestrian or bicycle ways.

6. Water features. Decorative water features (e.g., fountains, ponds, waterfalls) shall have re-circulating water systems and shall minimize use of potable water.

B. Plant material. Required landscape shall include trees, shrubs, and ground covers, as follows.

1. Size at time of planting. Plant materials shall be sized and spaced to achieve immediate effect and shall not be less than a 15-gallon container for trees, five-gallon container for specimen shrubs and six-inch pots for mass planting, unless otherwise approved by the review authority on the basis that the alternate size will achieve the desired immediate effect equally well.

2. Trees. Tree planting shall comply with the following standards.

a. Trees shall not be planted under any structure that may interfere with normal growth (for example, an eave, overhang, balcony, light standard or other similar structure).

b. Trees in landscape planters less than 10 feet in width or located closer than five feet from a permanent structure shall be provided with root barriers/root barrier panels.

c. Trees shall be staked in compliance with standards provided by the Department.

d. At a minimum, the required landscape shall include the following number of trees:

i) Parking area: refer to Section 18.34.050.C (Parking areas).

ii) Street setbacks: one per 200 square feet of landscaped area.

iii) Street trees: one per 30 foot length of right of way. The review authority may modify this requirement depending on the chosen tree species and its typical spread at maturity.

Comment [MJ32]: Moved to subdivision section.

3. Groundcover and shrubs. The majority of areas required to be landscaped shall be covered with groundcover, shrubs, turf, or other types of plants that are predominantly drought tolerant. At least 50 percent of landscaping plants shall be locally native plants.

a. A minimum of two, five-gallon size shrubs shall be provided for every six feet of distance along street setbacks, or as approved by the Director.

b. Groundcover shall be provided throughout the landscaped area and shall be spaced to achieve full coverage within one year.

c. Artificial groundcover or shrubs shall not be allowed.

d. Crushed rock, redwood chips, pebbles, stone, and similar materials shall be allowed up to 15 percent of the total required landscape area. Artificial or synthetic ground covers are not allowed.

e. Nonturf areas (e.g., shrub beds) shall be top dressed with a bark chip mulch or approved alternative.

4. Turf. Turf shall be limited to ~~50~~ 25 percent of the total landscaped area on the site where the applicant provides calculations approved by the Director that demonstrate that the irrigation requirements will not exceed standard low water usage, and where the turf is required for active play areas. No turf shall be allowed:

Comment [MJ33]: We could reduce the amount of turf allowed and or limit it to active play areas. Turf requires a lot of water.

a. In any area of 10 feet or less in width; or

b. On any slope exceeding 10 percent (25 percent, where other project water-saving techniques compensate for the increased runoff). A level buffer zone of 18 inches shall be provided between bermed turf areas and any hardscape (e.g., any street, walkway, or similar feature).

5. Soil conditioning and mulching.

a. A minimum one-foot depth of uncompacted soil shall be available for water absorption and root growth in each planted area.

b. A soil test for horticultural suitability shall be required at time of landscape installation in each landscaped area. Soil shall be prepared and/or amended to be suitable for the landscape to be installed.

c. A minimum of two inches of mulch shall be added in each nonturf area to the soil surface after planting. Any plant type that is intolerant to mulch shall be excluded from this requirement. Nonporous material shall not be placed under the mulch.

C. Irrigation system requirements. All landscaped areas shall be designed with native plantings such that they do not require an automatic irrigation system, once the plantings are established (after two years). except those approved for maintenance with intentionally unirrigated native plants shall include An automatic irrigation system may be approved by the review authority if: 1) the applicant provides a compelling case to the review authority for an automatic irrigation system; and/or 2) provides irrigation water from an onsite well. If an automated irrigation system is installed it shall comply with the following.

Comment [MJ34]: The City is moving away from allowing irrigation of new landscaping areas with City treated water. These requirements conform with that direction.

1. Water-efficient systems (e.g., drip, mini-spray, bubbler-type, or similar system) shall be used unless infeasible. Low-flow sprinkler heads with matched precipitation rates shall be used when spray or rotor-type heads are specified for watering shrubs and ground cover areas. Turf areas shall be sized and shaped so they can be efficiently irrigated. Spray or run-off onto paved areas shall be avoided.

2. Dual or multi-program controllers with separated valves and circuits shall be used when the project contains more than one type of landscape treatment (e.g., lawn, ground cover, shrub, tree areas), or a variety of solar aspects. Soil moisture-sensing devices and rain sensors shall be used on larger projects (50,000 plus square feet of landscaped area) to minimize or eliminate over-watering.

3. Watering shall be scheduled during the early morning, at times of minimal wind conflict and evaporation loss.

4. Sprinkler heads must have matched precipitation rates within each valve zone.

5. Check valves are required where elevation differential may cause low head drainage.

D. Certification of landscape completion. The completion of required landscaping and irrigation improvements shall be certified by the author of the landscape and irrigation plan, through a signed statement submitted to the Director.

18.34.070 - Maintenance of Landscape Areas

A. Maintenance required. All site landscaping shall be maintained in a healthful and thriving condition at all times. Irrigation systems and their components shall be maintained in a fully functional manner consistent with the originally approved design and the provisions of this Chapter. Regular maintenance shall include checking, adjusting, and repairing irrigation equipment; resetting automatic controllers; aerating and dethatching turf areas; adding/replenishing mulch, fertilizer, and soil amendments; pruning; and weeding all landscaped areas.

B. Maintenance agreement. Prior to finalbuilding inspection or the issuance of a certificate of occupancy, and prior to the recordation of a final subdivision map where applicable, the applicant shall enter into a landscape maintenance agreement with the City to guarantee proper maintenance in compliance with Subsection A. The form

Comment [MJ3S]: The City has not entered into such agreements. Should we consider striking this requirement and rely instead on Code Enforcement actions which appear to be sufficient to enforce compliance with landscaping maintenance. See C below.

BC. Water waste prohibited. Water waste in existing developments resulting from iInefficient landscape irrigation leading to excessive runoff, low head drainage, overspray, and other similar conditions where water flows onto adjacent property, non-irrigated areas, walks, roadways, or structures is prohibited.

CD. Enforcement. Failure to maintain landscape areas in compliance with this Section shall be deemed a nuisance, and shall be subject to abatement in compliance with the Municipal Code, and/or the applicable planning permit may be revoked.

Chapter 18.36

PARKING AND LOADING

Comment [MJ36]: This chapter was significantly changed in 2014 to reduce overall parking requirements and simplify regulations. Thus not many new changes are proposed at this time.

Sections:

18.36.010 Purpose
18.36.020 Applicability
18.36.030 General Parking Regulations
18.36.040 Number of Parking Spaces Required
18.36.050 Disabled/Handicapped Parking Requirements
18.36.060 Bicycle Parking
18.36.070 Motorcycle Parking
18.36.080 Reduction of Parking Requirements
18.36.090 Parking Design and Development Standards
18.36.100 Driveways and Site Access
18.36.110 Loading Space Requirements

18.36.010 - Purpose

The requirements of this Chapter are intended to ensure that suitable off-street parking and loading facilities are provided for all uses and developments, and that the facilities are properly designed, attractive, and located to be unobtrusive while meeting the needs of the specific use.

18.36.020 - Applicability

A. Off-street parking and loading required. Each land use and structure, including a change or expansion of a land use or structure, shall provide suitable off-street parking and loading facilities in compliance with this Chapter.

B. Timing of improvements. A land use shall not be commenced and a structure shall not be occupied until the parking and loading improvements required by this Chapter are completed and approved by the Director.

18.36.030 - General Parking Regulations

A. Parking and loading spaces to be permanent. Each parking and loading space shall be permanently available, marked, and maintained for parking or loading purposes for the use it is intended to serve; provided that the approval of a Limited Term Permit (Section 18.71.030) may allow the temporary use of a parking or loading space for other purposes.

B. Parking and loading to be unrestricted. A lessee, owner, tenant, or other person having control of the operation of a premises for which parking or loading spaces are required by this Chapter shall not prevent, prohibit, or restrict authorized persons from using the spaces without the prior approval of the Director.

C. Vehicles for sale. No vehicle, trailer, or other personal property shall be parked on private property for the purpose of displaying the vehicle, trailer, or other personal property for hire, rental, or sale, unless the applicable zoning district allows the use, and the person or business at that location is licensed to sell vehicles, trailers, or other personal property. However, Only one vehicle or trailer owned by the lessee, owner, or renter of the property may be displayed for the purpose of sale for a maximum of one month, on parcels that are not authorized car sale lots.

Comment [MJ37]: Note that we have many violators of this requirement, especially at the rite-aid parking lot. Consider deleting or revising as noted to simplify.

D. Recreational vehicle (RV) parkingLarge Motor Vehicle and Non-Motorized Vehicle Parking.

1. The storage (parking for any period longer than 72 hours) of a recreational vehicle (RV) and/or boatlarge motor vehicle or non-motorized vehicle (as defined in Section 10.02.010) in a residential zoning district shall be allowed only when all portions of the vehicle or boatlarge motor vehicle or non-motorized vehicle are located entirely within the property boundaries and do not extend into the setbacks or the public right-of-way. Except that vehicles can be located within required setbacks with approval of a Minor Use Permit.

2. Parking within setback areas shall also comply with Section 18.30.100.D. (Limitations on the Use of Setbacks).

18.36.040 - Number of Parking Spaces Required

Each land use shall be provided the number of off-street parking spaces required by this Section. See Sections 18.36.060, and 18.36.070 for off-street parking requirements for bicycles and motorcycles, respectively.

A. Parking requirements by land use.

1. Number of spaces. The number of off-street parking spaces required for each land use is determined as follows. Rules for the calculation of the required number of spaces are in Subsection A.2, below.

a. Basic space requirement. Each land use shall provide the number of off-street parking spaces required by Table 3-7, except where a greater or lesser number of spaces is required through Minor Use Permit or Use Permit approval in compliance with Section 18.71.060.

b. Use not listed. A land use not specifically listed in Table 3-7 shall provide parking as required by the Director. The Director shall use the requirements in Table 3-7 as a guide in determining the appropriate number of off-street parking spaces required for the use.

c. Use with accessory components. A single use with accessory components shall provide parking for each component. For example, a hotel with a gift shop shall provide the parking spaces required by Table 3-7 for a hotel (e.g., the guest rooms), and for a gift shop.

d. Multi-tenant site. A site with multiple tenants shall provide the aggregate number of parking spaces required for each separate use, except when any land or building under the same ownership or under a joint use agreement is used for two or more purposes with shared parking and no spaces reserved for a particular use. In this instance, the parking shall be provided as required by the analysis below:

i) Determine the minimum amount of parking required for each land use as though it were a separate use, by time period, considering proximity to transit.

ii) Calculate the total parking required across uses for each time period.

iii) Set the requirement at the maximum total across time periods.

e. Expansion of structure, change in use. When a structure is enlarged, or when a change in its use requires more off-street parking than the previous use, additional parking spaces shall be provided in compliance with this Chapter. See also Chapter 18.90 (Nonconforming Uses, Structures, and Parcels). However, if required driveway access for one off-street space eliminates one on-street parking space, the off-street space shall not be required.

f. Excessive parking.

i) The City discourages a land use being provided more off-street parking spaces than required by this Chapter, in order to avoid the inefficient use of land, unnecessary pavement, and excessive storm water runoff from paved surfaces.

ii) The provision of off-street parking spaces in excess of the requirements in Table 3-7 is allowed only with Minor Use Permit approval in compliance with Section 18.71.060, and only when additional landscaping, pedestrian amenities and necessary storm drain improvements are provided to the satisfaction of the review authority.

2. Calculation of required parking.

a. Floor area. In any case where Table 3-7 expresses a parking requirement based on floor area in square feet (for example: 1 space for each 1,000 sf of floor area), the floor area shall be construed to mean gross interior floor area.

b. Rounding of calculations. If a fractional number is obtained in calculations performed in compliance with this Chapter, one additional parking space shall be required for a fractional unit of 0.50 or above, and no additional space shall be required for a fractional unit of less than 0.50.

c. Bench or bleacher seating. Where fixed seating is provided as benches, bleachers, pews, or similar seating, a seat shall be defined as 24 inches of bench space for the purpose of calculating the number of parking spaces required by Table 3-7.

d. Parking based on employees. Whenever parking requirements are based on the number of employees, calculations shall be based on the largest number of employees on duty at any one time.

B. Use of on-street parking - Exception. Available on-street parking spaces cannot be used to meet the parking requirements identified in this Chapter. An exception to this provision may be granted according to the following procedure:

1. Criteria for approval. The Minor Use Permit may be issued if it meets all of the following criteria, in addition to the findings identified in Section 18.71.060:

a. The maximum amount of parking which is feasible shall be provided on-site.

b. The exception shall only be granted in situations where the Director, Public Works has determined that the exception will not result in potentially unsafe conditions for vehicles or pedestrians.

c. The Director of Community Development has determined that the project is located in an area of abundant on-street parking.

2. Annual review. Each Minor Use Permit that grants an exception to off-street parking requirements shall be reviewed annually, and, if the review authority finds that the use of on-street parking spaces is creating a nuisance, the City may initiate proceedings to revoke the Minor Use Permit.

C. Nonconforming parking. A use or structure with nonconforming off-street parking may be physically changed or undergo a change in use in compliance with the following provisions.

1. Residential uses. No additional parking spaces shall be required; provided, the change does not increase the number of dwelling units, nor eliminate the only portion of the site that can be used for the required or existing parking or access.

2. Nonresidential uses.

a. The number of existing parking spaces shall be maintained on the site and additional parking shall be provided in compliance with this Chapter for any additional floor area.

b. If the use of the structure is changed to one that requires more parking than the previous use, only the difference between the number of parking spaces required for the previous use and those required for the new use shall be added.

c. The change shall not eliminate the only portion of the site that can be used for the required or existing parking or access.

3. Waiver by Director. The Director may waive parking requirements when a nonconforming structure is proposed for rehabilitation if the Director determines that the existing structure location, parcel size, or topography renders the requirement unreasonable.

D. Recreational vehicle (RV) parking spaces. Off-street recreational vehicle (RV) parking spaces shall be provided as follows for retail uses, shopping centers, and visitor attractions that are required by this Chapter to provide 40 or more off-street parking spaces.

1. Number of RV spaces required. RV parking spaces shall be provided at a minimum ratio of one RV space for each 40 off-street vehicle parking spaces, or fraction thereof, required by this Chapter.

2. RV stall dimensions. Each RV parking space shall be designed as a pull-through space with a minimum width of 12 feet and a minimum length of 40 feet, with 14 feet of vertical clearance.

3. Modifications by Director. The Director may modify the provisions of this Subsection through a Minor Use Permit granted in compliance with Section 18.71.060.

TABLE 3-7 - PARKING REQUIREMENTS BY LAND USE

Land Use Type: Manufacturing Processing and Warehousing	Vehicle Spaces Required	
	Minimum	Maximum
All manufacturing, industrial, and processing uses, except the following.	1 space for each 400 sf of office area; 1 space for each 1,000 sf of floor and/or ground area devoted to other than office use; 1 space for each 5,000 sf of open storage.	1 space for each 200 sf of office area; 1 space for each 500 sf of floor and/or ground area devoted to other than office use; 1 space for each 2,500 sf of open storage.
Media production	1 space for each 400 sf of floor area.	1 space for each 200 sf of floor area.
Recycling facilities		
Heavy or light processing facilities, Large collection facilities	Determined by Use Permit.	Determined by Use Permit.
Scrap/dismantling yards	1 space for each 400 sf of gross floor area, plus 1 space for each 10,000 sf of gross yard area.	1 space for each 200 sf of gross floor area, plus 1 space for each 5,000 sf of gross yard area.
Small collection facilities	Determined by Minor Use Permit.	Determined by Minor Use Permit.
Wholesaling and distribution	1 space for each 1,000 sf of floor area.	1 space for each 300 sf of floor area.

TABLE 3-7 - PARKING REQUIREMENTS BY LAND USE (Continued)

Land Use Type: Recreation, Education, and Public Assembly	Vehicle Spaces Required	
	Minimum	Maximum
Clubs, community centers, lodges, meeting halls, religious facilities, theaters, auditoriums, and places of assembly	1 space for each 250 sf of floor area or 5 seats, whichever would yield more spaces.	1 space for each 100 sf of floor area or 3 seats, whichever would yield more spaces.
Commercial recreation facilities - Indoor	1 space for each 400 sf of floor area.	1 space for each 200 sf of floor area.
Commercial recreation facilities - Outdoor	Determined by Use Permit	Determined by Use Permit
Studios (art, dance, martial arts, music, etc.) Health/fitness facilities Conference/convention and sports/entertainment facilities	1 space for each 300 sf of floor area.	1 space for each 100 sf of floor area.
Library, gallery, and museum	1 space for each 500 sf of floor area.	1 space for each 250 sf of floor area.
Schools (public and private)		

Land Use Type: Recreation, Education, and Public Assembly	Vehicle Spaces Required	
	Minimum	Maximum
Elementary, Junior High, Kindergarten and nursery schools	1 space per employee plus 1 space for each 10 students.	1 space per employee plus 1 space for each 5 students.
High schools	1 space per employee plus 1 space for each 5 6 students.	1 space per employee plus 1 space for each 4 students.
Colleges and universities (including trade, business, and art/music/dancing schools)	1 space per employee plus 1 space for each 4 students.	1 space per employee plus 1 space for each 2 students.
Mobile home		
Outside of mobile home park	1 space for each unit.	-
Within a mobile home park	1 space for each unit, plus 0.5 guest parking space	-
Multi-family housing & Live/work unit	Under two bedrooms: 1 space per unit 2 bedrooms or more: 2 spaces per unit	2.25 spaces per unit.
Organizational house, rooming or boarding house, residential care facility, co-housing	0.5 spaces per bedroom.	1 space per bedroom.
Second dwelling unit	See Section 18.42.170.F	See Section 18.42.170.F
Single-family dwelling	2 spaces;	4 spaces

Notes:

(1) Recreational vehicle parking spaces may also be required. See Section 18.36.040.D (Recreational vehicle (RV) parking spaces).

TABLE 3-7 - PARKING REQUIREMENTS BY LAND USE (Continued)

Land Use Type: Retail Trade	Vehicle Spaces Required	
	Minimum	Maximum
All "Retail Trade" and general retail uses listed in Section 18.22.030, Table 2-6, except for the following:	1 space for each 400 sf of floor area, plus 1 space for each 600 sf of outdoor sales area.	1 space for each 200 sf of floor area, plus 1 space for each 400 sf of outdoor sales area.
Auto and vehicle sales and rental	1 space for each 400 sf of floor area for the showroom and offices, plus 1 space for each 2,000 sf of outdoor display area, plus spaces as required by this Section for parts sales ("retail trade," above), and vehicle services.	1 space for each 200 sf of floor area for the showroom and offices, plus 1 space for each 1,000 sf of outdoor display area, plus spaces as required by this Section for parts sales ("retail trade," above), and vehicle services.
Bar, cocktail lounge, night club, tavern	1 space for each 5 seats; or 1 space for each 250 sf of floor area, whichever would yield more spaces	1 space for each 3 seats; or 1 space for each 100 sf of floor area, whichever would yield more spaces
Building and landscape materials and furniture stores, Warehouse retail center	1 space for each 1,000 sf of display area.	1 space for each 500 sf of display area
Convenience store	1 space for each 300 sf of floor area.	1 space for each 150 sf of floor area.
Marine-related use (hardware, supplies, rentals, and sales)	1 space for each 500 sf of floor area for the showroom and offices, plus 1 space for each 5,000 sf of outdoor display area, plus spaces as required by this Section for parts sales ("retail trade," above), and services.	1 space for each 300 sf of floor area for the showroom and offices, plus 1 space for each 2,500 sf of outdoor display area, plus spaces as required by this Section for parts sales ("retail trade," above), and services.

Land Use Type: Retail Trade	Vehicle Spaces Required	
	Minimum	Maximum
Restaurant, cafe, coffee shop	1 space for each 100 sf of dining area.	1 space for each 40 sf of dining area.
Service station	1 space for each 300 sf of floor area, plus 2 spaces for each service bay.	1 space for each 200 sf of floor area, plus 4 spaces for each service bay.
Shopping center	1 space for each 400 sf of floor area	1 space for each 200 sf of floor area

Notes:

(1) Recreational vehicle parking spaces may also be required. See Section 18.36.040.D (Recreational vehicle (RV) parking spaces).

TABLE 3-7 - PARKING REQUIREMENTS BY LAND USE (Continued)

Land Use Type: Service Uses	Vehicle Spaces Required	
	Minimum	Maximum
Banks and financial services	1 space for each 300 sf of floor area	1 space for each 150 sf of floor area
Child day care		
Large family day care home	2 spaces; may include spaces provided to fulfill residential parking requirements and on-street parking so long as it abuts the site.	4 spaces; may include spaces provided to fulfill residential parking requirements and on-street parking so long as it abuts the site.
Child/adult day care center	1 space for each employee, plus 1 space for each 10 children.	1 space for each employee, plus 1 space for each 5 children.
Equipment rental	1 space for each 400 sf of floor area; none required for outdoor storage and rental area; provided, sufficient area is provided within the yard to accommodate all customer vehicles entirely on-site.	1 space for each 200 sf of floor area; none required for outdoor storage and rental area; provided, sufficient area is provided within the yard to accommodate all customer vehicles entirely on-site.
Freight terminal	1 space for each 1,000 sf of lot area, plus 1 space for each commercial vehicle.	-
Laundry- Dry cleaning pick-up facilities and Laundromats	1 space for each 400 sf of floor area.	1 space for each 250 sf of floor area.
Lodging	1 space for each unit, plus 1 space for the manager or owner and required spaces for accessory uses.	1.5 spaces for each unit, plus 2 spaces for the manager or owner and required spaces for accessory uses.
Medical Marijuana Dispensary	1 space for each 500 sf of floor space. (Ord. 851 §2, 2005)	1 space for each 250 sf of floor space. (Ord. 851 §2, 2005)
Medical services		
Clinic, laboratory, urgent care, doctor office	1 space for each 300 sf of floor area	1 space for each 200 sf of floor area
Extended care	1 space for each 5 beds or patients the facility is licensed to accommodate.	1 space for each 2 beds or patients the facility is licensed to accommodate.
Hospitals	2 spaces for each bed,	4 spaces for each bed

TABLE 3-7 - PARKING REQUIREMENTS BY LAND USE (Continued)

Land Use Type: Service Uses (Continued)	Vehicle Spaces Required	
	Minimum	Maximum
Mortuaries and funeral homes	1 space for each 300 sf of floor area within the facility or 1 space for each 4 seats in the sanctuary, whichever would yield more spaces.	1 space for each 200 sf of floor area within the facility or 1 space for each 3 seats in the sanctuary, whichever would yield more spaces.
Offices	1 space for each 400 sf of floor area.	1 space for each 200 sf of floor area.
Personal services and personal services - restricted		
All personal service uses except the following	1 space for each 350 sf of floor area	1 space for each 200 sf of floor area
Barber/beauty shops	2 spaces for each barber or beautician	3 spaces for each barber or beautician
Storage		
Cold storage facilities or ice plants	1 space for each 500 sf of floor area.	1 space for each 250 sf of floor area.
Outdoor storage Personal storage	1 space for each 3,000 sf of lot area.	1 space for each 1,500 sf of lot area.
facilities (mini-storage)	4 spaces for the manager's office.	8 spaces for the manager's office.
Warehousing	1 space for each 1,000 sf of floor area.	1 space for each 500 sf of floor area.
Vehicle services (major and minor repair)	4 spaces for each service or wash bay	8 spaces for each service or wash bay
Veterinary clinics, animal hospitals, boarding, or kennels	1 space for each 400 sf of floor area.	1 space for each 250 sf of floor area.
Boarding or kennels separate from other veterinary facilities	1 space per employee, plus 2 spaces.	2 spaces per employee, plus 2 spaces.

18.36.050 - Disabled Parking Requirements

Number of spaces required. Parking for the disabled shall be provided on site in compliance with California Building Code Standards.

Parking spaces required for the disabled shall count toward compliance with the number of off-street parking spaces required by this Chapter.

18.36.060 - Bicycle Parking

Each multi-family project of five or more units and nonresidential land use shall provide bicycle parking in compliance with this Section.

A. Number of bicycle spaces required.

1. Multi-family project. A multi-family project of five or more units shall provide bicycle parking spaces equal to a minimum of 10 percent of the required vehicle spaces, unless separate secured garage space is provided for each unit. The bicycle spaces shall be distributed throughout the project. A minimum number of two bicycle parking spaces shall be provided.

2. Nonresidential project. A nonresidential project (e.g., retail, office, etc.) shall provide bicycle parking spaces equal to a minimum of ten percent of the required vehicle spaces, distributed to serve customers and employees of the project. A minimum number of two bicycle parking spaces shall be provided.

B. Bicycle parking design and devices. Each bicycle parking space shall include a stationary parking device to adequately secure the bicycle, shall be a minimum of two feet in width and six feet in length, with a minimum of seven feet of overhead clearance, and shall be conveniently located and generally within proximity to the main entrance of a structure.

18.36.070 - Motorcycle Parking

A parking lot with 50 or more vehicle parking spaces shall provide motorcycle parking spaces conveniently located near the main entrance to the primary structure and accessed by the same access aisles that serve the vehicle parking spaces in the parking lot.

A. Number of spaces required. A minimum of one motorcycle parking space shall be provided for each 50 vehicle spaces or fraction thereof.

B. Space dimensions. Motorcycle spaces shall have minimum dimensions of four feet by seven feet.

18.36.080 - Reduction of Parking Requirements

A. Shared on-site parking.

1. Where two or more adjacent uses have distinct and differing peak parking usage periods (e.g., a theater and a bank), a reduction in the required number of parking spaces may be allowed through Minor Use Permit approval granted in compliance with Section 18.71.060.

2. Approval shall also require a recorded covenant running with the land, recorded by the owner of the parking lot, guaranteeing that the required parking will be maintained exclusively for the use served for the duration of the use.

B. Reduction of required parking. The Director may reduce the number of parking spaces required by Section 18.36.040 (Number of Parking Spaces Required), through the granting of a Minor Use Permit in compliance with Section 18.71.060, based on quantitative information provided by the applicant that documents the need for fewer spaces (e.g., sales receipts, documentation of customer frequency, information on parking standards required for the proposed land use by other cities, etc.). Parking requirements may be reduced, by the Review Authority, where the project facilitates bicycle use by providing bicycle storage, lockers, changing rooms and showers and/or bicycles for employee use.

C. Central Business District (CBD) Special Parking Combining Zone. The following parking requirements shall apply to areas within the CBD shown on the CBD Special Parking Combining Zone Map, below. An applicant may either comply with the parking requirements identified in Section 18.36.040 (Number of Parking Spaces Required) above, meet the alternative CBD parking requirements identified in Subsection C.2., or pay the parking in-lieu fee identified in Subsection C.3.

1. Exemptions from the off-street parking requirements. The following uses located within the CBD Special Parking Combining Zone are exempt from the off-street parking requirements identified in this Chapter:

a. Replacement of an existing use with a new use determined to be similar by the Director.

b. On the ground floor, any intensification of a commercial use except for bars, cocktail lounges, restaurants, and taverns.

c. Any use with hours of operation exclusively after 5:00 p.m.

d. Residential dwelling units located above ground floor commercial uses.

2. Number of parking spaces required for uses in the CBD Special Parking Combining Zone.

a. Off-street parking for uses in the CBD Special Parking Combining Zone shall comply with the requirements in Table 3-8.

b. A land use not specifically listed by Table 3-8 shall provide parking as required by the Director. The Director shall use the requirements in Table 3-8 as a guide in determining the appropriate number of off-street parking spaces required for the use.

c. In any case where Table 3-8 expresses a parking requirement based on floor area in square feet (for example: 1 space for each 400 sf of floor area), the floor area shall be construed to mean gross interior floor area.

d. A single use with accessory components shall provide parking for each component. For example, a hotel with a gift shop shall provide the parking spaces required by Table 3-8 for a hotel (e.g., the guest rooms), and for the gift shop.

e. If a fractional number is obtained in calculations performed in compliance with this Subsection, one additional parking space shall be required for a fractional unit of 0.50 or above, and no additional space shall be required for a fractional unit of less than 0.50.

TABLE 3-8 - PARKING REQUIREMENTS IN THE CBD BY LAND USE

Land Use Type:	Vehicle Spaces Required
Bars, cocktail lounges, restaurants, and taverns	1 space for each eight seats or 1 space for each 400 sf of floor area, whichever would yield more spaces.
Lodging	
Bed and breakfast inns Hotels or motels	1 space for each unit, plus 1 space for the manager or owner.
Residential dwelling units	1 space for each dwelling unit.
Retail commercial and office uses	1 space for each 600 sf of floor area.

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Figure 3-7 - CBD Special Parking Combining Zone

3. Parking in-lieu fee. Parking requirements in the CBD Special Parking Combining Zone may be waived at the discretion of the approval authority, if the owner of the subject property pays a parking in-lieu fee to the City in compliance with this Subparagraph.

a. In lieu of providing the off-street parking spaces required by this Subsection, these requirements may be satisfied by the payment to the City of an in-lieu parking fee established by the Council and identified in the City's Fee Schedule for both the use of existing structures and for new structures for each required off-street parking space which is not provided.

b. Parking in-lieu fees may be authorized in the CBD Special Parking Combining Zone for changes of use or projects for which provision of sufficient parking on site is not possible. Parking in-lieu fees are discouraged for changes of use or new development that can accommodate required parking on site. The funds shall be deposited with the City in a special fund and shall be used and expended for the purpose of acquiring and developing off-street parking facilities located insofar as reasonable in the general vicinity of the structures for which in-lieu payments were made as well as for meeting parking needs through strategies to reduce parking demand or to improve access to parking.

D. Parking reduction for small recycling collection facilities.

1. A reduction in vehicle parking spaces as provided in Table 3-9 may be allowed within an established nonresidential parking facility to accommodate a small recycling collection facility, when developed in compliance with Section 18.42.150 (Recycling Facilities).

TABLE 3-9 - PARKING REDUCTION FOR RECYCLING

Number of Available Vehicle Parking Spaces	Maximum Reduction (in vehicle spaces)
0-25	0
26-35	2
36-49	3
50-99	4
100+	5

2. A maximum five-space reduction shall be allowed when not in conflict with parking needs of the host nonresidential use.

18.36.090 - Parking Design and Development Standards
Required parking areas shall be designed, constructed, and properly maintained in compliance with the following requirements. Except where noted, the Director may modify the requirements of this Section through Minor Use Permit approval (Section 18.71.060).

A. Location of parking. Parking areas shall be located as follows:

1. Residential. Residential parking shall be located on the same parcel as the uses served. Temporary (overnight) parking is allowed within required setback areas only on a paved driveway.

2. Nonresidential. Nonresidential parking shall be located on the same parcel as the uses served or within 300 feet of the parcel if shared parking or public parking facilities are used to meet parking requirements.

a. Nonresidential parking shall not be located within a required front setback.

b. Parking may be located within a required side or rear setback; provided that it is separated from the side or rear property line by a minimum five-foot wide landscaped area.

c. Parking between the primary structure and the fronting street should be avoided.

3. Within the Downtown. Parking within the Downtown area identified by Subsection 18.36.080.C, Figure 3-7 (CBD Special Parking Combining Zone), shall not be located between a primary building and the fronting street.

B. Access to parking. Access to parking areas shall be provided as follows for all parking areas other than garages for individual dwelling units.

1. Parking areas shall provide suitable maneuvering area so that vehicles enter from and exit to a public street in a forward direction only.

a. Parking lots shall be designed to prevent access at any point other than at designated access drives.

b. Single- and multi-family dwelling units are exempt from this requirement, unless specifically required by conditions of a discretionary permit.

c. This requirement does not apply to alleys, unless so specified in a specific zoning district.

2. A nonresidential development that provides 50 or more parking spaces shall have access driveways that are not intersected by a parking aisle, parking space, or another access driveway for a minimum distance of 20 feet from the street right-of-way, to provide a queuing or stacking area for vehicles entering and exiting the parking area. See Figure 3-8.

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3. A minimum unobstructed clearance height of 14 feet shall be maintained above areas accessible to vehicles within nonresidential developments.

4. The design of parking lots on adjacent parcels may be required to provide for joint use and access, with cross parking easements, to limit access points to public rights-of-way, and encourage motorists to park once to complete multiple tasks.

5. The design of parking lots shall provide for safe pedestrian access, via sidewalks, to and from parked cars, to the street and to the primary entrance of the associated development.

6. Curb cuts for purposes of providing street access to on-site parking spaces on primary commercial streets (see definitions) shall be permitted only by Conditional Use Permit.

7. Curb cuts to provide street access to on-site parking spaces on non-primary commercial and residential streets shall be permitted only where a project site meets at least one of the following conditions:

a. The site has no adjacent side or rear alley having a minimum right-of-way of fifteen feet;

b. The topography or configuration of this site or placement of buildings on the site precludes reasonable alley access to a sufficient number of parking spaces;

c. The average slope of the parcel is at least five percent; or

d. The Director, Public Works determines that a curb cut is appropriate due to traffic, circulation or safety concerns.

C. Access to adjacent sites.

1. Nonresidential developments.

a. Applicants for nonresidential developments are encouraged to provide on-site vehicle access to parking areas on adjacent nonresidential properties to provide for convenience, safety, and efficient circulation.

b. A joint access agreement running with the land shall be recorded by the owners of the abutting properties, as approved by the Director, guaranteeing the continued availability of the shared access between the properties.

2. Residential developments. Shared pedestrian access between adjacent residential developments is also strongly encouraged.

D. Parking stall and lot dimensions.

1. Minimum parking space and driveway dimensions. Each parking stall, driveway, and other parking lot features shall comply with the minimum dimension requirements in Table 3-10, and as illustrated in Figures

3-8 and 3-9. Future adjustments to stall dimensions shall be based on the standards listed in the latest version of the Urban Land Institute's Dimensions of Parking.

TABLE 3-10 - MINIMUM PARKING SPACE CONFIGURATION

Minimum Uni-Stall Requirements	
Width	Length
9 ft	18 ft

Angle of Parking (in degrees)	Space Width (in feet)	Curb Length (per vehicle)	Space Depth (from curb)	Driveway Width (in feet)
Parallel	9 ft	23 ft 0 in	9 ft 0 in	12 ft
45	9 ft	12 ft 9 in	19 ft 2 in	14 ft
60	9 ft	10 ft 5 in	20 ft 2 in	19 ft
90	9 ft	9 ft 0 in	18 ft 0 in	23 ft

2. Space width abutting a fence or wall. When the length of a parking space abuts a fence or wall, the required width of the parking space shall be increased by at least one foot.

3. Space length for perpendicular parking abutting a planter. The front two feet of the required length of a parking space may overhang the planter.

4. Compact parking spaces prohibited. Compact parking spaces (a space smaller in size than that required by this Chapter) shall not be allowed. The Director may not modify this prohibition, except to accommodate the planting of trees within a parking lot.

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Figure 3-9 - Parking Space Dimensions

E. Tandem parking. Use of tandem parking (when one space is located directly behind another) shall not be allowed, except for single-family dwellings and duplex units, and only when both spaces are assigned to the same dwelling unit. The Director may grant approval of tandem parking for nonresidential and other multifamily developments through a Use Permit if the applicant demonstrates that the tandem parking is achieved for vehicles owned by residents within a single unit or employees of a single commercial use.

F. Landscaping. Landscaping shall be provided in compliance with Section 18.34 (Landscaping Standards).

G. Lighting. Lighting shall be provided in compliance with Section 18.30.070 (Outdoor Lighting).

H. Striping and identification.

1. Parking spaces shall be clearly outlined with four-inch wide lines painted on the parking surface.

2. The striping shall be continuously maintained in a clear and visible manner in compliance with the approved plans.

3. The re-striping of any parking space or lot other than to maintain existing striping shall require the prior approval of a re-striping plan by the Director, Public Works.

I. Surfacing, wheel stops, stormwater management & landscaping

1. All parking spaces and maneuvering areas shall be surfaced with paving, asphalt, concrete pavement, or comparable material as determined by the Director, Public Works. Permeable paving, permeable asphalt or permeable concrete pavement is preferred, and projects which use permeable paving materials will receive a proportional discount, based on the proportion of site coverage, on the City drainage fee. (Recommended maximum slopes for alternative paving surfaces are 5% for porous asphalt, 6% for porous concrete, and 10% for interlocking pavers.)

2. Required parking areas in the RR, RS, or RL zoning districts may be surfaced with gravel, pavers, or other all-weather surface as determined to be appropriate by the Director of Public Works. However all gravel parking lots shall include a 20 foot long paved driveway, to minimize the introduction of gravel onto the public right of way.

3. All parking and maneuvering areas shall be designed for on-site stormwater infiltration and treatment where feasible. Stormwater management techniques shall include one or more of the following techniques or their equivalent as determined by the City Engineer:

a) Permeable paving over at least 12" of gravel;

b) Site design so that stormwater flows into landscaped strips, islands and/or rain gardens with a soil depth of at least 24;"

c) Stormwater bioretention swales, rain-gardens, or other open water infiltration and conveyance system with a reservoir volume equal to the surface area of the impermeable surfaces times a depth of 6 inches;

d) Rainboxes; and/or

e) Equivalent stormwater retention or infiltration technique as determined by the Director of Public Works.

4. Where stormwater infiltration is infeasible, due to site limitations or use type, parking areas shall be graded so that all surface water flows off site into drainage features to the satisfaction of the Director, Public Works.

5. All grading plans relating to the parking facilities shall be reviewed and approved by the Director, Public Works before any work can commence.

6. Individual wheel stops, of at least six inches in height and width, shall be provided for parking spaces located adjacent to fences, walls, property lines, landscaped areas, and structures. Wheel stops shall be placed to allow for two feet of vehicle overhang area within the dimension of the parking space. Continuous concrete curbing is discouraged in parking lots. If continuous concrete curbing is installed it shall include curb cuts so that stormwater can flow into bioretention swales, islands, tree filter boxes, gravel wetlands or other LID stormwater techniques.

18.36.100 - Driveways and Site Access

Each driveway providing site access from a street, alley, or other public right-of-way shall be designed, constructed, and properly maintained in compliance with the following. The Director may modify the requirements of this Section through Minor Use Permit approval (Section 18.71.060).

A. Number of driveways.

1. Single-family dwellings and duplexes. A single-family dwelling or duplex shall be allowed one driveway from the adjacent alley if feasible except that:

a. A driveway from the Street may be allowed if no alley provides access, or

b. A circular driveway may be allowed on a parcel with 200 feet or more of street frontage without alley access.

2. Multi-family and nonresidential projects.

a. A multi-family or nonresidential development project on a parcel of two acres or less shall be limited to a maximum of two driveways, unless the Director, Public Works determines that more than two driveways are required to accommodate the traffic for the project.

b. Whenever a property has access to more than one street, access shall be generally limited to the lowest volume street where the impact of a new access will be minimized.

3. Shared driveways. The review authority may require development on smaller parcels to be planned with access along one side property line, and consolidated with the access driveway on the adjacent parcel, where practical, to limit the total number of access points on a street segment, and minimize conflicts with traffic flow.

4. Driveways and sidewalks. Driveways shall connect to alleys instead of streets, when possible, in order to minimize the point of conflicts between motor vehicles and pedestrians walking on sidewalks. For this reason, the size of driveways and the number of driveways which cross sidewalks shall be kept to a minimum.

B. Distance from street corners. Each driveway shall be separated from the nearest street intersection as follows, except where the Director, Public Works allows less separation:

1. A minimum of 150 feet from the nearest intersection, as measured from the centerline of the driveway to the centerline of the nearest travel lane of the intersecting street; and

2. For parcels with frontages less than 150 feet, the minimum distance shall be 100 feet.

C. Driveway spacing. Driveways shall be separated along a street frontage as follows.

1. Single-family and duplex residential developments. Driveways shall be separated by at least six feet, unless a shared, single driveway is approved by the Director, Public Works. The six-foot separation shall not include the transition or wing sections on each side of the driveway.

2. Multi-family and nonresidential developments. Where two or more driveways serve the same or adjacent multi-family or nonresidential development, the centerline of the driveways shall be separated by a minimum of 50 feet. The Director, Public Works may approve exceptions to this standard.

D. Driveway dimensions.

1. Single-family dwelling. Each single-family dwelling shall be provided a driveway with a minimum width of 10 feet and a maximum of 23 feet, preferably from an alley. If the driveway connects a garage to an alley, it shall have a minimum length of 10 feet. If the driveway connects to a street, it shall have a minimum length of 23 feet from the back of the sidewalk, or the edge of the right-of-way where there is no sidewalk.

2. Multi-family and nonresidential development.

a. A driveway for a multi-family or nonresidential development which connects to a parking lot of nine or more spaces, shall have a minimum paved width of 11 feet for a one-way driveway and 22 feet for a two-way driveway.

b. A driveway for a multi-family or nonresidential development which connects to a parking lot of eight or fewer spaces shall have a paved width of 10 feet unless additional width is necessary to ensure public safety.

c. If the City anticipates the parking lot will generate higher than normal turnover of vehicles (such as generated by a take-out restaurant) or larger than normal vehicles (such as generated by a warehouse) then the City may require additional width for driveways.

3. Minimum paved length. Where unpaved driveways are otherwise allowed by this Development Code or the review authority, each driveway shall be paved with concrete or asphalt for a minimum length of 20 feet from the public right-of-way.

E. Clearance from obstructions.

1. The nearest edge of a driveway curb cut shall be at least three feet from the nearest property line, the centerline of a fire hydrant, light standard, traffic signal, utility pole, or other similar facility.

2. Street trees shall be a minimum of 10 feet from the driveway access, measured at the trunk.

3. A driveway shall have an overhead clearance of 14 feet in height except within a parking structure, which may be reduced to seven feet, six inches.

F. Traffic safety visibility areas. Structures or landscaping over 42 inches in height shall not be allowed within a traffic safety visibility area, with the exception of trees with the canopy trimmed to a minimum of 6 feet in height. See Section 18.30.060.E.

G. Surfacing.

1. Within the multi-family and nonresidential zoning districts, driveways shall be paved and permanently maintained with permeable or impermeable paving, asphalt, concrete, or approved paving units. Projects that utilize permeable surfaces will receive a proportional discount on their drainage fees based on the total site coverage.

2. Within other zoning districts (e.g., RR, RS, and RL), driveways may be constructed with the use of other all-weather surfacing as determined to be appropriate by the Director, Public Works, where it is first determined that a surface other than asphalt or concrete is consistent with the driveways of similar properties in the vicinity, and that the alternate surface will not impair accessibility for emergency vehicles.

3. A driveway with a slope of 15 percent or more shall be paved with permeable or impermeable asphalt or concrete in all cases

18.36.110 - Loading Space Requirements

Off-street loading spaces shall be provided as required by this Section. The Director may modify these requirements through Minor Use Permit approval (Section 18.71.060), where the Director first determines that the operating, shipping, and delivery characteristics of the use do not require the number or type of loading spaces required by this Section.

A. Number of loading spaces required. Nonresidential uses shall provide off-street loading spaces in compliance with Table 3-11. Requirements for uses not listed shall be determined by the Director based upon the requirements for comparable uses.

TABLE 3-11 - REQUIRED OFF-STREET LOADING SPACES

Type of Land Use	Total Gross Floor Area	Loading Spaces Required

Type of Land Use	Total Gross Floor Area	Loading Spaces Required
Industrial, manufacturing, research and development, institutional, and service uses	5,000 to 10,000 sf.	1
	110,001 + sf.	1 for each additional 10,000 sf plus additional as required by Director.
Office uses	5,000 to 25,000 sf.	1
	25,001 + sf.	1 for each additional 25,000 sf plus additional as required by Director.
Retail commercial and other allowed nonresidential uses	5,000 to 10,000 sf.	1
	10,001 + sf	1 for each additional 10,000 sf plus additional as required by Director.

B. Standards for off-street loading areas. Off-street loading areas shall be provided in compliance with the following.

1. Dimensions. Loading spaces shall be a minimum of 12 feet in width, 40 feet in length, with 14 feet of vertical clearance.

2. Lighting. Loading areas shall have lighting capable of providing adequate illumination for security and safety; lighting shall also comply with the requirements of Section 18.30.070 (Outdoor Lighting).

3. Location. Loading spaces shall be:

a. As near as possible to the main structure and limited to the rear two-thirds of the parcel, if feasible;

b. Situated to ensure that the loading facility is screened from adjacent streets;

c. Situated to ensure that loading and unloading takes place on-site and in no case faces a public street, or is located within a required front setback, adjacent public right-of-way, or other on-site traffic circulation areas;

d. Situated to ensure that all vehicular maneuvers occur on-site. The loading areas shall allow vehicles to enter from and exit to a public street in a forward motion only; and

e. Situated to avoid adverse impacts upon neighboring residential properties and located no closer than 100 feet from a residential zoning district unless adequately screened, and authorized through Design Review approval in compliance with Section 18.71.050.

4. Loading ramps. Plans for loading ramps or truck wells shall be accompanied by a profile drawing showing the ramp, ramp transitions, and overhead clearances.

5. Screening. Loading areas shall be screened from abutting parcels and streets with a combination of dense landscaping and solid masonry walls with a minimum height of six feet.

6. Striping.

a. Loading spaces shall be striped, and identified for loading only.

b. The striping and “loading only” notations shall be continuously maintained in a clear and visible manner in compliance with the approved plans.

7. Surfacing.

a. All loading areas shall be surfaced with permeable paving, asphalt, concrete pavement, or comparable material as determined by the Director, Public Works and shall be graded to dispose of all surface water to the satisfaction of the Director, Public Works.

b. All grading plans relating to the loading facilities shall be reviewed and approved by the Director, Public Works before any work can commence.

Chapter 18.38

SIGNS

Comment [MJ38]: This chapter was also reviewed and modified in 2014, so relatively few new changes are proposed for this chapter.

Sections:

18.38.010 Purpose
18.38.020 Applicability
18.38.030 Sign Permit Requirements
18.38.040 Exemptions from Sign Permit Requirements
18.38.050 Prohibited Signs
18.38.060 General Requirements for All Signs
18.38.070 Zoning District Sign Standards
18.38.080 Standards for Specific Sign Types
18.38.090 Nonconforming Signs
18.38.100 Public Nuisance, Abatement, and Violation
18.38.110 Judicial Review
18.38.120 Partial Invalidation

18.38.010 - Purpose

The regulations established by this Chapter are intended to appropriately limit the placement, type, size, and number of signs allowed within the City, and to require the proper maintenance of signs. The purposes of these limitations and requirements are to:

A. Avoid traffic safety hazards to motorists, bicyclists, and pedestrians, caused by visual distractions and obstructions;

B. Promote the aesthetic and environmental values of the community by providing for signs that do not impair the attractiveness of the City as a place to live, work, and shop;

C. Provide for signs as an effective channel of communication, while ensuring that signs are aesthetically proportioned in relation to adjacent structures and the structures to which they are attached;

D. Safeguard and protect the public health, safety, and general welfare; and

E. Advance community design standards and safety standards as set forth in the Community Design and Safety Elements of the General Plan.

18.38.020 - Applicability

A. Signs regulated. The requirements of this Chapter shall apply to all signs in all zoning districts.

B. Applicability to sign content. The provisions of this Chapter do not regulate the message content of signs (sign copy), regardless of whether the message content is commercial or noncommercial.

C. Definitions. Definitions of the specialized terms and phrases used in this Chapter may be found in Article 10 (Glossary) under "Sign."

18.38.030 - Sign Permit Requirements

A. Sign permit required.

1. Approval required. No sign shall be constructed, installed, or modified, unless a sign permit is first obtained in compliance with this Section, or the sign is allowed without a sign permit by Section 18.38.040 (Exemptions from Sign Permit Requirements).

2. Compliance with standards required. No sign permit shall be approved for an existing or proposed sign unless the sign is in compliance with all applicable requirements of this Chapter.

3. Building Permit required. A Building Permit may also be required for sign construction/installation.

4. Temporary signs. Temporary signs shall comply with Sections 18.38.040.C (Temporary signs), and Section 18.38.080 (Standards for Specific Sign Types).

B. Review authority.

1. Director. The Director shall review all sign permit applications and approve only those that comply with the findings required in Subsection D. (Findings for approval). The Director may also refer a sign permit application to the Commission for review and decision, either for the individual sign permit, or as part of a development project that is otherwise subject to design review. Commission review of a sign permit referred by the Director shall require no additional fee.

2. Conditions of approval. The review authority may require conditions of approval that are deemed reasonable and necessary to achieve the purpose, intent, and objectives of this Chapter to the extent such conditions relate to the shape, location, height, size and materials of the sign; and/or the shape, design, placement, color, style, and quantity of text, illumination, reflected light and logos of a sign.

3. Approval criteria. The approval or non-approval of an application for a sign permit shall be guided by the criteria set forth in this Chapter. If the review authority finds that a proposed sign substantially complies with the standards of this Chapter, the review authority shall approve the sign.

4. Appeal. A decision of the Director or Commission in compliance with this Chapter may be appealed in compliance with Chapter 18.92 (Appeals).

C. Sign permit procedures.

1. Application requirements. An application for a sign permit shall be prepared, filed, and processed in compliance with Chapter 18.70 (Permit Application Filing and Processing).

2. Application contents. Each application shall include all fees required by the City's Fee Schedule, and all of the following:

a. Plans for the sign, drawn to scale, showing the proposed location of the sign in relation to other signs on the site and adjacent properties, structures, and uses;

b. A complete color scheme for the sign, and design drawing of the sign;

c. Sufficient other details of the proposed sign to show that it complies with the provisions of this Chapter;

d. Written permission from the property owner for the placement of the proposed signs on the site;

e. Computation of the total sign area, the area of each individual sign, the height of each sign, and the total number of existing and proposed signs on the site;

f. An accurate indication on the site plan of the proposed location of each present and future sign of any type, whether requiring a permit or not;

g. If a sign permit application is filed for a site where signs exist, the application shall include a schedule for bringing into conformance within five years of the application date, all signs not conforming with the requirements of this Chapter as of the date of application; and

h. Other information as required by the Department.

D. Findings for approval. The approval of a sign permit shall require that the review authority first make all the following findings, as applicable.

1. The proposed signs do not exceed the standards of Sections 18.38.070 (Zoning District Sign Standards) and 18.38.080 (Standards for Specific Sign Types), and are of the minimum size and height necessary to enable pedestrians and motorists to readily identify the facility or site from a sufficient distance to safely and conveniently access the facility or site;

2. That the placement of the sign on the site is appropriate for the height and area of a freestanding or projecting sign;

3. That a flush or projecting sign relates to the architectural design of the structure. Signs that cover windows, or that spill over natural boundaries, and/or cover architectural features shall be discouraged;

4. The proposed signs do not unreasonably block the sight lines of existing signs on adjacent properties;

5. The placement and size of the sign will not impair pedestrian or vehicular safety;

6. The design, height, location, and size of the signs are visually complementary and compatible with the scale and architectural style of the primary structures on the site, any prominent natural features on the site, and structures and prominent natural features on adjacent properties on the same street; and

7. The proposed signs are in substantial conformance with the design criteria in Subsection 18.38.060.E (Design criteria for signs) and the Citywide Design Guidelines for signs.

E. Expiration and extension of sign permit approval.

1. Approval of a sign permit shall expire 12 months from the date of approval unless the sign has been installed, or a different expiration date is stipulated at the time of approval. Before the expiration of a sign permit, the applicant may apply to the Department for an extension of an additional 12 months from the original date of expiration.

2. The expiration date of the sign permit shall be automatically extended to concur with the expiration date of the companion Building Permit or other applicable permits for the project.

18.38.040 - Exemptions from Sign Permit Requirements

The following signs are allowed without sign permit approval, provided that they comply with Section 18.38.060 (General Requirements for All Signs), and any required Building Permit is obtained.

A. Nonstructural modifications and maintenance.

1. Modifications to sign copy on conforming signs, or changes to the face or copy of conforming changeable copy signs;

2. The normal maintenance of conforming signs, except as identified in Subsection 18.38.060.I (Maintenance of signs).

B. Identification signs. Street identification, and house identification signs required to assist emergency responders in finding specific properties and not exceeding two square feet.

C. Temporary signs. The following temporary signs are allowed without a sign permit.

1. Signs posted on private property for ~~less than six months before~~for the sale, lease or rental of the property.

a. Commercial, industrial, and other non-residential zoning districts. Signs posted on private property ~~less than six months before~~ for the sale, lease or rental of the property within commercial, industrial, and other non-residential zoning districts shall be no more than 16 square feet, with a maximum height for freestanding signs of six feet.

Comment [MJ39]: Some properties take longer than six months to sell and the City does not currently require removal of the for sale sign. This change would make the regulations conform with current practice.

b. Residential zoning districts. Signs posted on private property less than six months before for the sale, lease or rental of the property in residential zoning districts shall not be illuminated, shall not exceed one sign per property, and shall be no more than four square feet in area, including riders.

2. Off-site directional signs not more than four square feet in area, including riders, may be located on private property two weeks prior to for the sale, lease or rental of a property, provided that they do not obstruct or impede pedestrian or vehicular traffic, and are not secured to prevent removal. No such sign shall be permitted within a public right-of-way.

3. Signs on property undergoing construction or remodeling may be allowed in all zoning districts in compliance with the following standards:

a. The number, type, placement, and size of signs shall comply with the sign requirements of Section 18.38.070 (Zoning District Sign Standards) for the applicable zoning district.

b. The signs shall be removed prior to final building inspection or the issuance of a Certificate of Occupancy.

4. Signs are allowed 90 days prior to an election and five days after an election so long as the sign is in compliance with the following requirements:

a. In Commercial and Industrial zoning districts, each temporary sign and the total temporary signage on a parcel shall not exceed 32 square feet in area.

b. In Residential districts, no temporary sign shall exceed four square feet in area.

c. No temporary sign shall be located in a public right-of-way.

D. Governmental signs. Signs installed by the City, County, or a Federal or State governmental agency, because of their responsibilities for the protection and promotion of public health, safety, and general welfare, including the following signs:

1. Emergency and warning signs necessary for public safety or civil defense;

2. Traffic signs erected and maintained by an authorized public agency;

3. Legal notices, licenses, permits, and other signs required to be displayed by law;

4. Signs showing the location of public facilities (e.g., public telephones, restrooms, and underground utilities); and

5. Any sign, posting, notice, or similar sign placed by or required by a governmental agency in carrying out its responsibility to promote and protect public health, safety, and general welfare.

E. Miscellaneous signs.

1. Address numbers not exceeding 12 inches in height required to assist emergency responders in finding specific properties.

2. Official flags. Flags of national, State, or local governments, or nationally recognized religious, fraternal, or public service agencies; provided, the length of the flag shall not exceed one-fourth the height of the flag pole, and the flag is not used for commercial advertising.

3. Symbols, pictures, patterns, and illumination approved as architectural ornamentation or decoration by the review authority.

4. Signs erected and maintained by a historical agency or non-profit and located on a historical building, including names and dates of buildings and date of construction so long as none of these exceed four square feet.

5. Service station price signs required by State law.

6. Signs or displays located entirely inside of a building.

6. Small, temporary signs, otherwise in conformance with size, number, and duration requirements of this chapter that address non-commercial issues.

7. Banners and flags of 12 square feet or less, without commercial messages that do not interfere with pedestrian access or vehicular traffic within the public right of way (sidewalk and or street).

8. Signs advertising non-profit events that are less than 100 SF and located on private property with the permission of the property owner. Non-profit event signs shall not be displayed for a period of more than 30 days and shall be removed immediately after the event occurs. The advertised non-profit events must be located within the City of Fort Bragg.

18.38.050 - Prohibited Signs
All signs not expressly allowed by this Chapter shall be prohibited. Examples of prohibited signs include the following:

A. Abandoned signs;

B. Animated signs, including electronic message display signs, and variable intensity, blinking, or flashing signs, or signs that emit a varying intensity of light or color;

C. Balloons and other inflatable devices;

D. Billboards;

E. Flags which include commercial messages logos or images, are distracting to drivers, and/or are larger than 30 SF, except as specifically allowed by Subparagraph 18.38.040.E.2. (Official flags);

F. Moving signs, except signs that are stationary but contain moving parts;

G. Obscene signs;

H. Off-premises signs, except as allowed by Subparagraph 18.38.040.C.2. (Offsite directional signs);

I. Pennants and streamers, except in conjunction with an athletic event, carnival, circus, or fair, or as allowed in Subsection 18.38.040.C. (Temporary signs);

J. Pole signs and other freestanding signs over ~~six~~ 14 feet in height;

Comment [MJ40]: 14 feet is allowed in the inland area, 6 feet is allowed in the Coastal Zone.

K. Roof signs;

L. Because of the City's compelling interest in ensuring traffic safety, signs that simulate in color, size, or design, any traffic control sign or signal, or that make use of words, symbols, or characters in a manner that interferes with, misleads, or confuses pedestrian or vehicular traffic; and signs that due to color or motion act as a distraction and safety hazard to drivers;

M. Signs in the form or shape of a directional arrow, or otherwise displaying a directional arrow, except as may be approved by the review authority for safety, convenience and control of vehicular and pedestrian traffic within the premises of the subject use;

N. Signs attached to or suspended from a boat, float, vehicle, or other movable objects parked within a public right-of-way, or in a location on private property that is visible from a public right-of-way, except a sign painted directly upon, magnetically affixed to, or permanently affixed to the body or other integral part of the vehicle;

O. Signs burned, cut, or otherwise marked on or otherwise affixed to a hillside or tree;

P. Signs with reflective material;

Q. Signs in residential zoning districts, except as specifically allowed in this Chapter; and

R. Temporary and portable signs, except as specifically allowed by Subsection 18.38.040.C. (Temporary signs).

S. Signs in the public right-of-way except for the following:

1. Public signs erected by or on behalf of a governmental agency to convey public information, identify public property, post legal notices, or direct or regulate pedestrian or vehicular traffic;

2. Bus stop signs installed by a public transit company;

3. Informational signs of a public utility regarding its lines, pipes, poles, or other facilities. Emergency warning signs erected by a governmental agency, a public utility company, or a contractor doing authorized work within the public right-of-way; or

4. Temporary signs held by individuals that display non-commercial messages of less than ten square feet.

T. Any sign installed or placed within the public right-of-way other than in compliance with this Section shall be forfeited to the public and be subject to confiscation

In addition to other remedies identified in Chapter 18.98 (Enforcement and Penalties), the City shall have the right to recover from the owner, or person placing the sign, the full costs for sign removal and disposal.

18.38.060 - General Requirements for All Signs
The following rules shall govern the computation of sign area:

A. Sign area measurement. Sign area measurement to determine compliance with the sign area limitations of this Chapter shall occur as follows.

1. Surface area. The surface area of a sign shall be calculated by enclosing the extreme limits of all framing, emblem, logo, representation, writing, or other display within a single continuous perimeter composed of squares or rectangles with no more than eight perimeter lines. See Figure 3-10.

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Figure 3-10 - Sign Area Measurement

2. Sign structure. Supporting bracing or framework that is clearly incidental to the display itself shall not be computed as sign area.

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3. Multi-faced signs. The sign area for a sign with more than one face shall be computed by adding together the area of all sign faces.

4. Three-dimensional objects. The area of a sign consisting of one or more three-dimensional objects (e.g., balls, cubes, clusters of objects, sculpture, or statue-like trademarks), shall be measured as their maximum projection upon a vertical plane. See Figure 3-11.

5. Time and/or temperature device. The area of any time and/or temperature device incorporated into a sign shall not be included in the calculation of total sign area.

B. Sign height measurement. The height of a sign shall be computed as the vertical distance from the lowest point of the base of the sign at normal grade, to the top of the highest attached component of the sign. See Figure 3-11. Normal grade shall be construed to be the lower of either the:

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1. Existing grade before construction; or

2. Newly established grade after construction, exclusive of any berming, filling, mounding, or excavating solely for the purpose of locating the sign.

C. Sign height limitations.

1. Maximum height for freestanding signs. A freestanding sign shall not exceed a height of six feet above normal grade in the residential and PF zoning districts. Freestanding signs shall be limited to 14 feet above normal grade in all other districts.

2. Maximum height for signs on structures. The top of a sign mounted on a structure shall not extend higher than the lesser of:

a. The window sills of the second floor;

b. The top of the wall to which the sign is attached, in the case of a one-story structure; or

c. 20 feet above normal grade.

D. Sign location requirements. Each sign shall be located in compliance with the following requirements, and all other applicable provisions of this Chapter.

1. Each sign shall be located on the same site as the subject of the sign, except as otherwise allowed by this Chapter.

2. No sign shall project over public property, or the public right-of-way, except where the City has granted an encroachment permit in addition to a sign permit.

3. No sign shall be placed so as to interfere with the operation of a door, window, or fire escape.

E. Design criteria for signs. The following design criteria shall be used in reviewing the design of individual signs. Substantial conformance with each of the following design criteria shall be required before a sign permit or Building Permit can be approved.

1. Color. Colors on signs and structural members should be harmonious with one another and relate to the dominant colors of the other structures on the site. Contrasting colors may be utilized if the overall effect of the sign is still compatible with the structure colors and prevailing colors in the surrounding neighborhood (where a theme can be identified).

2. Design and construction.

a. Proposed permanent signs should be designed by professionals (e.g., architects, building designers, landscape architects, interior designers, or those whose principal business is the design, manufacture, or sale of signs), or others who are capable of producing professional results.

b. All permanent signs should be constructed by persons whose principal business is building construction or a related trade including sign manufacturing and installation businesses, or others capable

of producing professional results. The intent is to ensure public safety, achieve signs of careful construction, neat and readable copy, and durability so as to reduce maintenance costs and to prevent dilapidation.

3. Materials and structure.

a. Sign materials (including framing and supports) shall be representative of the type and scale of materials used on the primary onsite structure and on other onsite signs.

b. Materials for permanent signs shall be durable and capable of withstanding weathering over the life of the sign with reasonable maintenance.

c. The size of the structural members (e.g. columns, crossbeams, and braces) should be proportional to the sign panel they are supporting. In general, fewer larger supporting members are preferable to many smaller supports.

d. The use of individual letters incorporated into the building design is encouraged, rather than signs with background and framing other than the structure's wall(s).

4. Street address. The review authority may require that a sign include the street address of the site, where it determines that public safety and emergency vehicle response would be more effectively served than if the street address were displayed solely on one or more structures on the site.

F. Copy design guidelines. The City does not regulate the message content (copy) of signs; however, the following are principles of copy design and layout that can enhance the readability and attractiveness of signs. Copy design and layout consistent with these principles is encouraged, but not required.

1. Sign copy should relate only to the name and/or nature of the business or commercial center.

2. Permanent signs that advertise continuous sales, special prices, or include phone numbers, etc. should be avoided.

3. Information should be conveyed briefly or by logo, symbol, or other graphic manner. The intent should be to increase the readability of the sign and thereby enhance the identity of the business.

4. The area of letters or symbols should not exceed 40 percent of the background area in commercial districts or 60 percent in residential districts.

5. Freestanding signs should contain the street address of the parcel or the range of addresses for a multi-tenant center.

G. Sign lighting. Sign lighting shall be designed to minimize light and glare on surrounding rights-of-way and properties.

1. External light sources shall be directed and shielded so that they do not produce glare on any object other than the sign, and/or off the site of the sign.

2. The light illuminating a sign shall not be of an intensity or brightness that will interfere with the reasonable enjoyment of residential properties.

3. Sign illumination shall not blink, flash, flutter, or change light intensity, brightness, or color.

4. Colored lights shall not be used at a location or in a manner so as to be confused or construed as traffic control devices.

5. Neither the direct nor reflected light from primary light sources shall create hazards for pedestrians or operators of motor vehicles.

6. Reflective-type bulbs and incandescent lamps that exceed 15 watts shall not be used so as to expose the face of the bulb or lamp to a public right-of-way or adjacent property.

7. Light sources shall utilize hard-wired fluorescent or compact fluorescent lamps, or other lighting technology that is of equal or greater energy efficiency.

8. Permanently installed illuminated panels, visible tubing, and strings of lights outlining all or a portion of a structure, other than lighting that is primarily for indirectly illuminating architectural features, signs, or landscaping, shall be deemed "signs" subject to this Chapter and shall be counted as part of the allowed sign area. Each line of tubing or lights shall be deemed to have a minimum width of at least six inches for the purpose of area calculation.

H. Maintenance of signs.

1. Each sign and supporting hardware, including temporary signs, shall be maintained in good repair and functioning properly at all times.

2. Any repair to a sign shall be of equal or better in quality of materials and design as the original sign.

3. A sign that is not properly maintained and is dilapidated shall be deemed a public nuisance, and may be abated in compliance with the Municipal Code.

4. When an existing sign is removed or replaced, all brackets, poles, and other supports that are no longer required shall be removed.

5. Unpainted areas shall be painted to match the adjacent portion of the structure or the sign support structure.

18.38.070 - Zoning District Sign Standards

Each sign shall comply with the sign type, area, height, and other restrictions provided by this Section, except as otherwise expressly provided in Section 18.38.080 (Standards for Specific Sign Types).

A. Residential and PF zoning districts. Each sign in a residential or PF zoning district shall comply with the following requirements.

TABLE 3-11 - SIGN STANDARDS RESIDENTIAL AND PUBLIC FACILITY ZONING DISTRICTS

Allowed Sign Types	Maximum Sign Height	Maximum Number of Signs Allowed per Parcel	Maximum Sign Area Allowed per Parcel
Wall or freestanding	Wall signs: below edge of roof; Freestanding: 6 ft	1 of either allowed sign type per street frontage	12 sf maximum each; 24 sf total for all signs

B. Commercial and industrial zoning districts. Each sign in the commercial and industrial zoning districts established by Section 18.14.020 (Zoning Map and Zoning Districts) shall comply with the requirements in Table 3-12, in addition to the provisions of Section 18.38.080 (Standards for Specific Sign Types), as applicable.

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Figure 3-13 - Examples of sign types

TABLE 3-12 - SIGN STANDARDS FOR COMMERCIAL AND INDUSTRIAL ZONES

Allowed Sign Types	Maximum Sign Height	Maximum Number of Signs Allowed per Parcel	Maximum Sign Area
Ground-mounted and Ground-floor Signs			
Awning (18.38.080.B.)	Below roof (1)	**Single tenant site or structure:** 3 of any combination of allowed sign types per primary structure frontage. 1 of any allowed sign type per secondary frontage. **Site or structure with two or more tenants:** two of any allowed sign per business frontage.	**Maximum sign area per parcel.** The total sign area on a parcel shall comply with the following requirements. 1. 2 sf for each 3 linear ft of primary building frontage. 2. 0.5 additional sf for each linear foot of secondary building frontage. 3. Each use tenant is allowed a total sign area of at least 25 sf regardless of frontage length. 4. The total sign area per use tenant shall not exceed 100 sf. **Maximum sign area per building** The total area of all signs on a single structure frontage shall not exceed the total linear feet of that frontage. **Site with 4 or more tenants:** is allowed an additional freestanding identification sign of 0.25 sf for each linear ft of total primary structure frontage, up to 100 sf maximum.
Freestanding (18.38.080.C.)	14 ft		
Projecting, Wall (18.38.080.E., 18.38.080.G.)	Below roof (1)		
Suspended (18.28.080.G.)	Below eave/canopy; at least 8 ft above a walking surface		
Temporary/Portable	See Sections 18.38.080.A and 18.38.080.F		
Window	See Section 18.38.080.H		
Second Floor Signs			
Awning, Projecting, Wall	Below roof (1)	1 per tenant space	12 sf for each tenant. 1 directory sign not to exceed 12 sf is also allowed to identify upper floor occupants.
Window	See Section 18.38.080.H		
Indoor Signs, and Outdoor Signs Not Visible from a Street			
Awning, Freestanding, Projecting, Suspended, Wall, Window	Below roof (1)	See Section 18.38.080, as applicable	

Notes:

(1) At least one foot below the top of a parapet, the sill of a second floor window, and/or the lowest point of any cornice or roof overhang.

Comment [SP41]: We have received comments from business owners who want to sublease a portion of their space to other tenants. This clarifies that even a small space with two tenants can have two signs.

18.38.080 - Standards for Specific Sign Types

Proposed signs shall comply with the following standards applicable to the specific sign type. Each sign type listed in this Section shall be included in the calculation of the total sign area allowed on a parcel by Section 18.38.070 (Zoning District Sign Standards), unless this Section explicitly provides otherwise. Each sign shall also comply with the sign area, height, and other requirements of Section 18.38.060, and all other applicable provisions of this Chapter. Any non-commercial message may be substituted for the copy on any commercial sign allowed by this Chapter.

A. A-board and other portable sidewalk signs. Each business may display one A-board or other portable sign in compliance with the following standards.

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1. **Limitation on location.** An A-board or other portable sign shall be allowed only on private property.

2. Sign size. Each sign shall not exceed a width of 2 feet 6 inches. Sign height shall be limited to four feet. Sign height shall be measured perpendicular from the sidewalk surface to the highest point of the A-board sign.

4. Sign placement. A portable sidewalk sign shall be placed only on private property within the boundaries of the applicable business's street frontage, and shall be positioned so that it will not:

a. Obstruct required ADA sidewalk clearance;

b. Impede any line of sight for motorists at vehicular public right-of-way intersections, as recommended by the Director, Public Works; or

c. Interfere with people exiting and entering parked cars.

5. Design and construction standards. The review authority shall approve an A-frame sign only if it first determines that the design and appearance of the sign, including any graphics and/or text, will reflect attractive, professional design, and that the sign will be durable and stable when in place.

6. Stabilization. The sign shall be stabilized to withstand wind gusts or shall be removed during windy conditions.

7. Daily removal. The sign shall be removed at the close of business each day.

9. Maintenance. The sign shall be continuously maintained in good condition with no peeling paint or other deterioration.

B. Awning signs. The following standards apply to awning signs in all zoning districts where allowed by Section 18.38.070 (Zoning District Sign Standards).

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1. Signs on awnings are limited to ground level or second story occupancies only.

2. Awnings shall not be internally illuminated. Direct exterior lighting may be allowed. Translucent awning materials are prohibited.

C. Freestanding signs. The following standards apply to freestanding signs in all zoning districts where allowed by Section 18.38.070 (Zoning District Sign Standards).

1. Multiple signs shall be separated by a minimum of 75 feet to ensure adequate visibility for all signs. The review authority may waive this requirement where the locations of existing signs on adjacent properties would make the 75-foot separation impractical.

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2. A sign shall not project over public property, vehicular easements, or rights-of-way, and shall not obstruct a traffic safety sight area, as determined by the review authority.

3. To assist emergency response personnel in locating the site, freestanding signs should contain an illuminated street address plate. Numbers should be a minimum of six inches in height. Street address numbers not exceeding six inches in height shall not be included in calculations of allowed sign area.

D. Murals. A mural placed on the wall of a structure maybe allowed in any commercial or industrial zoning district subject to Administrative Design Review, and as follows.

Comment [MJ42]: So that design review can occur over the counter unless the proposed mural is controversial in which case the Director can ask the Planning Commission to review the proposed project.

1. A mural without text visible from a public right-of-way may be approved in addition to (not counted as part of) the sign area allowed by Section 18.38.070 (Zoning District Sign Standards); a mural with text shall comply with the sign area limitations applicable to the site.

2. Murals that illustrate the local setting, natural environment, and history as sources of inspiration are encouraged.

3. The approval of a mural shall require that the review authority first find that the size, colors, and placement of the mural are visually compatible with the structure architecture, and that the mural will serve to enhance the aesthetics of the City.

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E. Projecting signs. The following standards apply to projecting signs in all zoning districts where allowed by Section 18.38.070 (Zoning District Sign Standards).

1. The maximum projection of a sign from a structure wall shall not exceed eight feet or more than two-thirds of the width of the public sidewalk below. Any projection over a public right-of way shall require an Encroachment Permit.

2. The top of a projecting sign shall not exceed the lesser of 14 feet, eave height, parapet height, or sill height of a second floor window. No portion of the sign shall project above the eave line of a sloped roof or the top of the parapet on a flat roof.

3. A projecting sign shall maintain a minimum clearance of eight feet from the bottom of the sign to the finished grade below.

4. Icon signs using shapes or symbols uniquely suited to the business, creative shapes, and three-dimensional signs are encouraged. See Figure 3-19.

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5. Each sign shall be graphically designed for pedestrians, with a maximum area of nine square feet on each sign face, regardless of the length of the building frontage. Within the CBD zoning district, no sign face shall exceed a maximum area of 12.5 square feet.

6. Sign supports shall be well-designed and compatible with the design of the sign.

F. Temporary signs & banners. Temporary signs other than A-boards are allowed subject to the following requirements. A-board signs are instead subject to the requirements of Subsection A.

1. Temporary signs on private property, except as identified in Section 18.38.040.C, shall comply with the following requirements.

a. Time limits. The use of a temporary sign maybe allowed only for a licensed business for a period not to exceed 30 days per year. A temporary sign permit may be issued for up to 30 days. A business is only allowed three temporary sign permits per year. This is in addition to the 30 days allowed for a business grand opening temporary sign. Signs advertising a particular event shall be removed within 10 days after the event.

b. The application for a temporary sign permit shall include the dates proposed by the applicant for scheduled banner use.

c. Temporary signs may be authorized by the Director, upon submittal of a sign application, plan for removal, and the fees required by the City's Fee Schedule.

d. Maximum sign area. In a residential zoning district, the combined area of temporary signs shall not exceed three square feet. In a commercial or industrial zoning district, the combined area of temporary signs shall not exceed that permitted for permanent signage in the district in which the sign will be placed.

e. Maximum number of signs. No more than one temporary sign shall be erected on a premise at a time.

f. Sign placement. Temporary signs shall be subject to the same placement and height restrictions as permanent signs for the applicable zoning district, except for inflated and tethered signs.

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g. Inflatable or tethered signs. Inflatable or tethered signs are permitted for special events and may be installed for a period not to exceed five consecutive days, no more than two times per year. These signs may exceed the maximum sign area and sign height standards for the applicable zoning district.

G. Wall signs. The following standards apply to wall signs in all zoning districts where allowed by Section 18.38.070 (Zoning District Sign Standards).

1. A wall sign may be located on any primary or secondary structure frontage.

2. The area of the largest wall sign shall not exceed seven percent of the area of the building facade on which the sign is mounted or painted, including the area of windows, doors, and recesses.

3. A wall sign shall not project more than 12 inches from the surface to which it is attached.

H. Window signs. The following standards apply to temporary and permanent window signs where allowed by Section 18.38.070 (Zoning District Sign Standards).

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1. Maximum sign area. Permanent and temporary 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 Signs

etched into the glass surface; however, neon and LCD signs with blinking lights, changing letters, or moving

Comment (MJ43]: We have regularly required that fast food businesses not cover their windows with signage advertising their food. This change is consistent with this practice.

Comment (MJ44]: Consistent with the change above. Also with an eye towards more explicitly not allowing blinking and changing lights on neon and LED signs which are very distracting to drivers.

18.38.090 - Nonconforming Signs

A nonconforming sign is any permanent or temporary sign that was legally established and maintained in compliance with the provisions of all applicable laws in effect at the time of original installation but that does not now comply with the provisions of this Development Code.

A. General requirements. A nonconforming sign shall not be:

1. Changed to another nonconforming sign;

2. Structurally altered to extend its useful life;

3. Enlarged;

4. Re-established after a business is discontinued for 30 days; or

5. Re-established after damage or destruction to 50 percent or more of the value of the sign, or its components, as determined by the Building Official.

Any interruption in the use of a nonconforming sign that continues for 60 days or more shall be deemed to be an abandonment of the sign. Subsequent use shall comply with the regulations of this Chapter. Non-occupation or non-operation of the building or business advertised shall be deemed an interruption of the use of the sign.

B. Exceptions. An administrative exception to the requirements of Subsection A. may be granted by the Commission, provided that the Commission shall make the following findings:

1. The new proposed sign is significantly more conforming in height and/or area than the existing sign; and

2. By approving the new sign, the exception will eliminate the existing nonconforming sign.

C. Maintenance and changes. Sign copy and face changes, nonstructural modifications, and nonstructural maintenance (e.g., painting, rust removal) are allowed without a sign permit up to a maximum of 25 percent of the existing total area of the sign. Face changes not including copy, and any nonstructural modifications exceeding 25 percent of the existing total area of the sign, and any structural changes shall comply with all applicable standards of this Chapter.

18.38.100 - Violations, Enforcement, Abatement

A. Signs on vacated buildings. Signs on premises that have been vacated for 60 days or more, and signs on multi-tenant buildings advertising a business that has been vacated for 60 days or more shall be immediately removed by the owner after the expiration of that period. The Director may issue a muni code violation and/or a notice to remove signs and sign standards after the expiration of the 60 day period in conformance with section 18.98.100 of this development code.

B. Violation, abatement, penalties. Any sign within the city that fails to comply with the requirements of this Chapter, other applicable State statute or City ordinance, or for which a permit has not been obtained in compliance with this Chapter, shall be subject to abatement through civil legal proceedings or as an infraction punishable by a fine as set forth in Chapter 18.98 (Enforcement and Penalties).

18.38.110 - Judicial Review

Any permit issued or denied in compliance with this Chapter shall be subject to expedited judicial review to the extent provided by the time limits identified in Code of Civil Procedure Section 1094.6 et seq.

18.38.120 - Partial Invalidation

This Chapter and its various parts are hereby declared to be severable. Should any Section of this Chapter be declared by a court to be unconstitutional or invalid, that decision shall not affect the validity of the Chapter as a whole, or any portion of the Chapter, other than the Section declared to be unconstitutional or invalid.

Article 4

Standards for Specific Land Uses

Chapter 18.40 ADULT ORIENTED BUSINESS REGULATIONS
18.40.010 Intent and Purpose
18.40.020 Definitions
18.40.030 Prohibited Areas and Minimum Proximity Requirements
18.40.040 Adult-Oriented Business Permit Required
18.40.050 Application Requirements
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18.40.110 Registration of New Employees
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18.40.200 Inspections

Chapter 18.42 STANDARDS FOR SPECIFIC LAND USES
18.42.010 Purpose and Applicability
18.42.020 Accessory Retail and Service Uses
18.42.030 Agricultural Accessory Structures
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18.42.050 Bed and Breakfast Inns (B&Bs)
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18.42.130 Outdoor Displays and Sales
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Chapter 18.44 TELECOMMUNICATIONS FACILITIES
18.44.010 Purpose
18.44.020 Definitions
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18.44.060 Facility Design and Development Standards

18.44.070 Operation and Maintenance Standards
18.44.080 Discontinuance and Site Restoration

Chapter 18.40

ADULT ORIENTED BUSINESS REGULATIONS

Comment [MJ1]: Staff has not reviewed or modified any part of this chapter. Council may proceed to page 14 to review standards for specific land uses and propsed changes.

Sections:

18.40.010 Intent and Purpose
18.40.020 Definitions
18.40.030 Prohibited Areas and Minimum Proximity Requirements
18.40.040 Adult-Oriented Business Permit Required
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18.40.180 Applicability to Other Regulations
18.40.190 Conduct Constituting a Public Nuisance
18.40.200 Inspections

18.40.010 - Intent and Purpose

A. Intent. It is the intent of this Chapter to provide special design guidelines, standards, and development regulations to regulate the time, place, and manner of the operation of Adult-Oriented Businesses in order to minimize the negative secondary effects associated with these businesses including, but not limited to, increased crime, decreased property values, and the deterioration of neighborhoods which can be brought about by the concentration of Adult-Oriented Businesses in close proximity to each other or proximity to other incompatible uses, including religious facilities, parks, playgrounds, schools, and residentially zoned districts or uses. The Council finds that it has been demonstrated in various communities that the concentration of Adult-Oriented Businesses causes an increase in the number of transients in the area, and an increase in crime, and in addition to the effects described above can cause other businesses and residents to move elsewhere.

B. Purpose. It is, therefore, the purpose of this Chapter to:

1. Establish reasonable and uniform regulations to prevent the concentration of Adult-Oriented Businesses or their close proximity to incompatible uses, while allowing the location of Adult-Oriented Businesses in certain areas; and

2. Regulate Adult-Oriented Businesses in order to promote the health, safety, and general welfare of the citizens of the City.

C. Restriction on content and access not intended. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including adult-oriented materials. Similarly, it is not the intent nor effect of this Chapter to restrict or deny access by adults to adult-oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of adult-oriented entertainment to their intended market. Neither is it the intent nor effect of this Chapter to condone or legitimize the distribution of obscene material.

18.40.020 - Definitions

Definitions of the technical terms and phrases used in this Chapter are under “Adult Oriented Business” in Article 10 (Glossary).

18.40.030 - Prohibited Areas and Minimum Proximity Requirements

A. IH (Heavy Industrial) and IL (Light Industrial). Subject to the limitations set forth in this Chapter, Adult-Oriented Businesses may be established in the IH and IL zoning districts.

B. Specified distance separation requirements. Notwithstanding the above, no Adult-Oriented Business shall be established or located within certain distances of certain specified land uses or zoning districts as set forth below. No Adult-Oriented Business shall be established or located:

1. Within a 300-foot radius from any existing residential zoning district or use. The distance between a proposed Adult-Oriented Business use and a residential zoning district or use shall be measured from the nearest exterior walls of the facilities housing the Adult-Oriented Business use or proposed Adult-Oriented Business use to the nearest property line included within a residential zoning district or property in current residential use, along a straight line extended between the two points; or

2. Within 500 feet of any other Adult-Oriented Business as defined in this Chapter which is located either inside or outside the jurisdiction of the City of Fort Bragg. The distance between the two Adult-Oriented Business uses shall be measured between the nearest exterior walls of the facilities housing the Adult-Oriented Business use and proposed Adult-Oriented Business use along a straight line extended between the two uses; or

3. Within 500 feet from any existing park, playground, religious facility, or school use or property zoned Open Space (OS) or Public Facilities (PF). The distance between a proposed Adult-Oriented Business use and park, playground, religious facility, or school use or property zoned Open Space (OS) or Public Facilities (PF), shall be measured from the nearest exterior wall of the facility housing the Adult-Oriented Business use or proposed Adult-Oriented Business use to the nearest property line where the park, playground, religious facility, or school use is located, or property zoned Open Space (OS) or Public Facilities (PF) along a straight line extended between the two points.

C. Separation requirements also apply to specified uses or districts outside of the City. The above distance limitations shall also apply to residential districts or uses and parks, playgrounds, schools, and church uses or property so designated in the General Plan Land Use Element of an adjacent jurisdiction

18.40.040 - Adult-Oriented Business Permit Required

A. Adult-Oriented Business Permit and Business License required. It shall be unlawful for any person to engage in, conduct, establish, carry on, or to permit to be engaged in, conducted, established, or carried on, in or upon any premises in the City of Fort Bragg, the operation of an Adult-Oriented Business unless the person first obtains and continues to maintain in full force and effect both an Adult-Oriented Business Permit and a Business License from the City of Fort Bragg.

B. Not allowed by right. No Adult-Oriented Business may be established within the City of Fort Bragg by right. All persons wishing to establish an Adult-Oriented Business within the City shall first apply for and receive an Adult-Oriented Business Permit in compliance with this Chapter.

C. Applicant to supply sufficient evidence. It is the burden of the applicant for an Adult-Oriented Business Permit to supply sufficient evidence to justify the grant of an Adult-Oriented Business Permit.

18.40.050 - Application Requirements

A. Application submittal. Any person desiring to operate or establish an Adult-Oriented Business within the City of Fort Bragg shall file with the Department an Adult-Oriented Business Permit application on a standard application form supplied by the Department.

B. Required information. All applications shall include the following information:

1. If the applicant is an individual, the individual shall state his or her legal name, including any aliases, address, and submit satisfactory written proof that he or she is at least 18 years of age.

2. If the applicant is a partnership, the partners shall state the partnership's complete name, address, the names and current addresses of all partners, whether the partnership is general or limited, and attach a copy of the partnership agreement, if any.

3. If the applicant is a corporation, the corporation shall provide its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of California, the names, addresses, and capacity of all officers and directors, the name of the registered corporate agent and the address of the registered office for service of process.

4. The notarized signature of the property owner and proof of ownership.

5. A deposit or fee as set forth by the City's Fee Schedule.

6. Signed statement by the applicant verifying that applicant intends to and will comply with all of the adult-oriented business development standards of this Chapter.

7. A description of the Adult-Oriented Business for which the permit is requested and the proposed address where the Adult-Oriented Business will operate, plus the names and addresses of all the owners and lessors of the Adult-Oriented Business site.

8. The address to which notice of action on the application is to be mailed.

9. A sketch or diagram showing the interior configuration of the premises, including a statement of the total floor area occupied by the Adult-Oriented Business. The sketch or diagram need not be professionally prepared, but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.

10. A straight-line drawing depicting the building and the portion thereof to be occupied by the Adult-Oriented Business, and:

a. The property line of any residential zoning district or use within 300 hundred feet of the nearest exterior wall of the Adult-Oriented Business;

b. The property line of any other Adult-Oriented Business within 500 feet of the nearest exterior wall of the Adult-Oriented Business for which a Business Permit is requested; and

c. The property lines of any church, school, park, or playground within 500 feet of the nearest exterior wall of the Adult-Oriented Business.

11. A diagram of the off-street parking areas and premises entries of the Adult-Oriented Business showing the location of the lighting system required by this Chapter.

C. Signature of applicant required. If the applicant is an individual, he or she shall sign the application. If the applicant is other than an individual, an officer of the business entity or an individual with a 10 percent or greater interest in the business entity shall sign the application.

D. Fictitious name, if applicable. If the applicant intends to operate the Adult-Oriented Business under a name other than that of the applicant, the applicant shall file the fictitious name of the Adult-Oriented Business and show proof of registration of the fictitious name.

E. CEQA compliance. All applicants for an Adult-Oriented Business Permit shall also fill out the City's environmental review package/initial study checklist for purposes of complying with the California Environmental Quality Act (CEQA).

F. Other permits or licenses. The fact that an applicant possesses other types of State or City permits or licenses does not exempt the applicant from the requirement of obtaining an Adult-Oriented Business Permit.

18.40.060 - Investigation and Action on Application
The processing, review, and decision by the City on an Adult-Oriented Business Permit shall be the same as required for a Use Permit by Chapter 18.70 (Permit Application Filing and Processing), Section 18.71.060 (Use Permit and Minor Use Permit), and Chapters 18.72 (Environmental Impact Assessment and Mitigation Monitoring), and 18.76 (Permit Implementation, Time Limits, and Extensions), except as provided by Section 18.40.080 (Permit Expiration). Decisions of the Commission on an Adult-Oriented Business Permit may be appealed to the Council in compliance with Chapter 18.92 (Appeals).

18.40.070 - Judicial Review of Decision to Grant, Deny, or Revoke
A. Court challenge. The time for court challenge to a decision by the Council to grant, deny, or revoke an Adult-Oriented Business Permit is governed by California Code of Civil Procedure Section 1094.6.

B. Transmittal of decision to applicant. Notice of the Council's decision and its findings shall be mailed to the applicant and shall include citation to California Code of Civil Procedure Section 1094.6.

C. Prompt judicial review. The Petitioner may seek prompt judicial review of the Council's action in compliance with California Code of Civil Procedure Section 1094.8.

18.40.080 - Permit Expiration
Any Adult-Oriented Business Permit approved in compliance with this Chapter shall become null and void unless the proposed use is established within 180 days of the date from the approval. As to facilities that are a reuse of existing facilities, the Adult-Oriented Business Permit shall become null and void unless the proposed use is established within 180 days from the date of approval, unless before the expiration date the permittee demonstrates to the satisfaction of the Commission that the applicant has a good faith intent to presently commence the proposed use. The extensions shall not exceed a total of two 180-day extensions.

18.40.100 - Findings
A. Required findings. The Commission or Council shall approve or conditionally approve an application for an Adult-Oriented Business Permit where the information submitted by the applicant or other relevant evidence substantiates all of the following findings:

1. The applicant is over the age of 18 years;

2. The required application fee has been paid;

3. The proposed use complies with the development and design requirements of the underlying zoning district in which it is located and with the applicable development standards of this Chapter;

4. The proposed site is not located within a 300-foot radius from any existing residential zoning district or use. The distance between a proposed Adult-Oriented Business use and a residential zoning district or use shall be measured from the nearest exterior wall of the facility housing the Adult-Oriented Business use or proposed Adult-Oriented Business use to the nearest property line included within a residential zoning district or property in current residential use, along a straight line extended between the two points;

5. That the proposed site is not located within 500 feet of any other Adult-Oriented Business as defined in this Chapter which is located either inside or outside the jurisdiction of the City of Fort Bragg. The distance between the two Adult-Oriented Business uses shall be measured between the nearest exterior walls of the facilities housing the Adult-Oriented Business use and proposed Adult-Oriented Business use along a straight line extended between the two uses;

6. The proposed site is not located within 500 feet from any existing park, playground, religious facility, or school use or property zoned Open Space (OS) or Public Facilities (PF). The distance between a proposed Adult-Oriented Business use and park, playground, religious facility, or school use or property zoned Open Space (OS) or Public Facilities (PF), shall be measured from the nearest exterior walls of the facilities housing the Adult-Oriented Business use or proposed Adult-Oriented Business use to the nearest property line where the park, playground, religious facility, or school use or property zoned Open Space (OS) or Public Facilities (PF) is located, along a straight line extended between the two points;

7. The proposed site is not located within 300 feet of a residential zoning district or use or within 500 feet of a park, playground, religious facility, or school use located in or on property so designated in the General Plan Land Use Element of an adjacent jurisdiction; and

8. Neither the applicant, if an individual, or any of the officers or general partners, if a corporation or partnership, have been found guilty or pleaded nolo contendere within the past four years of a misdemeanor or a felony classified by the State as a sex or sex-related offense.

B. Conditions imposed on the permit. Any conditions imposed upon the permit shall be in keeping with the objective development standards of this Chapter and the underlying zoning district in which the property is located.

18.40.110 - Registration of New Employees

A. Employee registration required. As a further condition of approval of every Adult-Oriented Business Permit issued in compliance with this Chapter, every owner or operator of an Adult-Oriented Business shall register every employee with the Police Department within five business days of the commencement of the employee's period of employment at the Adult-Oriented Business.

B. Color photographs and other information required. Each Employee shall be required to provide two recent color passport-quality photographs and, at the discretion of the Police Chief, shall allow himself or herself to be fingerprinted by the Police Department for purposes of identification. In addition, each new employee shall provide the following information in a form provided by the Police Department:

1. Name, current resident address, and telephone number;

2. Date of birth;

3. Social Security number;

4. Height, weight, color of eyes and hair; and

5. Stage name, if applicable, and other aliases used within the previous two years.

C. Current employee register required. Each owner or operator of an Adult-Oriented Business shall maintain a current register of the names of all employees currently employed by the Adult-Oriented Business, and shall disclose the registration for inspection by any Police Officer for the purposes of determining compliance with the requirements of this Section.

D. Failure to comply. Failure to register each new employee within five days of the commencement of employment or to maintain a current register of the names of all employees shall be deemed a violation of the conditions of the Adult-Oriented Business Permit and may be considered grounds for suspension or revocation of the permit.

18.40.120 - Adult-Oriented Business Development Standards

A. Unlawful hours of operation. It shall be unlawful for any operator or employee of an Adult-Oriented Business to allow the adult business to remain open for business, or to permit any employee to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service, between the hours of 10:00 p.m. and 10:00 a.m. of the following day.

B. Observation of activities or materials outside prohibited. No Adult-Oriented Business shall be operated in any manner that permits the observation of any material or activities depicting, describing, or relating to specified sexual activities or specified anatomical areas from any public way or from any location outside the building or area of the establishment. This provision shall apply to any display, decoration, sign, show window, or other opening. No exterior door or window on the premises shall be propped or kept open at any time while the business is open, and any exterior windows shall be covered with opaque covering at all times.

C. Outdoor lighting level required. All off-street parking areas and other exterior areas of the Adult-Oriented Business shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one foot candle of light evenly distributed at ground level. The

required lighting level is established in order to provide sufficient illumination of the parking areas, walkways, and outdoor areas serving the Adult-Oriented Business for the personal safety of patrons and employees and to reduce the incidence of vandalism and criminal conduct. The lighting shall be shown on the required sketch or diagram of the premises.

D. All areas shall be readily accessible. The operator of an Adult-Oriented Business shall not permit any doors on the premises to be locked during business hours and, in addition, the operator shall be responsible to see that any room or area on the premises shall be readily accessible at all times and shall be open to view in its entirety for inspection by any law enforcement official.

E. Posting of California Penal Code Section 314 required. The Adult Oriented Business shall post in plain view inside the front portion of the business, a sign, in two inch print which shall reference California Penal Code Section 314 which shall read as follows:

1. Every person who willfully and lewdly either: (1) exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or (2) procures, counsels, or assists any person so as to expose himself or take part in any model artist exhibition, or to make any other exhibition of himself to public view or the view of any number of persons, which is offensive to decency, or is adapted to excite to vicious or lewd thoughts or acts, is guilty of a misdemeanor.

2. Upon the second and each subsequent conviction under Subparagraph 1. above, or upon a first conviction under Subparagraph 1. above after a previous conviction under [California Penal Code] Section 288, every person so convicted is guilty of a felony, and is punishable by imprisonment in State prison. California Penal Code Section 314.

F. Open to view by management. All indoor areas of the Adult-Oriented Business within which patrons are permitted, except restrooms and customer changing rooms, if any, shall be open to view by the management at all times.

G. Additional "Adult Arcade" provisions. Any adult-oriented business which is also an **"**Adult Arcade**"** shall comply with the following additional provisions:

1. The interior of the premises shall be configured so that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms and customer changing rooms. Restrooms and customer changing rooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured so that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this Subparagraph shall be direct line of sight from the manager's station.

2. The view area specified in Subparagraph 1. above shall remain unobstructed by any doors, walls, merchandise, display racks, or other materials at all times. No patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.

3. No viewing room or changing room may be occupied by more than one person at any one time.

4. The walls or partitions between viewing rooms or booths, changing rooms, restrooms, and stalls or spaces contained therein shall be maintained in good repair at all times, with no holes between any two of the rooms that would allow viewing from one booth or room into another or that would allow physical contact of any kind between the occupants of any two of the booths or rooms.

5. Customers, patrons, or visitors who are not actively engaged in shopping for or reviewing the products available on display for purchaser viewing, shall not be allowed to stand idly by in the vicinity of any video booths, or to remain in the common area of the business, other than the restrooms. Signs prohibiting loitering shall be posted in prominent places in and near the video booths.

6. The floors, seats, walls, and other interior portions of all video booths shall be maintained clean and free from waste and bodily secretions. Presence of human excrement, urine, semen, or saliva in any of the booths shall be evidence of improper maintenance and inadequate sanitary controls; instances of these conditions may justify suspension or revocation of the Adult-Oriented Business permit.

H. Indoor lighting level required. All interior areas of the Adult-Oriented Business shall be illuminated at a minimum of the following foot-candles, minimally maintained and evenly distributed at ground level:

Location	Minimum Illumination Level (foot-candles)
Adult arcades	10
Bookstores and other retail establishments	20
Modeling studios	20
Motels/Hotels	20 in public areas
Theaters and cabarets	5, except that a minimum of 1.25 shall be required during performances

I. Separate restrooms required. The Adult-Oriented Business shall provide and maintain separate restrooms for male patrons and employees, and female patrons and employees. Male patrons and employees shall be prohibited from using a restroom for females, and female patrons and employees shall be prohibited from using a restroom for males, except to carry out duties of repair, maintenance, and cleaning of the restroom facilities. The restrooms shall be free from any Adult-Oriented Material. Restrooms shall not contain television monitors or other motion picture or video projection, recording, or reproduction equipment. The foregoing provisions of this Subparagraph shall not apply to an Adult-Oriented Business that deals exclusively with sale or rental of sexually oriented material or merchandise that is not used or consumed on the premises and which does not provide restroom facilities to its patrons or the general public.

J. Additional requirements for live entertainment. The following additional requirements shall pertain to Adult-Oriented Businesses providing live entertainment depicting specified anatomical areas or involving specified sexual activities, except for businesses regulated by the Alcoholic Beverage Control Commission:

1. No employee, owner, operator, responsible managing employee, manager, or permittee of an Adult-Oriented Business providing live entertainment shall allow any person below the age of 18 years upon the premises or within the confines of the business if no alcoholic beverage is served, or under the age of 21 if alcoholic beverages are served.

2. No entertainer shall dance with or otherwise be within four feet of a patron while performing for compensation or while on the Adult-Oriented Business's premises. This four-foot separation shall be marked by a railing or other physical barrier designed to obstruct any contact between the entertainer and the patron(s).

3. No owner, operator, responsible managing employee, manager, or permittee shall permit or allow at licensed premises any patron to approach within four feet of an entertainer, or permit or allow an entertainer to approach within four feet of a patron.

4. All employees, other than entertainers while performing, shall, at a minimum while on or about the licensed premises, wear an opaque covering which covers their specified anatomical areas.

5. The Adult-Oriented Business shall provide separate dressing room facilities for entertainers which are exclusively dedicated to the entertainers' use.

6. The Adult-Oriented Business shall provide an entrance/exit for entertainers which is separate from the entrance/exit used by patrons.

7. The Adult-Oriented Business shall provide access for entertainers between the stage and the dressing rooms which is completely separated from the patrons. If a separate access is not physically feasible, the Adult-Oriented Business shall provide a minimum three-foot wide walk aisle for entertainers between the dressing room area and the stage, with a railing, fence, or other barrier separating the patrons and the entertainers capable of (and which actually results in) preventing any physical contact between patrons and entertainers.

8. No entertainer, either before, during, or after performances, shall have physical contact with any patron and no patron shall have physical contact with any entertainer either before, during, or after performances by the entertainer. This Subparagraph shall only apply to physical contact on the premises of the Adult-Oriented Business.

9. No patron shall directly pay or give any gratuity to any entertainer and no entertainer shall solicit any pay or gratuity from any patron.

K. Security guards required. Adult-Oriented Businesses shall employ security guards in order to maintain the public peace and safety, consistent with the following standards:

1. Adult-Oriented Businesses featuring live entertainment shall provide at least one security guard at all times while the business is open. If the occupancy limit of the premises is greater than 35 persons, an additional security guard shall be on duty.

2. All Adult-Oriented Businesses shall have a responsible person who shall be at least 18 years of age and shall be on the premises to act as manager at all times during which the business is open. The individual designated as the on-site manager shall be registered with the Police Chief by the owner to receive all complaints and be responsible for all violations taking place on the premises.

3. All Adult-Oriented Businesses shall provide a security system that visually records and monitors the exterior premises of the property including all parking lot areas, or in the alternative, uniformed security guards to patrol and monitor the exterior premises of the property, including the parking lot areas during all business hours. A sign indicating compliance with this provision shall be posted on the premises. The sign shall not exceed two by three feet and shall at a minimum be one foot by one and a half feet.

4. Security guards shall be uniformed in a manner so as to be readily identifiable as a security guard by the public and shall be duly licensed as a security guard as required by applicable provisions of State law. No security guard required in compliance with this Subparagraph shall act as a door person, ticket seller, ticket taker, admittance person, or sole occupant of the manager's station while acting as a security guard.

L. X-rated movies or videos. X-rated movies or videos shall be restricted to persons over 18 years of age. If an establishment that is not otherwise prohibited from providing access to persons under 18 years of age sells, rents, or displays videos or other motion picture media that have been rated "X" or rated "NC-17" by the motion picture rating industry ("MPAA"), or which have not been submitted to the MPAA for a rating, and which consist of images which are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas, the videos shall be located in a specific section of the establishment where persons under the age of 18 shall be prohibited. All access to sexually oriented material or merchandise shall be restricted to persons over 18 years of age.

M. Disposal in locked garbage receptacles only. Any and all sexually oriented materials or sexually oriented merchandise discarded by an Adult-Oriented Business shall be fully contained within a locked garbage receptacle at all times so that minors are not exposed to sexually oriented materials or sexually oriented merchandise.

The foregoing applicable requirements of this Section shall be deemed conditions of Adult-Oriented Business permit approvals, and failure to comply with every requirement shall be grounds for revocation of the permit issued in compliance with these regulations.

18.40.130 - Display of Permit
Each Adult-Oriented Business shall display at all times during business hours the Adult-Oriented Business permit issued in compliance with the provisions of this Chapter for an Adult-Oriented Business in a conspicuous place so that the same may be readily seen by all persons entering the Adult-Oriented Business.

18.40.140 - Persons Under 18 Prohibited
It shall be unlawful for any permittee, operator, or other person in charge of any Adult-Oriented Business to employ, or provide any service for which it requires an Adult-Oriented Business permit, to any person who is not at least 18 years of age.

18.40.150 - Transfer of Adult-Oriented Business Regulatory Permits
A. Only at approved address. A permittee shall not operate an Adult-Oriented Business under the authority of an Adult-Oriented Business permit at any place other than the address of the Adult-Oriented Business stated in the application for the Adult-Oriented Permit.

B. No transfer without permit amendment. A permittee shall not transfer ownership or control of an Adult-Oriented Business or transfer an Adult-Oriented Business permit to another person unless and until the transferee obtains an amendment to the permit from the Commission stating that the transferee is now the permittee. The amendment may be obtained only if the transferee files an application with the Commission in compliance with Sections 18.40.040 (Adult-Oriented Business Permit Required) and 18.40.050 (Application Requirements), above, accompanies the application with a transfer fee as set forth in the City's Fee Schedule, and the Commission determines in compliance with Sections 18.40.060-100 that the transferee would be entitled to the issuance of an original Adult-Oriented Business permit. The transfer fee shall be paid in lieu of the filing fee required by Section 18.40.050.

C. No transfer when subject to suspension or revocation. No Adult-Oriented Business permit may be transferred when the permittee has been notified that the Adult-Oriented Business Permit has been or may be suspended or revoked.

D. No transfer in violation of this Section. Any attempt to transfer an Adult-Oriented Business permit either directly or indirectly in violation of this Section is hereby declared void, and the Adult-Oriented Business permit shall be deemed revoked.

18.40.160 - Permit Revocation
A. Findings required for revocation. Any Adult-Oriented Business permit issued in compliance with the provisions of this Chapter may be revoked by the City on the basis of any of the following:

1. The business or activity has been conducted in a manner which violates one or more of the conditions imposed upon the issuance of the permit or which fails to conform to the plans and procedures described in the application, or which violates the occupant load limits for the building in which the use is located set by the Fire Marshal;

2. The permittee has misrepresented a material fact in the application for permit or in any report required to be filed with the City or has not answered each question in the application truthfully;

3. The permittee has failed to obtain or maintain all required City, County, and State licenses and permits;

4. The permit is being used to conduct an activity different from that for which it was issued;

5. The building or structure in which the Adult-Oriented Business is conducted is hazardous to the health or safety of the employees or patrons of the business or of the general public under the standards set forth in the Uniform Building, Uniform Plumbing, or Uniform Fire Code;

6. The permitted business creates sound levels which violate the Noise Ordinance of the City;

7. The permittee, if an individual, or any of the officers or general partners, if a corporation or partnership, is found guilty or pleaded nolo contendere to a misdemeanor or felony classified by the State as a sex or sex-related offense during the period of the Adult-Oriented Business's operation;

8. The permittee, employee, agent, partner, director, stockholder, or manager of an Adult-Oriented Business has knowingly allowed or permitted, and has failed to make a reasonable effort to prevent the occurrence of any of the following on the premises of the Adult-Oriented Business:

a. Any act of unlawful sexual intercourse, sodomy, oral copulation, or masturbation;

b. Use of the Adult-Oriented Business site as a place where unlawful solicitations for sexual intercourse, sodomy, oral copulation, or masturbation openly occur;

c. Any conduct constituting a criminal offence which requires registration under Section 290 of the California Penal Code;

d. The occurrence of acts of lewdness, assignation, or prostitution including any conduct constituting violations of California Penal Code Sections 315, 316, 318, or 647(b);

e. Any act constituting a violation of provisions of the California Penal Code relating to obscene matter or distribution of harmful matter to minors, including, but not limited to, Sections 311 through 313.4; or

f. Any conduct prohibited by this Chapter.

9. Failure to abide by any action previously imposed by an appropriate City official; and

10. The use for which the approval was granted has ceased to exist or has been suspended for 180 days or more.

B. Notice and public hearing required. Written notice of hearing on the proposed permit revocation, together with written notification of the specific grounds of complaint against the permittee, shall be personally delivered or sent by certified mail to the permittee at least 10 days before the hearing.

1. The Commission shall hold a public hearing on the proposed revocation of the permit.

2. Notice of the public hearing shall be given in compliance with California Government Code Section 65091, as the same may be amended from time to time.

3. In reaching a decision on the proposed revocation, the Commission shall not be bound by the formal rules of evidence. Any relevant evidence may be admitted that is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs.

C. Commission action. The Commission shall revoke, not revoke, or not revoke but add additional conditions to, the permittee's Adult-Oriented Business permit. Any additional conditions imposed upon the permit shall be in keeping with the objective development standards of this Chapter and the underlying zoning district in which the property is located.

D. Transmittal of Commission decision. The Commission's decision shall be in writing, and shall be hand delivered or mailed to the applicant and mailed to all property owners within 300 feet of the use.

E. Decision within 30 days. The Commission shall make its final decision within 30 days of the public hearing.

F. Appeal of Commission decision. Any interested person may appeal the decision of the Commission to the Council in writing within 10 days after the Commission's written decision. In addition, within 10 days after the Commission's written decision, any member of the Council shall have the authority to direct that the Council review the decision of the Commission on the grounds that the individual council member believes that the matter should be decided by the Council.

G. De novo public hearing. Consideration of an appeal of the Commission's decision shall be at a de novo public hearing which shall be noticed in the same manner as the public hearing of the Commission and shall occur within 30 days of the filing of the appeal or initiation of review by the Council. In reaching its decision, the Council

shall not be bound by the formal rules of evidence. Any relevant evidence may be admitted that is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs.

H. Council action on appeal. The Council action on the appeal of the Commission's decision shall be by a majority vote of the quorum, and upon the conclusion of the public hearing, the Council shall revoke, not revoke, or not revoke but add additional conditions to, the permittee's Adult-Oriented Business permit. Any additional conditions imposed upon the permit shall be in keeping with the objective development standards of this Chapter and the underlying zoning district in which the property is located. The Council's decision shall be final and conclusive.

I. No new permit within 12 months after revocation. In the event a permit is revoked pursuant to this Chapter, another adult use development permit to operate an adult business shall not be granted to the permittee within 12 months after the date of the revocation.

18.40.170 - Violations
Any violation of this Chapter shall constitute a public nuisance and any person who violates any section of this Chapter shall be guilty of a misdemeanor and is subject to a fine and/or imprisonment in compliance with the limits set forth in California Government Code section 36901, as it may be amended from time to time, or any other legal remedy available to the City including but not limited to all enforcement options under Municipal Code 6.12.

18.40.180 - Applicability to Other Regulations
The provisions of this Chapter are not intended to provide exclusive regulation of the Adult-Oriented Business uses. These uses shall comply with any and all applicable regulations imposed in other articles of this Development Code, other City ordinances, and State and Federal law.

18.40.190 - Conduct Constituting a Public Nuisance
The conduct of any business within the City in violation of any of the terms of this Chapter is hereby found and declared to be a public nuisance, and the City Attorney or the District Attorney may, in addition or in lieu of prosecuting a criminal action hereunder, commence an action or proceeding for the abatement, removal, and enjoinment thereof, in the manner provided by law; and shall take other steps and shall apply to other courts as may have jurisdiction to grant relief that will abate or remove the Adult-Oriented Business and restrain and enjoin any person from conducting, operating, or maintaining an Adult-Oriented Business contrary to the provisions of this Chapter.

18.40.200 - Inspections
An applicant or permittee shall permit representatives of the Police Department, Health Department, Planning Department, or other City Departments or Agencies to inspect the premises of an Adult-Oriented Business for the purpose of ensuring compliance with the law and the development standards applicable to Adult-Oriented Businesses, at any time it is occupied or opened for business. A person who operates an Adult-Oriented Business or his or her agent or employee is in violation of the provisions of this Section if he/she refuses to permit the lawful inspection of the premises at any time it is occupied or open for business.

Chapter 18.42

STANDARDS FOR SPECIFIC LAND USES

Sections:

18.42.010 Purpose and Applicability
18.42.020 Accessory Retail and Service Uses
18.42.030 Agricultural Accessory Structures
18.42.040 Animal Keeping
18.42.050 Bed and Breakfast Inns (B&Bs)
18.42.060 Child Day Care Facilities
18.42.070 Drive-Through Facilities
18.42.080 Home Occupations
18.42.090 Live/Work Units
18.42.095 Medical Marijuana Dispensary
18.42.100 Mixed Use Projects
18.42.110 Mobile Homes and Mobile Home Parks
18.42.120 Multi-Family Projects
18.42.130 Outdoor Displays and Sales
18.42.140 Outdoor Storage
18.42.145 Pipelines and Transmission Lines
18.42.150 Recycling Facilities
18.42.160 Residential Accessory Uses and Structures
18.42.165 Restaurants
18.42.170 Second Units
18.42.180 Service Stations

18.42.010 - Purpose and Applicability

A. Purpose. This Chapter provides site planning, development, and/or operating standards for certain land uses that are allowed by Article 2 (Zoning Districts and Allowable Land Uses) within individual or multiple zoning districts, and for activities that require special standards to ensure their compatibility with site features, and existing uses and structures in the site vicinity.

B. Applicability. The land uses and activities covered by this Chapter shall comply with the provisions of the Sections applicable to the specific use, in addition to all other applicable provisions of this Development Code.

1. Where allowed. The uses that are subject to the standards in this Chapter shall be located only where allowed by Article 2 (Zoning Districts and Allowable Land Uses).

2. Planning permit requirements. The uses that are subject to the standards in this Chapter are allowed only when authorized by the planning permit required by Article 2, except where a planning permit requirement is established by this Chapter for a specific use.

3. Development standards. The standards for specific uses in this Chapter supplement and are required in addition to those in Articles 2 (Zoning Districts and Allowable Land Uses), 3 (Site Planning and Project Design Standards), 5 (Resource Management), and Article 6 (Site Development Regulations).

a. The applicability of the standards in this Chapter to the specific land uses listed is determined by Chapter 18.20 (Development and Land Use Approval Requirements).

b. In the event of any conflict between the requirements of this Chapter and those of Articles 2 or 3, the requirements of this Chapter shall control.

18.42.020 - Accessory Retail and Service Uses

This Section provides standards for specific retail sales and service uses, including restaurants, pharmacies, and the sale of retail merchandise, that are accessory to a primary commercial, industrial, or institutional use, where allowed by Article 2 (Zoning Districts and Allowable Land Uses).

A. General standard. ~~There shall be no e~~External evidence of any ~~commercial activity~~accessory retail or service use shall be subordinate to the ~~other than~~ the primary use of the site (e.g., ~~no~~ signs, windows with merchandise visible from adjoining streets, etc. shall be limited and subordinate)~~., nor~~ additionally access to any space used for the accessory retail or service shall be accessed ~~use other than from within~~ through the primary ~~structure~~use entrance.

Comment [MJ2]: This seems overly restrictive. Conisder modifications.

B. IL (Light Industrial) zoning district. Accessory retail service uses within the IL zoning district shall be limited to businesses that the review authority determines will manufacture, refine, repair, finish, or store their products or services on-site, will provide adequate parking and street access, and will not generate significant customer traffic.

C. Review and approval requirements. Accessory retail and service uses may require Design Review in compliance with Section 18.71.050. Accessory Retail and service uses require a Minor Use Permit in compliance with Table 2-10 in Section 18.24.030. In order to approve an accessory retail or service use, the review authority shall first find that there will be no adverse effects on adjacent existing or potential residential uses from excessive traffic, noise or other effects of the accessory use.

18.42.030 - Agricultural Accessory Structures

The following standards apply to agricultural accessory structures, where allowed by Article 2 (Zoning Districts and Allowable Land Uses).

A. Timing of installation. An agricultural accessory structure shall only be constructed concurrent with or after the construction of an approved primary structure on the same site, unless:

1. The site is one acre or larger, and the proposed structure is a barn, or other structure used for confining animals and/or housing farm equipment or supplies, or is a noncommercial greenhouse; or

2. Construction in advance of a primary structure is authorized through Minor Use Permit approval.

B. Setback requirements. An agricultural accessory structure shall comply with the setback requirements of the applicable zoning district, except where Section 18.42.040 (Animal Keeping) establishes a greater setback requirement for an animal keeping structure.

18.42.040 - Animal Keeping

Animal keeping within the City shall comply with requirements of this Section, and shall occur only where allowed by Article 2 (Zoning Districts and Allowable Land Uses) and this Section. The provisions of this Section are intended to assist in ensuring that animal keeping does not create adverse impacts on adjacent properties by reason of bright lights, dust, insect infestations, noise, odor, or visual blight.

Comment [MJ3]: This section was updated in 2014 and no new changes are recommended at this time

A. Pre-existing uses. Any legally established animal keeping use that became nonconforming upon adoption of this Section shall be permitted to continue subject to Chapter 18.90 (Nonconforming Uses, Structures, and Parcels).

B. Allowable animal keeping activities and permit requirements.

1. Activities and permit requirements. Animal keeping, including related animal husbandry activities (breeding, judging, etc.) is allowed only in compliance with the limitations on use and permit requirements in Table 4-1, and the animal keeping standards in Subsection C. The keeping of imported animals may require approval by the U.S. Department of Agriculture Fish and Wildlife Service, U.S. Department of Public Health, California Department of Fish and Game, and/or the California Department of Food and Agriculture, and the Mendocino County Agricultural Commissioner, in addition to any City approval required by this Section.

Table 4-1 - ALLOWABLE ANIMAL-KEEPING AND PERMIT REQUIREMENTS

Type of Animal	Permit Requirement by Zoning District		
	RR & RS	RL & RM	RH, RVH
Beekeeping	P	P*	MUP
Fowl, poultry, aviary (except roosters)	P	P	MUP
Hogs and swine	P	-	-
Two or fewer horses and cows	MUP	-	-
Household pets	P	P	P
Roosters	MUP	-	-
Other large animals (defined in Table 4-2)	P	MUP	-
Other small animals (defined in Table 4-2)	P	P	P

Key to permit requirements:

P	Permitted animal keeping, no City approval required for the animal keeping activity, provided that it complies with the standards in Subsections C. through F.
P*	Beekeeping, as a permitted use, is limited to one hive per parcel. A Use Permit is required for more than one hive per parcel in residential and commercial zoning districts.
MUP	Minor Use Permit approval required in compliance with Section 18.71.060.
-	Type of animal or activity not allowed.

2. Minor Use Permit review. Where Table 4-1 requires a Minor Use Permit for keeping a specified animal type, the purpose of the discretionary review shall include evaluation of how the proposed animals will be housed and/or confined, and whether the location, size, and design of the area on the site for animal keeping will be adequate to allow compliance with the other standards of this Section without unreasonable effort on the part of the animal manager. In approving a Minor Use Permit in compliance with this Section, the review authority may limit the maximum number of animals allowed on the site as appropriate to the characteristics of the site, the surrounding land uses, and the species of animals proposed.

C. Animal keeping standards. All animal keeping shall comply with the standards in Table 4-2, where allowed by Subsection B., Table 4-1, except that more animals may be allowed by Minor Use Permit.

Table 4-2 - ANIMAL-KEEPING STANDARDS

Type of Animal or Facility	Maximum Number of Animals per Site (1)	Minimum Lot Area (2)	Minimum Setbacks (3)	
			From Side/Rear Property Lines	From Streets and Dwellings
Dogs and cats	5 animals total on a site less than 1 acre; 5 of each species on a site	None required	None required	None required

Type of Animal or Facility	Maximum Number of Animals per Site (1)	Minimum Lot Area (2)	Minimum Setbacks (3)	
			From Side/Rear Property Lines	From Streets and Dwellings
	of 1 acre or more			
Fowl, poultry, aviary	6 for parcels less than 10,000 SF; 12 per acre for larger parcels	6,000 SF	10 ft	25 ft
Hogs and swine	1 per acre	2 acres	50 ft	100 ft
Horses and cows	2 per acre	1 acre	25 ft	25 ft
Other small animals - Including chinchillas, rabbits, non-poisonous reptiles, rodents, and other non-poisonous small animals.	6 animals total on a site less than 10,000 SF; 20 animals per acre for larger sites, where allowed by Table 4-1.	None	10 ft	25 ft
Other large animals - Emus, goats, llamas, miniature horses and donkeys, ostriches, pot belly pigs, sheep, and similar sized animals.	4 per acre	1 acre	25 ft	25 ft

Notes:

(1) Offspring allowed in addition to maximum number until market-ready.

(2) Minimum lot area required for the keeping of animals.

(3) Minimum setbacks from all property lines for barns, shelters, pens, coops, cages, and other areas and structures where animals are kept in concentrated confinement; but not including areas continuously maintained as pasture. Animals shall not be kept in any required front yard setback except in pasture areas.

D. Maintenance and operational standards. All animal keeping shall comply with all of the following maintenance and operational standards.

1. Odor and vector control. All animal enclosures, including but not limited to pens, coops, cages and feed areas shall be maintained free from litter, garbage and the accumulation of manure, so as to discourage the proliferation of flies, other disease vectors and offensive odors. Manure shall also not be allowed to accumulate. Each site shall be maintained in a neat and sanitary manner.

2. Containment. All animals shall be effectively contained on the site, and shall not be allowed to run free off the parcel or in a public right-of-way.

3. Waterway protection. The keeping of horses, cattle, hogs or other large animals within 50 feet of any waterway shall first require Director approval of a good housekeeping plan to protect the waterway from the polluting effects of runoff from the animal keeping area. The plan shall provide for regular manure removal, the maintenance of pasture vegetation to minimize the exposure and potential erosion of bare soil, site grading to direct runoff to detention and settling areas rather than the waterway, and/or other measures approved by the Director.

4. Erosion and sedimentation control. In no case shall an animal keeping operation be managed or maintained so as to produce sedimentation on any public road, adjoining property, or in any drainage channel or other waterway. In the event sedimentation occurs, the keeping of animals outdoors on the site shall be deemed a nuisance and may be subject to abatement.

5. Noise control. Animal keeping shall comply with the Municipal Code Chapter 9.44.

E. Animal husbandry project exception. The keeping or raising of a calf, horse, goat, sheep, hog, chickens, rabbits, birds or other animals (excluding roosters) as a 4-H or Future Farmers of America (FFA) project shall comply with the following requirements.

1. Minimum site area. A minimum of one acre of site area shall be required for the keeping of horses, cows, or other large animals.

2. Setback requirements. The project animals shall be confined in a pen or fenced area that is located no closer than 25 feet to any dwelling other than on the project site; except that a hog or swine shall not be located closer than 100 feet from any dwelling other than on the project site.

3. Maximum number of animals. The number of animals shall comply with the limitations in Subsection C.

4. Maintenance. The animal keeping shall comply with all standards in Subsection D.

F. Kennels and animal boarding. Each kennel and other small animal boarding facility shall comply with the following standards.

1. Minimum site area. An animal boarding facility may be approved only on a parcel of 2 acres or larger.

2. Enclosure within building. All animal boarding (sleeping and night-time confinement) shall occur within an entirely enclosed building.

3. Noise control. The building used for animal boarding shall be insulated, or otherwise constructed and maintained so that no noise from animals within the building is audible to an average person at the property line of the site.

4. Management. A manager of the facility shall be present on the site at all times.

18.42.050 - Bed and Breakfast Inns (B&Bs)
This Section establishes standards for the development and operation of Bed and Breakfast Inns (B&B), where allowed by Article 2 (Zoning Districts and Allowable Land Uses). The intent of these provisions is to ensure the compatibility between the B&B and nearby residential uses.

~~**A. Limitation on number within the RL zoning district.** No bed and breakfast inn shall be allowed within the RL zoning district, except those which existed in the RL zone as of December 2, 2002. These existing B&Bs may be expanded as allowed by Use Permit approval.~~

~~**B. Exterior appearance.** The exterior appearance of an existing structure housing an existing B&B in the RL zoning district shall not be altered from its residential character except for allowed signs, and any structural modifications necessary to comply with California Code of Regulations Title 24. An addition to an existing B&B in the RL zoning district shall require Design Review in compliance with Section 18.71.050, to ensure that the structure is designed consistent with the residential character of the surrounding neighborhood.~~

A~~C~~. Limitation on services provided. Service shall be limited to the rental of bedrooms or suites; and meal/beverage service shall be provided for registered guests only. Separate/additional kitchens for guests are not allowed. Additional services and special events may be allowed only as specifically provided by the Use Permit approval for the facility, where the review authority determines that the type and frequency of the approved services and events will not adversely affect the residential character of the neighborhood, or allow for a use more intensive than typically associated with a B&B within the City.

B~~D~~. Off-street parking. Off-street parking shall be provided at a ratio of one space for each guest room, plus two spaces for the on-site owner/manager of the B&B. Parking shall not be located in the required front and side setbacks; and any night lighting for the parking area shall be limited to the minimum number of fixtures and illumination levels necessary for safety, and shall comply with Section 18.30.070 (Outdoor Lighting).

C~~E~~. Signs. See Chapter 18.38.

Comment [MJ4]: These requirements are not necessary as B&Bs are not allowed in residential districts. The one legal non-conforming B&B will have to comply with that section of the code.

18.42.060 - Child Day Care Facilities

Comment [MJ5]: This section was updated in 2014. No additional edits are required.

A. Applicability. Where allowed by Article 2 (Zoning Districts and Allowable Land Uses) child day care facilities shall comply with the standards of this Section. These standards apply in addition to the other provisions of this Development Code and requirements imposed by the California Department of Social Services (DSS). DSS Licensing is required for all facilities.

B. Definitions. Definitions of the child day care facilities regulated by this Section are in Article 10 (Glossary) under "Day Care."

C. Standards for large family day care homes. As required by State law, a Minor Use Permit for a large family day care home shall be approved if it complies with the following standards.

1. Location requirements. In order to avoid the concentration of intensive, non-residential land uses in residential neighborhoods, maintain residential character, and compatibility with adjacent residential uses, no large family day care home shall be located within 200 feet of an existing large family day care home, or child day care center. In no case shall a residential property be directly abutted by a large family day care center on two or more sides.

2. Parking, drop-off area.

a. At least two off-street parking spaces shall be provided exclusively for dropping off and picking up children. The driveway may be used to provide the off-street parking required by Section 18.36.040 (Number of Parking Spaces Required) for a single-family dwelling, if the parking will not obstruct any required drop-off and pick up areas nor block any sidewalks or other public access. Alternative parking and drop-off arrangements may be required by the review authority based on traffic and pedestrian safety considerations.

b. A home located on a street with a speed limit of 30 miles per hour or greater shall provide a drop-off/pick-up area designed to prevent vehicles from backing onto the street (e.g., circular driveway).

3. Outdoor activity areas.

a. Any side or rear setback areas intended for day care use shall be enclosed with a fence or wall to separate the children from neighboring properties.

b. Outdoor recreation equipment over eight feet in height shall not be located within a required side setback, and shall be set back a minimum of five feet from a rear property line.

4. Noise. Noise generated from the large family day care home shall not exceed the standards in Municipal Code Chapter 9.44.

5. Additional standards. Each large family day care home shall comply with applicable building and fire codes, and standards adopted by the State and Social Services Department licensing requirements (California Code of Regulations, Title 22, Division 2).

D. Standards for child day care centers.

1. Fencing. Design Review shall be required for any proposed fencing.

2. Parking and loading.

a. Off-street parking shall be provided as required through the Minor Use Permit process, but shall be a minimum of one space per employee on the largest shift, plus one space for each 10 children authorized by the State license. An exception to these off-street parking requirements may be granted if the facility complies with the following criteria:

i) The exception shall be granted only for uses in an existing building, and shall not be granted for any expansion of gross floor area or new construction;

ii) Off-street parking shall be provided on the site in the maximum amount feasible;

iii) The exception shall only be granted in a situation where the City Engineer has determined that the exception will not result in potentially unsafe conditions for vehicles or pedestrians;

iv) Each Minor Use Permit that grants an off-street parking exception shall be reviewed annually, and if it is found that the use of on-street parking spaces by the facility is creating a nuisance, the City may initiate proceedings to revoke the Minor Use Permit.

b. Picking up and dropping off of children shall not create unsafe conditions. Loading and unloading of children from vehicles shall only be allowed in the driveway or in an approved parking area.

3. Noise. Potential noise sources shall be identified during the Minor Use Permit process, and noise attenuation and sound dampening shall be addressed.

18.42.070 - Drive-Through Facilities

This Section establishes standards for the development and operation of drive-through facilities for very limited types of retail or service activities (e.g., ATMs, banks, or pharmacies) where allowed by Article 2 (Zoning Districts and Allowable Land Uses).

A. General standards.

1. Design objectives. Drive-through facilities shall only be permitted if the design and operation avoids congestion, excessive pavement, litter, and noise.

2. Limitation on location. A drive-through facility shall only be located to the rear of a building. A drive-through facility shall not be located within the CBD zone ~~only if the review authority determines that the facility is ancillary to a use that is primarily pedestrian oriented~~.

Comment [MJ6]: Drive through facilities don't make sense in the CBD.

B. On-site circulation standards. A drive-through facility shall be provided internal circulation and traffic control as follows.

1. Aisle design.

a. The entrance/exit of any drive aisle shall be a minimum of 50 feet from an intersection of public rights-of-way (measured at the closest intersecting curbs) and at least 25 feet from the edge of any driveway on an adjoining parcel.

b. Drive aisles shall be designed with a minimum 10-foot interior radius at curves and a minimum 10-foot width.

2. Stacking area. A clearly identified area shall be provided for vehicles waiting for drive-up or drive-through service that is physically separated from other on-site traffic circulation.

a. The stacking area shall accommodate a minimum of three cars for each drive-up or drive-through window in addition to the vehicle receiving service.

b. The stacking area shall be located at and before the service window (e.g., pharmacy, teller, etc.).

c. Separation of the stacking area from other traffic shall be by concrete curbing or paint striping on at least one side of the lane.

d. Stacking areas adjacent and parallel to streets or public rights-of-way shall be prohibited.

3. Walkways. An on-site pedestrian walkway shall not intersect a drive-through aisle.

4. Exceptions. The review authority may approve alternatives to the requirements of Subsections B.1 through B.3 where it first finds that the alternate design will, given the characteristics of the site, be equally effective in ensuring on- and off-site pedestrian and vehicular traffic safety and minimizing traffic congestion.

C. Signs. Each entrance to, and exit from, a drive-through aisle shall be clearly marked to show the direction of traffic flow by signs and pavement markings or raised curbs. Signage shall also be provided to indicate whether the drive-through facility is open or closed.

18.42.080 - Home Occupations

The following standards for home occupations are intended to provide reasonable opportunities for employment within the home, while avoiding changes to the residential character of a dwelling that accommodates a home occupation, or the surrounding neighborhood, where allowed by Article 2 (Zoning Districts and Allowable Land Uses). The Director may waive or modify limitations on use and/or operating standards for home occupations in single-family residences located within the Commercial zoning districts.

A. Business License required. A home occupation shall require a City Business License.

B. Limitations on use. The following are examples of business activities that may be approved as home occupations, and uses that are prohibited as home occupations.

1. Uses allowed as home occupations. The following and other uses determined by the Director to be similar may be approved by the Director in compliance with this Section.

a. Art and craft work (ceramics, painting, photography, sculpture, etc.);

b. Tailors, sewing, etc.; and

c. Office-only uses, including an office for an architect, attorney, consultant, counselor, insurance agent, planner, tutor, writer, etc., and electronic commerce.

2. Uses prohibited as home occupations. The following are examples of business activities that are not incidental to or compatible with residential activities, and are, therefore, prohibited as home occupations:

a. Adult entertainment activities/businesses;

b. Animal hospitals and boarding facilities;

c. Automotive and other vehicle repair and service (body or mechanical), painting, storage, or upholstery, or the repair, reconditioning, servicing, or manufacture of any internal combustion or diesel engines, or of any motor vehicle, including automobiles, boats, motorcycles, or trucks;

d. Contractor's and other storage yards;

e. Dismantling, junk, or scrap yards;

f. Fitness/health facilities (except that one-on-one personal trainers may be allowed);

g. Medical clinics, laboratories, or doctor's offices;

h. Personal services as defined in Article 10 (Glossary), except that licensed massage therapy and physical therapy may be allowed as home occupations in compliance with this Section;

i. On-site sales, except that mail order businesses may be allowed where there is no stock-in-trade on the site;

j. Uses which require explosives or highly combustible or toxic materials;

k. Welding and machine shop operations;

l. Wood cutting businesses; or

m. Other uses the Director determines to be similar to those listed above.

C. Operating standards. Home occupations shall comply with all of the following operating standards.

1. Accessory use. The home occupation shall be clearly secondary to the full-time use of the property as a residence.

2. Location of home occupation activities.

a. RR zoning district. Allowed home occupation activities may be conducted within an approved accessory structure in the RR zoning district, provided that two covered parking spaces are continually maintained.

b. Other zones. All home occupation activities shall be confined completely to one room within the primary dwelling, which shall not occupy more than 25 percent of the gross floor area of the ground floor. Garages or other enclosed accessory structures may be used for home occupation purposes only if required off-street parking spaces are continually maintained. Horticulture activities may be conducted outdoors, but only within the rear one-third of the site.

3. Visibility. The use shall not require any exterior modification to the structure not customarily found in a dwelling, nor shall the home occupation activity be visible from a public right-of-way, or from neighboring residential properties.

4. Signs. There shall be no advertising signs, other than one name plate, not exceeding one square foot in area, and only if attached flush to a wall of the structure.

5. Safety. Activities conducted and equipment or material used shall not change the fire safety or occupancy classifications of the premises. The use shall not employ the storage of explosive, flammable, or hazardous materials beyond those normally associated with a residential use.

6. Off-site effects. No home occupation activity shall create dust, electrical interference, fumes, gas, glare, light, noise, odor, smoke, toxic/hazardous materials, vibration, or other hazards or nuisances as determined by the Director.

7. Outdoor display or storage. There shall be no window display or outdoor storage or display of equipment, materials, or supplies associated with the home occupation.

8. Employees. A home occupation shall have no on-site employees other than full-time residents of the dwelling.

9. Client/customer visits. The home occupation shall be operated so as to not require more than eight vehicle trips per day of clients, customers, visitors, and/or service visits to the residence. On-site presence of clients or customers shall be limited to one client or family at a time, and only between the hours of 9:00 a.m. and 8:00 p.m.

10. Motor vehicles. There shall be no motor vehicles used or kept on the premises, except residents' passenger vehicles, and/or one pickup truck, van, or similar vehicle not exceeding 1.5 ton carrying capacity. The home occupation shall not involve the use of commercial vehicles for delivery of materials to or from the premises in a manner different from normal residential usage, except for FedEx, UPS, or USPS-type home deliveries/pick-ups. The Commission may authorize other types and/or additional vehicles with Use Permit approval.

11. Utility service modifications. No utility service to the dwelling shall be modified solely to accommodate a home occupation, other than as required for normal residential use.

D. Home working operations. Small-scale commercial wood and metal working may be authorized by Minor Use Permit as a home occupation, provided that the review authority may require conditions of approval limiting hours of operation, noise levels, and/or any other aspect of the operation, to ensure compatibility with on-site and adjacent residential uses.

18.42.090 - Live/Work Units

Comment [MJ7]: This section was updated in 2014.

A. Purpose. This Section provides standards for the development of new live/work units and for the reuse of existing commercial and industrial structures to accommodate live/work opportunities where allowed by Article 2 (Zoning Districts and Allowable Land Uses). A live/work unit shall function predominantly as work space with incidental residential accommodations that meet basic habitability requirements. The standards of this Section do not apply to mixed use projects, which are instead subject to Section 18.42.100 (Mixed Use Projects).

B. Application requirements. In addition to the information and materials required for a Use Permit application by this Development Code, the review authority may require a Use Permit application for a live/work unit to include a Phase I Environmental Assessment for the site, including an expanded site investigation to determine whether lead based paint and asbestos hazards are present in an existing structure proposed for conversion to live/work. The purpose of this requirement is to assess whether there are any hazardous or toxic materials on the site that could pose a health risk to the residents. If the Phase I assessment shows potential health risks, a Phase 2 Environmental Assessment shall be prepared and submitted to the Department in order to determine if remediation may be required.

C. Limitations on use. The nonresidential component of a live/work project shall only be a use allowed within the applicable zoning district. A live/work unit shall not be established or used in conjunction with any of the following activities:

1. Adult businesses;

2. Vehicle maintenance or repair (e.g., body or mechanical work, including boats and recreational vehicles), vehicle detailing and painting, upholstery, etc.);

3. Any other activity or use, as determined by the Director to not be compatible with residential activities and/or to have the possibility of affecting the health or safety of live/work unit residents, because of the potential of exposure to dust, glare, heat, noise, noxious gases, odor, smoke, traffic, vibration, or other impacts, or would be hazardous because of materials, processes, products, or wastes within the residential (living) portion of the live/work unit.

D. Residential density. Live/work units shall not exceed a maximum density of 15 units per acre.

E. Occupancy requirement. The residential space within a live/work unit shall be occupied by at least one individual employed in the business conducted within the live/work unit.

F. Design standards.

1. Floor area requirements. No more than 40 percent of the floor area shall be reserved for living space as defined under "Live/Work Unit" in Article 10 (Glossary). All remaining floor area shall be reserved and regularly used for working space.

2. Separation and access. Each live/work unit shall be separated from other live/work units or other uses in the structure. Access to each live/work unit shall be provided from a public street, or common access areas, corridors, or halls. The access to each unit shall be clearly separate from other live/work units or other uses within the structure.

3. Facilities for commercial or industrial activities, location. A live/work unit shall be designed to accommodate commercial or industrial uses as evidenced by the provision of flooring, interior storage, ventilation, and other physical improvements of the type commonly found in exclusively commercial or industrial facilities used for the same work activity.

4. Integration of living and working space. The living and work space of the Live/work unit shall be combined within one integrated structure. The living space of a live/work unit shall be accessed only by means

of an interior connection from the work space, and shall have no exterior access except as required by the Building Code.

5. Mixed occupancy structures. If a structure contains mixed occupancies of live/work units and other nonresidential uses, occupancies other than live/work shall meet all applicable requirements for those uses, and proper occupancy separations shall be provided between the live/work units and other occupancies, as determined by the Building Official.

G. Operating requirements.

1. Sale or rental of portions of unit. No portion of a live/work unit may be separately rented or sold as a commercial or industrial space for any person not living in the premises or as a residential space for any person not working in the same unit.

2. Notice to occupants. The owner or developer of any structure containing live/work units shall provide written notice to all live/work occupants and users that the surrounding area may be subject to levels of dust, fumes, noise, or other effects associated with commercial and industrial uses at higher levels than would be expected in more typical residential areas. State and Federal health regulations notwithstanding, noise and other standards shall be those applicable to commercial or industrial properties in the applicable zoning district.

~~3~~. On-premises sales. On-premises sales of goods is limited to those produced within the live/work unit, provided the retail sales activity shall be incidental to the primary production work within the unit. These provisions shall allow occasional open studio programs and gallery shows.

4. Nonresident employees. Up to two persons who do not reside in the live/work unit may work in the unit, unless this employment is prohibited or limited by the Use Permit. The employment of three or more persons who do not reside in the live/work unit may be allowed, subject to Use Permit approval, based on an additional finding that the employment will not adversely affect parking and traffic conditions in the immediate vicinity of the unit. The employment of any persons who do not reside in the live/work unit shall comply with all applicable Uniform Building Code (UBC) requirements.

5. Client and customer visits. Client and customer visits to live/work units are allowed subject to any applicable conditions of the Use Permit to ensure compatibility with adjacent commercial or industrial uses, or adjacent residentially-zoned areas.

H. Changes in use. After approval, a live/work unit shall not be converted to either entirely residential use or entirely business use unless authorized through Use Permit approval. No live/work unit shall be changed to exclusively residential use in any structure where residential use is not allowed, where two or more residential units already exist, or where the conversion would produce more than two attached residential units.

I. Required findings. The approval of a Use Permit for a live/work unit shall require that the review authority first make all of the following findings, in addition to those findings required for Use Permit approval by Section 18.71.060 (Use Permit and Minor Use Permit):

1. The proposed use of each live/work unit is a bona fide commercial or industrial activity consistent with Subsection C. (Limitations on use);

2. The establishment of live/work units will not conflict with nor inhibit commercial or industrial uses in the area where the project is proposed;

3. The structure containing live/work units and each live/work unit within the structure has been designed to ensure that they will function predominantly as work spaces with incidental residential accommodations meeting basic habitability requirements in compliance with applicable regulations; and

4. Any changes proposed to the exterior appearance of the structure will be compatible with adjacent commercial or industrial uses where all adjacent land is zoned for commercial or industrial uses.

18.42.095 - Medical Marijuana Dispensaries
Medical Marijuana Dispensaries, as defined in Section 18.100.020, shall be allowed per the requirements of Fort Bragg Municipal Code Chapter 9.30. (Ord. 851 §3, 2005.)

18.42.100 - Mixed Use Projects

Comment [MJ8]: This section was updated in 2014.

This Section provides standards for the design of mixed use projects, where allowed by Article 2 (Zoning Districts and Allowable Land Uses). A mixed use project combines residential and nonresidential uses on the same site, with the residential units typically located above the nonresidential uses (vertical mixed use). Residential units may be also allowed at ground level behind street-fronting nonresidential uses (horizontal mixed use) only under the limited circumstances specified by this Section.

A. Design considerations. A mixed use project shall be designed to achieve the following objectives.

1. The design shall provide for internal compatibility between the residential and non-residential uses on the site.

2. Potential glare, noise, odors, traffic, and other potential nuisance conditions for residents shall be minimized to allow a compatible mix of residential and nonresidential uses on the same site.

3. The design shall take into consideration existing and potential future uses on adjacent properties and shall include specific design features to minimize potential impacts.

4. The design shall ensure that the residential units are of a residential character, and that appropriate privacy between residential units and other uses on the site is provided.

5. Site planning and building design shall provide for convenient pedestrian access from the public street into the nonresidential portions of the project, through such means as courtyards, plazas, walkways, and street furniture.

6. Site planning and building design shall be compatible with and enhance the adjacent and surrounding residential neighborhood in terms of building design, color, exterior materials, landscaping, lighting, roof styles, scale, and signage.

B. Mix of uses. A mixed use project may combine residential uses with any other use allowed in the applicable zoning district where allowed by Article 2 (Zoning Districts and Allowable Land Uses); provided, that where a mixed use project is proposed with a use that is required to have Minor Use Permit or Use Permit approval in the applicable zoning district, the entire mixed use project shall be subject to that permit requirement.

C. Maximum density. The residential component of a mixed use project shall comply with the density requirements of the applicable General Plan designation and zoning district.

D. Site layout and project design standards. Each proposed mixed use project shall comply with the property development standards of the applicable zoning district and the following requirements.

1. Location of units. Residential units shall not occupy ground floor street frontage on the primary street frontage. Residential units are allowed on the first floor of alleys and secondary street frontages. The ground floor street frontage space within a mixed use building shall be reserved for commercial uses, except for a lobby or other feature providing access to the residential units.

2. Parking. In order to encourage the development of residential uses in existing and new commercial areas, the use of shared parking provisions shall be incorporated into mixed use projects in compliance with Section 18.36.080 (Reduction of Parking Requirements).

3. Loading areas. Commercial loading areas shall be located away from residential units and shall be screened from view from the residential portion of the project to the maximum extent feasible.

4. Refuse and recycling areas. Areas for the collection and storage of refuse and recyclable materials shall be located on the site in locations that are convenient for both the residential and nonresidential uses.

E. Performance standards.

1. Lighting. Lighting for commercial uses shall be appropriately shielded to limit impacts on the residential units.

2. Noise. Each residential unit shall be designed and constructed to minimize nonresidential project noise levels, in compliance with the City's Noise Ordinance. Night-time commercial uses shall minimize noise levels, in compliance with the City's Noise Ordinance.

18.42.110 - Mobile/Manufactured Homes and Mobile Home Parks

This Section provides requirements and development standards for the use of mobile homes and manufactured homes as single-family dwellings outside of mobile home parks, and for mobile home parks, where allowed by Article 2 (Zoning Districts and Allowable Land Uses).

A. Mobile home outside of a mobile home park.

1. Site requirements. The site, and the placement of the mobile home on the site, shall comply with all zoning, subdivision, and development standards applicable to a conventional single-family dwelling on the same parcel.

2. Mobile home design and construction standards. A mobile home outside of a mobile home park shall comply with the following design and construction standards.

a. The exterior siding, trim, and roof shall be of the same materials and treatment found in conventionally built residential structures in the surrounding area, and shall appear the same as the exterior materials on any garage or other accessory structure on the same site.

b. The roof shall have eave and gable overhangs of not less than 12 inches measured from the vertical side of the mobile home, and the roof pitch shall be no less than 3:12.

c. The mobile home shall be placed on a foundation system, subject to the approval of the Building Official.

d. The mobile home is certified under the National Mobile Home Construction and Safety Standards Act of 1974 (42 USC Section 4401 et seq.), and has been constructed after January 1, 1989.

B. Mobile home park standards. The site for the mobile home park shall comply with the following requirements.

1. Planning and design objectives. The City intends that each mobile home park be designed and landscaped to be compatible with adjacent residential and other uses. These standards are intended to provide a means of achieving an environment of stable, desirable character not out of harmony with the surrounding area.

2. Permit requirements. A mobile home park shall require Design Review in compliance with Section 18.71.050, in addition to the Use Permit approval required by Section 18.21.030 (Residential Zoning District Allowable Land Uses and Permit Requirements).

3. Allowable uses. Use Permit approval for a mobile home park may authorize the following uses in addition to individual mobile homes.

a. Accessory uses, limited to awnings, portable, demountable or permanent carports, fences or windbreakers, garages, porches, and storage cabinets.

b. A golf course, lake, park, playground, riding and hiking trails, equestrian facilities, other similar recreational structures and facilities, clubhouses, community centers, laundries, and similar uses; provided that all of these are not allowed on the individual mobile home lots within the mobile home park.

c. Public utility and public service uses and structures.

4. Standards. This Section identifies standards for mobile home park development, recognizing the dual need for moderately priced housing, and standards that will adequately protect residents of the parks and the City as a whole.

a. Phased development. Development may be in phases, so long as each phase complies with the minimum standards of this Section, and no mobile home is occupied in any phase until at least 10 mobile home lots are developed and improved on a minimum of two acres, and authorized by a permit for occupancy in compliance with Health and Safety Code Section 18505.

b. Density. The Commission shall determine the allowable density for each mobile home park, based on the following criteria:

i) The provision of the space necessary for compliance with this Section;

ii) Individual mobile home lots shall be a minimum of 2,400 square feet; and

iii) In no case shall the density of a mobile home park exceed the maximum density of the General Plan and zoning district designation for the subject site.

c. Building lines. Each structure and mobile home shall have a minimum setback of 15 feet from all exterior property lines; and a minimum setback of 20 feet from the right-of-way of any street adjoining the mobile home park. The resulting setback area shall be landscaped and continually maintained, in compliance with Chapter 18.34 (Landscaping Standards).

d. Parking. Parking shall be provided in compliance with Chapter 18.36 (Parking and Loading).

e. Utilities. All utility distribution facilities (including cable television, communication and electric lines and boxes) within a mobile home park shall be placed underground. The developer is responsible for complying with the requirements of this Subparagraph, and shall make the necessary arrangements with the utility companies for the installation of the required facilities.

f. Tenant storage. A minimum of one 75 cubic foot storage cabinet shall be provided on each mobile home site. Adequate solid waste and recyclable materials storage enclosures shall be provided in compliance with Section 18.30.110.

g. Accessory uses. Accessory uses are those that are incidental to the planned residential use, exist for the sole purpose of service to the residents, are customarily found in multi-family developments, and do not alter the character of the residential use.

i) Any structure used for an accessory use shall meet all requirements for a primary structure.

ii) Allowable accessory uses include a management facility, laundry facility, swimming facilities, recreation room, recreational vehicle storage areas, vending machines, and other uses that, in the opinion of the Commission, are of a similar nature.

iii) A mobile home park may contain accessory retail and service uses for park residents as authorized by Use Permit approval, and in compliance with Section 18.42.020 (Accessory Retail and Service Uses).

h. Travel trailers. An occupied travel trailer, camper, motor coach, motor home, trailer coach, or any similar vehicle not certified under the National Mobile Home Construction Safety Standards Act of 1974 (42 USC Section 4401 et seq.) shall not be allowed within a mobile home park. Unoccupied trailers and other recreational vehicles may be stored in an approved on-site storage area where authorized by Use Permit.

i. Fencing. A solid masonry wall, fence, or other decorative landscape screening of the maximum height allowed by this Development Code shall be installed as required by the review authority as part of the Use Permit approval for the mobile home park.

j. Landscaping. Landscaping shall be provided in compliance with Chapter 18.34 (Landscaping Standards).

k. Signs. A mobile home park may be allowed one externally illuminated identification sign not exceeding six feet in height or 24 square feet in area. The sign shall be integrated into the mobile home park landscaping, at a location specified in the Use Permit approval.

l. Skirting. Skirting shall be provided along all sides of each mobile home.

m. Internal streets. Internal street design shall comply with City street standards except where superseded by a standard required by State law.

18.42.120 - Multi-Family Projects

Comment [MJ9]: This section was updated in 2014.

New or remodeled multi-family projects shall comply with the standards of this Section, where allowed by Article 2 (Zoning Districts and Allowable Land Uses). For the purposes of this Section, the term "remodeled" means the reconstruction or remodeling of at least 50 percent of the gross floor area of the original structure.

A. Accessory structures. Accessory structures and uses (e.g., bicycle storage, garages, laundry rooms, recreation facilities, etc.) shall be designed and constructed with an architectural style, exterior colors and materials similar to the structures in the project containing dwelling units.

B. Building facades adjacent to streets. A multi-family project of three or more dwelling units shall be designed so that at least 75 percent of the facade of each building adjacent to a public street is occupied by habitable space with windows. Each facade adjacent to a street shall have at least one pedestrian entry into the structure.

C. Front setback pavement. No more than 40 percent of the front setback area shall be paved for walkways, driveways, and/or other hardcover pavement.

D. Parking location. Off-street parking for a multi-family structure of three or more units shall be located so that it is not visible from the street fronting the parcel. ~~A garage providing parking for a duplex may be located in compliance with the following standards, in addition to the requirements of Chapter 18.36 (Parking and Loading).~~

Comment [SP10]: Duplexes removed from definition of multifamily.

1. Front setback. A garage shall be set back from the front property line at least 10 feet further than the facade of the dwelling, to reduce visual impact from the street.

2. Side setback. When a maintenance easement is granted by the owner of the adjacent parcel to the approval of the Director, a garage may be built to the side property line on that side, but shall be located at least eight feet from the other side property line. Otherwise, a garage shall be set back a minimum of five feet from each side property line.

3. Rear setback. A garage shall be set back a minimum of five feet from a rear property line.

4. Facade width, parking orientation. The front facade of a garage shall not exceed a width of 25 feet. Tandem parking is allowed.

E. Open space. Each multi-family residential project~~, except a duplex,~~ shall include permanently maintained outdoor open space for each dwelling unit (private space), and for all residents (common space), except where the review authority determines that existing public park or other usable public open space is within convenient walking distance, or that the residential units are part of a mixed use project and/or located in a commercial zoning district.

1. Area required. Private and common open space shall be provided as required by Table 4-3.

TABLE 4-3 - MULTI-FAMILY PROJECT OPEN SPACE REQUIREMENTS

Project Size	Minimum Common Open Space Required	Minimum Private Open Space Required

Project Size	Minimum Common Open Space Required	Minimum Private Open Space Required
3 or 4 units	200 sf	100 sf for each unit
5 to 10 units	500 sf	150 sf for each unit with patios
11 and more units	100 sf per unit	100 sf for each unit with balconies

2. Configuration of open space. Required open space areas shall be designed and located as follows. Landscaping shall comply with the requirements of Chapter 18.34 (Landscaping Standards).

a. Common open space. All required open space shall be: easily accessible; continuous, usable site elements; separated from parking areas; safe and secure. Each common open space area shall have a minimum dimension of 12 feet for three and four unit projects, and 20 feet for projects with five or more units.

b. Private open space. Private open space shall be at the same elevation as, and immediately accessible from within the unit. Each private open space area shall have a minimum dimension of eight feet; except that the review authority may authorize different minimum dimensions for upper-floor balconies where the private open space is provided as a balcony or upper floor court.

The review authority may allow required open space to be in different locations and/or with different dimensions where it determines that the alternative approach will provide open space of equivalent utility and aesthetic quality.

3. Maintenance and control of common open space. Required common open space shall be controlled and permanently maintained by the Home Owners Association (HOA). Provisions for control and maintenance shall be included in property covenants of all common interest developments.

F. Outdoor lighting. Outdoor lighting shall be installed and maintained along all vehicular access ways and major walkways, in compliance with 18.30.070 (Outdoor Lighting). The lighting shall be directed onto the driveways and walkways within the development and away from adjacent properties. Lighting of at least one foot candle shall also be installed and maintained within all covered and enclosed parking areas and shall be screened to minimize glare onto public sidewalks. Lighting fixtures/lamps shall be the most energy efficient available. All proposed lighting shall be shown on the required landscape plan.

G. Storage. A minimum of 100 cubic feet of lockable storage area shall be provided for each dwelling outside of the unit, with no dimension less than 30 inches.

H. Universal Design. For projects of more than ten units, one unit shall be designed according to the principles of universal design to ensure handicapped accessibility of the unit.

I. Television antennas. Exterior television antennas, other than satellite dishes less than 39 inches in diameter, are not allowed, except for a single common, central antenna, with underground cable service to each dwelling unit. This restriction shall be included in any property covenants of a common interest development.

J. Window orientation. Where one or more windows are proposed 10 feet or less from a side lot line, or 10 feet from another residential structure on the same site, Design Review shall ensure, to the extent feasible, that the windows are located and/or screened to provide privacy for residents of both structures.

18.42.130 - Outdoor Displays and Sales

A. Applicability. The provisions of this Section apply to temporary and permanent facilities for outdoor display, sales (e.g., garden supply sales, news and flower stands, and similar uses where merchandise is displayed for sale), and outdoor eating areas, where allowed by Article 2 (Zoning Districts and Allowable Land Uses).

B. Temporary outdoor displays and sales. See Section 18.71.030 (Limited Term Permit).

C. Permanent outdoor displays and sales. The permanent outdoor display and sale of merchandise is allowed subject to the following standards.

1. The outdoor display of merchandise shall not exceed a height of six feet above finished grade, unless a greater height is allowed through Minor Use Permit approval.

2. Outdoor display and sales areas shall not encroach into required setback areas or the public right-of-way. In zoning districts where no setback area is required, the outdoor sales area shall be set back a minimum of 10 feet from adjoining property lines unless otherwise allowed through Minor Use Permit approval.

3. Displayed merchandise shall occupy a fixed, specifically approved, location that does not disrupt the normal function of the site or its circulation, and does not encroach upon driveways, landscaped areas, required parking spaces, or pedestrian walkways. A display shall not obstruct intersection visibility or otherwise create hazards for pedestrian or vehicle traffic.

4. The outdoor display and sales area shall be directly related to a business occupying a permanent structure on the subject parcel.

5. The Director may require that outdoor sales and activity areas other than vehicle sales lots, produce stands, and nursery product sales be screened from the view of adjoining public rights-of-way by decorative walls, fences, or landscaping.

6. Additional signs shall not be provided for the outdoor display and sales area beyond those normally allowed for the primary use.

D. News and flower stands. See the City's Mobile Vending Unit regulations in the Municipal Code.

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~~**1. Location requirements.** A news or flower stand shall:~~

~~a. Be located parallel and adjacent to the wall of a structure. A freestanding news or flower stand is allowed only as a roofed kiosk;~~

~~b. In the case of a privately owned stand, not be located within the public right-of-way, within three feet of a display window of any structure abutting the sidewalk, or so as to interfere with or restrict the reasonable use of the window for display purposes.~~

~~**2. Design and construction requirements.**~~

~~a. A stand shall be soundly constructed of wood, metal, or other suitable permanent material, and designed in a manner and color to be compatible with the adjacent structures whether the stand is opened or closed. Security doors shall be designed as an integral part of the structure.~~

~~b. Shelving shall not exceed eight feet in height nor two feet in depth.~~

~~**3. Maintenance.** Each news or flower stand shall be maintained in a clean and neat condition and in good repair, at all times.~~

~~**4. Signs.**~~

~~a. The stands shall not be used for advertising or publicity purposes. Signs shall be for identification only, with size and design in compliance with Chapter 18.38 (Signs).~~

~~b. The owners or operators of the outdoor news or flower stand shall display, in a place readily visible to the public, a telephone number and address where the owners may be reached.~~

~~**5. Additional product sales.** In addition to the sale of newspapers, magazines, and other periodicals, for newsstands, and flowers and plants, for flower stands, the owners or operators may sell other related accessory products, not to exceed 10 percent of the total merchandise displayed.~~

Comment [MJ11]: This section has been replaced by the new Mobile Vending Unit regulations of the Muni Code.

E. Outdoor dining areas.

1. An outdoor dining area may be allowed accessory and incidental to a restaurant with indoor eating area on the same site; provided the outdoor eating area shall also comply with the parking requirements of Section 18.36.040 (Number of Parking Spaces Required) for restaurants.

2. Signs shall comply with Chapter 18.38.

18.42.140 - Outdoor Storage
An outdoor storage or work area shall comply with the following requirements, where allowed by Article 2 (Zoning Districts and Allowable Land Uses).

A. Enclosure and screening required. Outdoor storage areas shall be entirely enclosed by a solid wall or fence as approved by the review authority with a minimum height of six feet and a maximum height of eight feet.

B. Maximum height of stored materials. The materials within the storage area shall not be higher than the fence, except where authorized by the Use Permit for the storage area.

C. Landscaped setback. In any case where an outdoor storage area abuts a street right-of-way, the required screening wall or fence shall be set back from the right-of-way as required by the applicable zoning district, and the set back area shall be landscaped to the approval of the Director, and in compliance with Chapter 18.34 (Landscaping Standards).

18.42.145 - Pipelines and Transmission Lines
Pipelines and transmission lines shall comply with the following requirements, where allowed by Article 2 (Zoning Districts and Allowable Land Uses).

A. Local service facilities. Lines and facilities for local utility service are permitted in all zones.

B. Electric transmission lines. The location of proposed electric transmission lines shall be reviewed by the Commission and approved by the Council prior to right-of-way acquisition.

18.42.150 - Recycling Facilities
This Section establishes standards and procedures for the siting and operation of ~~various types and sizes of~~ commercial recycling facilities, where allowed by Article 2 (Zoning Districts and Allowable Land Uses).

~~**A. Reverse vending machines.** Reverse vending machines shall comply with the following standards.~~

~~**1. Accessory use only.** Each machine shall be installed only as an accessory use to an allowed primary use.~~

~~**2. Location requirements.** If located outside of a structure, a machine shall not occupy parking spaces required by the primary use.~~

~~**3. Signs.** Sign area shall not exceed four square feet for each machine, exclusive of operating instructions. The sign area shall be subject to the overall site sign area limitations in Section 18.38.070 (Zoning District Sign Standards).~~

~~**4. Lighting.** Each machine shall be illuminated to ensure comfortable and safe operation if the machine is accessible between dusk and dawn. The light source shall be shielded so that glare and reflections are confined within the boundaries of the site.~~

Comment [MJ12]: Removed from use tables

B. Small collection facilities. A small collection facility shall comply with the following standards.

1. Location requirements. A small collection facility shall:

a. Not be located within 50 feet of any parcel zoned or occupied for residential use; and

b. Be set back at least 10 feet from any public right-of-way, and not obstruct pedestrian or vehicular circulation.

2. Maximum size. A small collection facility shall not occupy more than 350 square feet. ~~nor three parking spaces, not including space that would be periodically needed for the removal of materials or exchange of containers~~.

3. Appearance of facility. Collection containers and site fencing shall be of a color and design that is compatible and harmonious with the surrounding uses and neighborhoods.

4. Operating standards for small collection facilities. Small collection facilities shall:

a. Not use power-driven processing equipment, except for reverse vending machines;

b. Accept only glass, metal, or plastic containers, paper, and reusable items;

c. Use containers that are constructed with durable waterproof materials, secured from unauthorized removal of material, and shall be of a capacity sufficient to accommodate materials collected and the collection schedule; and

d. Be screened where determined by the review authority to be necessary because of excessive visibility.

5. Signs. Non-illuminated signs may be provided as follows:

a. Identification signs are allowed with a maximum area of 15 percent for each side of the structure or 12 square feet, whichever is greater. In the case of a wheeled facility, the side shall be measured from the ground to the top of the container;

b. Additional directional signs, consistent with Chapter 18.38 (Signs), may be approved by the Director if found necessary to facilitate traffic circulation, or if the facility is not visible from the public right-of-way.

6. Parking requirements.

a. No additional parking space shall be required for customers of a small collection facility located in the established parking lot of the primary use. One additional space shall be provided for the attendant, if needed.

b. Use of parking spaces by the patrons and the attendant shall not reduce available parking spaces below the minimum number required for the primary use unless a parking study, determined to be acceptable by the Director, shows that existing capacity is not fully utilized during the time the recycling facility would be on the site.

C. Large collection facilities. A collection facility that is larger than 350 square feet, or on a separate parcel not accessory to a primary use, shall comply with the following standards.

1. Location requirements. The facility shall not abut a parcel zoned for residential use.

2. Container location. Any containers provided for "after hours" donation of recyclable materials shall be permanently located at least 100 feet from any residential zoning district, constructed of sturdy materials, have sufficient capacity to accommodate materials collected, and be secured from unauthorized entry or removal of materials.

3. Screening. The facility shall be screened from public rights-of-way, by solid masonry walls or located within an enclosed structure.

4. Setbacks, landscaping. Structure setbacks and landscaping shall be provided as required for the applicable zoning district.

5. Outdoor storage. Exterior storage of material shall be in sturdy containers that are secured and maintained in good condition. Storage shall not be visible above the height of the required solid masonry walls.

6. Operating standards.

a. The site shall be maintained clean, sanitary, and free of litter and any other trash or rubbish, shall be cleaned of loose debris on a daily basis, and shall be maintained free from rodents and other disease vectors.

b. Dust, fumes, odor, smoke, or vibration, above ambient levels, shall not be detectable on adjoining parcels.

D. Processing facilities. Processing facilities shall comply with the following standards.

1. Location requirements. The facility shall not abut a parcel zoned or occupied for residential use.

2. Limitation on activities. Allowed activities are limited to baling, briquetting, compacting, crushing, grinding, shredding, and sorting of source-separated recyclable materials and repairing of reusable materials. The facility shall not bale, compact, or shred ferrous metals, other than beverage and food containers. Outbound truck shipments from the site shall not exceed an average of two each day.

3. Maximum size. The facility shall not exceed 45,000 square feet of floor or ground area.

4. Container location. Containers provided for "after hours" donation of recyclable materials shall be permanently located at least 100 feet from any residential zoning district, constructed of sturdy, rustproof materials, have sufficient capacity to accommodate materials collected, and be secured from unauthorized entry or removal of the materials.

5. Screening. The facility shall be screened from public rights-of-way, by solid masonry walls or located within an enclosed structure.

6. Outdoor storage. Exterior storage of material shall be in sturdy containers or enclosures that are secured and maintained in good condition. Storage shall not be visible above the height of the required solid masonry walls.

7. Operating standards. Dust, fumes, odor, smoke, or vibration, above ambient levels, shall not be detectable on adjoining parcels.

18.42.160 - Residential Accessory Uses and Structures

Comment [MJ13]: This section was updated in 2014.

This Section provides standards for residential accessory uses and structures, where allowed by Article 2 (Zoning Districts and Allowable Land Uses). These requirements do not apply to residential second units, which are instead regulated by Section 18.42.170 (Second Units).

A. Limitation on number. Only one residential accessory structure shall be allowed on any parcel in addition to a detached garage, except in the RR and RS zoning districts, and except where a site is two times or more the minimum lot area required for a new parcel in the applicable zoning district.

B. Relationship to primary use. An accessory use and/or structure shall be incidental to the primary residential use of the site, and shall not alter the character of the primary use.

C. Timing of installation. A residential accessory structure shall only be constructed concurrent with or after the construction of the primary structure on the same site, unless:

1. The site is within the RR zoning district, is one acre or larger, and the proposed structure is a garage; or

2. Construction in advance of a primary structure is authorized through Minor Use Permit approval.

D. Attached structures. An accessory structure attached to the primary structure shall comply with all zoning district requirements applicable to the primary structure, including height limits, site coverage, and setbacks; and shall also comply with any applicable requirements of Subsection F.

E. Detached structures. An accessory structure that is detached from the primary structure shall comply with the following standards, except where Subsection F. establishes a different requirement for a specific type of accessory structure.

1. Setbacks.

a. Front setback. An accessory structure shall not be located within a required front setback.

b. Side and rear setbacks. An accessory structure not exceeding 10 feet in height shall maintain side and rear setbacks of at least five feet. An accessory structure with a height greater than 10 feet shall comply with the setback requirements of the applicable zoning district.

c. Separation between structures. An accessory structure shall maintain at least a five-foot separation from other accessory structures and the primary dwelling unit.

d. Double-frontage lot. An accessory structure shall not occupy the front half of a parcel, or either front quarter of a double-frontage lot.

e. Garage accessible from an alley. Where an accessory garage is accessible to vehicles from an alley, it shall be located not less than 25 feet from the opposite side of the alley.

2. Height limit. The height of an accessory structure other than a detached garage shall not exceed 12 feet, except where a greater height is authorized through Minor Use Permit approval. The height limit of a detached garage including any accessory uses, structures, and additions built into or on the detached garage shall not exceed 16 feet, except where a greater height is authorized through Minor Use Permit approval.

3. Coverage and size limitations. Where permitted, the aggregate coverage of accessory structures in required side and rear setbacks shall not exceed 500 square feet. The maximum site coverage for all structures on a parcel shall comply with the requirements of the applicable zoning district.

F. Standards for specific accessory uses and structures. The following requirements apply to the specific types of accessory structures listed, in addition to the requirements of Subsection A., as applicable.

1. Antennas. Antennas shall comply with the requirements of Chapter 18.44 (Telecommunications Facilities).

2. Garages. A garage for a single-family dwelling shall comply with the following requirements. A garage for a multi-family project shall comply with the requirements of Section 18.42.120 (Multi-Family Projects). This limitation does not apply to double lots.

a. Limitation on number. A single parcel shall have only one attached or detached garage, except that this limitation shall not apply in the RR and RS zoning districts, or to a site that is two times or more the minimum lot area required for a new parcel in the applicable zoning district

b. Front setback. Garages shall comply with the garage front setback requirements of the applicable zoning district.

c. Side setbacks. When a maintenance easement is granted by the owner of the adjacent parcel to the approval of the Director, a detached or attached garage may be built to the side property line on that side.~~, but shall be located at least eight feet from the other side property line.~~ Otherwise, a garage shall be set back a minimum of five feet from side property lines.

d. Rear setback. A garage shall be set back a minimum of five feet from the rear property line, except that a garage may be built to the lot line with Minor Use Permit approval.

e. Facade width, parking orientation. The facade of any garage facing a street shall not exceed a width of 25 feet.

3. Greenhouses. An accessory greenhouse may occupy up to 400 square feet for each dwelling unit in the RL and RM zoning districts; and 1,000 square feet or five percent of the parcel area, whichever is smaller, in the RR or RS zoning districts. Accessory greenhouses are not allowed in the RH or RVH zones.

4. Guest houses. Guest houses shall comply with the requirements for second units in Section 18.42.170.

5. Patio covers. A patio cover that is attached to or detached from the primary dwelling, and open on at least three sides, may be located within the required rear setback subject to the following:

a. The five-foot separation from the primary dwelling unit required by Subparagraph E.1.c (Separation between structures), above does not apply;

b. The structure shall comply with the coverage and size limitations of Subparagraph E.3. (Coverage and size limitations), above; and

c. No part of the patio cover shall be closer than 10 feet to a property line.

6. Swimming pools. Non-commercial swimming pools are an allowed accessory use in any zoning district subject to the following requirements:

a. Setbacks. No swimming pool shall be located within a required front or side setback, or within 10 feet of any property line; and

b. Fence or wall. No swimming pool shall be located within three feet of a fence or wall.

7. Tennis and other recreational courts. Non-commercial outdoor tennis courts and courts for other sports, including basketball and racquetball, accessory to a residential use shall comply with the following requirements:

a. Setbacks. No court shall be located within a required setback, or within 10 feet of a property line; and

b. Fencing. Court fencing shall comply with Section 18.30.050 (Fences, Walls, and Screening); and

c. Lighting. Court lighting shall require Minor Use Permit approval, and shall not exceed a maximum height of 20 feet, measured from the court surface. The lighting shall be directed downward, shall only illuminate the court, and shall not illuminate adjacent property, in compliance with Section 18.30.070 (Outdoor Lighting).

8. Workshops, studios, and storage areas. An accessory structure intended as a workshop or studio for artwork, crafts, light hand manufacturing, hobbies and/or storage, is subject to the following standards:

a. Limitation on use. The use of an accessory structure as a studio shall be limited to: non-commercial hobbies or amusements, or comply with Section 18.42.080 (Home Occupations); and

b. Floor area. A workshop studio and/or storage area footprint shall not occupy an area larger than 35 percent of the building footprint of the primary structure.

18.42.165 - Restaurants

The following standards for restaurants are intended to regulate the disposal of grease and oils for the protection of the City of Fort Bragg sewage treatment plant and the environment.

Comment [MJ14]: This section was updated in 2014

A. Operating standards. Restaurants shall comply with the following operating standards.

1. Installation and maintenance of grease trap/interceptor. Grease interceptor installation and maintenance must comply with the City's Food Service Establishment Wastewater Discharge Permit and the City's Municipal Code section regarding Fats, Oil and Grease Control.

2. Washing of restaurant floor mats, exhaust filters. Restaurant floor mats and exhaust filters shall be washed in a sink or wash area that drains to the sanitary sewer, or collected wastewater from such washing shall be discharged to the sanitary sewer.

18.42.170 - Second Units

This Section establishes standards for residential second units, where allowed by Article 2 (Zoning Districts and Allowable Land Uses). The standards set forth in this Section are intended to be consistent with Government Code Section 65852.2, and to the extent that any such standards are determined by the review authority or a court of competent jurisdiction to be inconsistent with Government Code Section 65852.2, such standards shall not apply to residential second units. An application for a second unit that complies with the standards of this Section shall be approved ministerially.

~~**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.~~

Comment [SP15]: Remove for consistency with new state legislation.

B. Limitation on number of units. No more than one second unit shall be approved on a single parcel.

C. Minimum site area. A parcel proposed for a second unit ~~shall be a minimum of 6,000 square feet.~~must be of adequate size to meet the lot coverage requirements of the applicable zoning district after development of the second unit.

D. Relationship to primary use.

1. Size, style. A second unit ~~shall~~ may be incidental and subordinate to the primary single-family residential use of the site in terms of size and location~~ and shall not alter the character of the primary structure~~. A second unit can also be attached to a primary dwelling unit or be one of the units of a duplex.

Comment [MJ16]: Per new state law requirements.

2. Timing of construction. A second unit may be constructed simultaneously with, or after the primary dwelling. In addition, an existing dwelling that complies with the design standards for second units in Subsection E. may be considered a second unit, and a new primary unit may be constructed which would then be considered the primary dwelling unit.

E. Second unit standards. A second unit shall comply with the following standards.

1. Height limit. A second unit shall be limited to 18 feet and one story. A second unit located over a garage may be allowed with a maximum height of 25 feet with Minor Use Permit approval.

2. Setbacks. A second unit shall comply with the setback requirements of the applicable zoning district, unless the second unit is located in a nonconforming structure as defined by Section 18.90.020. No second unit may be permitted above a garage unless the unit complies with the setback standards of the applicable zoning district.

3. Maximum floor area.

a. The floor area of a second unit shall not exceed 960 square feet.

b. For purposes of computing the floor area of a second unit that is detached from the primary unit, all enclosed areas accessed from within the second unit shall be included.

c. An ~~on-site~~ enclosed storage area, or garage of up to 400 square feet, shall not be included when calculating the floor area of the second unit~~, provided that no internal doorway or passage connects the storage or garage and the second unit~~.

4. Separate entrance required. An attached second unit shall have an entrance separate from the entrance to the primary dwelling.

5. Window placement. A second unit that is placed 20 feet or less from a residential unit on the same parcel or an adjacent parcel shall not have windows that directly face windows in the other unit. A second unit that is two stories or located over a garage shall not have windows or balconies that directly face a neighboring yard. This limitation applies only to side yards, not to windows facing alleys.

~~**6. Site coverage.** The maximum site coverage by structures and impervious surfaces shall not exceed 50 percent of the net site area or the maximum coverage allowed by the applicable zoning district, whichever is less.~~

Comment [SP17]: Covered in Article 2 – lot coverage maximums.

~~**F. Off-street parking requirements.** At least one off-street paved parking space shall be provided for a second unit or carriage house in addition to the parking required for the primary dwelling by Chapter 18.36 (Parking and Loading). The parking space shall comply with the location and design requirements of Chapter 18.36. If the primary dwelling was legally constructed at a time when off-street parking was not required (before November 22, 1982), off-street parking shall only be required for the second unit. If feasible, driveway access to required off-street parking shall not eliminate on-street parking spaces. If required driveway access for one off-street space eliminates one on-street parking space; the off-street space shall not be required.~~

Comment [MJ18]: New state law requires that parking not be required if the second unit is located within one half mile of a transit stop. The entire city is located within a half mile of a transit lot.

18.42.180 - Service Stations

This Section establishes standards for the development and operation of motor vehicle service stations (not including card lock facilities), where allowed by Article 2 (Zoning Districts and Allowable Land Uses).

A. Permit and application requirements. A service station shall require Design Review in compliance with Section 18.71.050, in addition to the planning permit required by Article 2. Each application for a new or remodeled service station shall include a photometric plan identifying all proposed light sources and their illumination levels, to assist in evaluating compliance with the outdoor lighting requirements of Subsection D.5 and Section 18.30.070 (Outdoor Lighting). The City may require an applicant to pay the cost for a lighting consultant engaged by the City to evaluate photometric plans and recommend alternatives to proposed lighting.

B. Limitations on location.

1. Prohibited locations. A service station site shall not abut a residential zoning district or residential use.

2. Separation between stations. A service station shall not be closer than 500 feet to another service station except when both are at the same street intersection. The distance shall be measured in a straight line from the nearest property line of the sites for each service station. No more than two service stations shall be located at the same street intersection.

C. Site requirements. A site proposed for a new service station shall:

1. Be located on an arterial street (Main Street and Highway 20) on a site with a minimum of 150 feet of frontage; and

~~2. Have a minimum area of 15,000 square feet and a minimum depth of 100 feet.~~

The Commission may grant an exception to this requirement for a service station within a retail complex site if the Commission determines that the exception improves traffic circulation or reduces traffic. Approval of the exception shall also require that the Commission ensure that the service station is effectively integrated into the architecture and design of the overall retail complex.

D. Site planning standards. The layout of a service station site and its site features shall comply with the following standards.

1. Site access and driveways.

a. Curb cuts for service station driveways shall be separated by a minimum of 30 feet from edge-to-edge.

b. A driveway shall not be located closer than 50 feet to the end of a curb corner nor closer than 25 feet to an interior property line.

c. The width of a driveway shall not exceed 25 feet, measured at the sidewalk.

d. Each pump island shall be provided a stacking area that can accommodate a minimum of three waiting vehicles.

2. Setback requirements.

a. Pump islands shall be located a minimum of 15 feet from any property line to the nearest edge of the pump island.

b. A canopy or roof structure over a pump island shall be a minimum of 10 feet from any property line.

3. Pavement. A service station site shall be paved with a permanent surface of concrete or asphalt material and shall contain drainage facilities in compliance with all Federal, State, and local laws, rules, and regulations. Any unpaved portion of the site shall be landscaped and separated from the paved area by curbs or other barrier approved as part of the Design Review for the site.

4. Landscaping. Landscaping, consisting of trees, ground cover, shrubs, vines, and/or other plant materials approved by the review authority shall be installed, permanently maintained and, if necessary, replaced, in compliance with the following standards, and the requirements of Chapter 18.34 (Landscaping Standards).

a. A minimum of 15 percent of the entire site shall be landscaped.

b. Boundary landscaping is required along all property lines abutting streets, except for driveways.

c. Landscaped areas shall have a minimum width of eight feet, and shall be separated from abutting vehicular areas by a wall or curbing at least six inches higher than the abutting pavement.

d. A corner site shall be provided a planter area of at least 200 square feet at the street corner, except where a building is located at the corner.

e. Additional landscaping may be required by the Commission to screen the service station from adjacent properties.

f. All landscaping on the site shall be placed and maintained to provide safe sight distances for pedestrians and drivers.

5. Lighting. Exterior lights, including canopy, perimeter, and flood shall be stationary, and shielded or recessed within the roof canopy to ensure that all light is directed away from adjacent properties and public rights-of-way. Lighting shall not be of a high intensity so as to cause a traffic hazard, be used as an advertising element, or adversely affect adjacent properties, in compliance with Section 18.30.070 (Outdoor Lighting). Lighting fixtures/lamps shall be the most energy efficient available, including fluorescent, compact fluorescent, low pressure sodium, high pressure sodium, or other lighting technology that is of equal or greater energy efficiency.

6. Signs and banners. Signs, banners, and promotional flags shall comply with Chapter 18.38 (Signs).

7. Solid waste and recyclables storage. The storage and disposal of solid waste and recyclable materials, including used or discarded motor vehicle parts or equipment, and fluids, shall comply with all applicable Federal, State, and local requirements. Outdoor solid waste and recyclable storage areas shall be screened by a

solid masonry wall with a height of six feet, or as approved by the review authority. The wall design, materials, and colors shall be compatible with the primary structures on the site, as determined by the review authority.

E. Building design standards. Each new service station shall comply with the following standards.

1. Architectural character. Subject to the requirements of Design Review, service station architecture shall fit with the existing or intended character of the surrounding area as determined by the review authority.

2. Bay orientation. Service bay openings shall not face a public street.

3. Restrooms. Each service station shall maintain one or more restrooms available for use by the general public without charge. Restroom entrances shall be screened from the view of the public right-of-way.

F. Facility operating standards.

1. Restriction on outdoor activities. Outdoor activities on a service station site shall be limited to fueling, replenishing air, water, oil and similar fluids, and the replacement of minor parts (e.g., lamp bulbs, wiper blades, and other similar items) requiring only the use of small hand tools while a vehicle is being serviced at the pump island. Where minor auto repair is permitted by Article 2, all repair activities shall occur entirely within an enclosed structure.

2. Display. There shall be no outdoor display of equipment or merchandise, except as allowed in compliance with Subsection G.1 (Outdoor storage).

3. Vehicle parking. Vehicles shall not be parked on sidewalks, parkways, driveways, or alleys, and shall not be parked on the premises for the purpose of sale.

G. Appurtenant uses. The following appurtenant uses are prohibited unless specifically allowed as part of Use Permit approval.

1. Outdoor storage. One or more outdoor storage and display cabinets or enclosures other than the primary structure may be approved by the review authority, provided that their combined total area shall not exceed 50 square feet. The construction and finish of storage and display cabinets shall be compatible with the primary structures on the site, as determined by the review authority. Outdoor storage and display cabinets may be used only for the display and sale of brake fluid, gasoline additives, oil, transmission fluid, windshield wipers and fluid, and other similar merchandise. The outdoor storage of tires shall be prohibited. No outdoor vending machines are allowed.

2. Tow truck operations. Where tow truck operations are approved as part of a service station by the review authority, no abandoned, disabled, junked, wrecked, or otherwise non-operational motor vehicles shall remain on site for more than five days, and shall be stored entirely within an enclosed structure.

3. Convenience sales - Parking. Where allowed, the sale of beer and wine, other drinks, food, and/or other merchandise shall be provided off-street parking in compliance with Chapter 18.36 (Parking and Loading).

4. Prohibited uses. The following uses are prohibited.

a. The rental, sale, or storage of garden supplies, tools, trailers, travel trailers, vehicles, and other similar materials and merchandise, except the short term storage of vehicles allowed in compliance with Subsection G. 2. (Tow truck operations), above.

b. Incidental uses such as pinball or video game machines, pool tables, or laundry facilities.

H. Removal of tanks upon cessation or change of use. If, for any reason, a service station ceases to sell gasoline for more than 115 out of 120 days, all gasoline pumps and signs shall be removed from the site and all gasoline storage tanks shall be removed or treated in compliance with Federal and State regulations, subject to the approval of the Fire Department.

Chapter 18.44

TELECOMMUNICATIONS FACILITIES

Comment [MJ19]: This section was updated in 2014

Sections:

18.44.010 Purpose
18.44.020 Definitions
18.44.030 Applicability
18.44.040 Permit Requirements
18.44.050 Limitations on Location
18.44.060 Facility Design and Development Standards
18.44.070 Operation and Maintenance Standards
18.44.080 Discontinuance and Site Restoration

18.44.010 - Purpose
This Chapter establishes development standards consistent with Federal law to: regulate the placement and design of communication facilities so as to preserve the unique visual character of the City, promote the aesthetic appearance of the City, and to ensure public safety and welfare; pursue additional benefits from the facilities to the public by encouraging the leasing of publicly owned properties where feasible for the development of communication facilities; and to provide the community with full coverage (no service gaps) by the cell phone and telecommunication providers that require cell tower facilities within the City.

18.44.020 - Definitions
The technical terms and phrases used in this Chapter are defined in Article 10 (Glossary) under "Telecommunications Facility."

18.44.030 - Applicability
The location, permit requirements, and other provisions of this Chapter shall apply to all communications facilities within the City, except the following, which are exempt from this Chapter. All communication facilities shall also comply with all applicable requirements of State and Federal law.

A. Replacement or modification of previously permitted facilities or equipment determined by the Director to be of a minor nature that does not increase the number or height of antennas or significantly change or enlarge the ancillary related equipment at the site.

B. An antenna that is one meter (39.37 inches) or less in diameter or diagonal measurement, that is designed:

1. To receive direct broadcast satellite service, including direct-to-home satellite service, as defined by Section 207 of the Telecommunications Act of 1996 Code of Federal Regulations Title 47, and any interpretive decisions thereof issued by the Federal Communications Commission; or

2. For subscribing to a multipoint distribution service.

C. A satellite earth station (SES) antenna of two meters (78.74 inches) or less in diameter or diagonal measurement, located in a commercial or industrial zoning district, that is designed to transmit or receive radio communications by satellite or terrestrial communications antenna. These antennas may require a Building Permit and approval of the placement by the Director to ensure maximum safety is maintained. In order to avoid tripping hazards and the creation of an attractive nuisance, these antennas shall be placed whenever possible, on the top of buildings as far from the edge of rooftops as possible.

18.44.040 - Permit Requirements
A. Use Permit or Minor Use Permit. Use Permit approval is required for all communication facilities subject to this Chapter, except for the following, which shall require Minor Use Permit approval. The Director shall ensure through the Minor Use Permit approval that each of the following facilities complies with all applicable requirements of this Chapter. The Director may also choose to defer action and refer any of the following facilities to the Commission for consideration as a Use Permit application.

1. An antenna that is installed, placed, and maintained under the roofline of an existing structure, or above, behind, and below an existing approved roof screen and does not extend above the highest point of the structure, or is camouflaged within an existing structure so as not to be visible from a public right-of-way or other property.

2. A communication facility in which the antenna is mounted on a mast less than 10 feet high, is not located on a historic structure, and is not visible from a public right-of-way.

3. An amateur and/or citizens band antenna operated by a person holding a license issued by the FCC in compliance with 47 C.F.R. Part 97, and used solely in connection with that license, and which shall be subject to the "minimum practicable regulation to accomplish the local authority's legitimate purpose," in keeping with the order of the FCC known as "PRB-1," FCC 85-506, released September 19, 1985; provided that there shall be no more than one antenna support structure on a single parcel and that the antenna structure complies with the height limits of the applicable zoning district.

B. Application requirements. In addition to the information required for Use Permit or Minor Use Permit application by Chapter 18.70 (Permit Application Filing and Processing) the application for a communication facility shall include:

1. An analysis of the proposed facility in combination with existing adjacent facilities that illustrates that the facility complies with State and Federal health requirements and standards pertaining to electromagnetic and/or radio frequency radiation; and

2. A report, as required by the Police Department, to evaluate the potential for interference (e.g., HF, UHF, VHF, 800 mHz). The applicant shall be responsible for paying any costs incurred by the City, including the costs of retaining consultants, to review and analyze the report.

C. Master Use Permit. A service provider who intends to establish multiple wireless Telecommunications Facilities within the City is encouraged to apply for the approval of all facilities under a Master Use Permit. Under this approach, all proposed facilities may be acted upon by the City as a single application, ensuring feasibility of long range company projections.

D. Communications consultant may be required. In the event that the City needs assistance in understanding the technical aspects of a particular proposal, the services of a communications consultant may be requested to determine the engineering or screening requirements of establishing a specific wireless communications facility. This service will be provided at the applicant's expense.

E. Required findings for approval. The approval of a Use Permit or Minor Use Permit for a communication facility shall require that the review authority first make the following findings, in addition to those required for Use Permit approval by Section 18.71.060 (Use Permit and Minor Use Permit):

1. The communication facility complies with all applicable requirements of this Chapter; and

2. The communication facility will not adversely impact the character and aesthetics of any public right-of-way.

18.44.050 - Limitations on Location

A. Zoning district priorities. A communication facility that requires a Use Permit shall be approved or located only within the PF (Public Facility) zoning district; except that the review authority may approve a facility within a commercial or industrial district if it first determines that the applicant has demonstrated that all PF zoning district options are infeasible, and/or there is no site within a PF district where the communication facility would provide adequate coverage.

B. Co-location required. A new communication facility shall be co-located with existing facilities and with other planned new facilities whenever feasible, and whenever determined by the review authority to be aesthetically desirable. A service provider shall co-locate a new communication facility with non-communications facilities (e.g.,

light standards, water tanks, and other utility structures) where the review authority determines that this co-location will minimize the overall visual impact.

1. A service provider shall exhaust all reasonable measures to co-locate their communications facilities on existing towers or with or within existing ancillary support equipment facilities before applying for a new communication facility site.

2. Each service provider shall provide the City with evidence that they have contacted all other potential providers who have, or who are reasonably likely to be installing facilities within the vicinity of the proposed facility and have offered to participate in a joint installation project on reasonable terms.

3. In order to facilitate co-location, Use Permit conditions of approval for a new facility shall require each service provider to cooperate in the siting of equipment and antennas to accommodate the maximum number of operators at a given site where determined by the review authority to be feasible and aesthetically desirable.

C. City-owned property. A communication facility shall not adversely affect the public health, peace, safety or welfare. In order to best benefit the citizens of Fort Bragg from this necessary community impact, the Commission shall always consider City-owned sites as the highest priority for the location of communication facilities.

18.44.060 - Facility Design and Development Standards
Each proposed communication facility shall comply with the following standards; except that any standard may be modified or waived by the review authority upon a determination that effective signal reception and transmission will not occur if the facility complies with these standards.

A. Facility placement.

1. Standards for all facilities.

a. A roof-mounted antenna on a structure that complies with applicable height limits shall be set back from the nearest roof edge the equivalent of the height of the tower or a minimum of 10 feet, whichever is greater.

b. A ground-mounted communication facility (including towers and antennas) shall be located as far as possible from all property boundaries, and set back from the property line at a ratio of 1.5 horizontal feet for every one foot of height, where feasible.

c. A tower or antenna shall be set back from any site boundary or public right-of-way by a minimum of 25 feet. No part of any tower shall extend into a required front setback or beyond a property line of the site.

d. Communication facilities other than towers and antennas shall be located either within a structure, underground, in a rear yard (not visible from a public right-of-way) or on a screened roof top area. A ground-mounted facility that is located within a front or side setback or within a public right-of-way shall be underground so that the facility will not detract from the image or appearance of the City.

2. Facilities within commercial and industrial districts. Within an industrial zoning district, a minimum distance of 500 feet shall be provided between towers, and there shall be no more than two towers on a single Assessor's parcel or developed site, unless the towers are located on a public facility as described in A.1, above.

B. Height limitations.

1. All ground mounted communication equipment, antennas, poles, or towers shall be of a minimum functional height.

2. The height of a tower located on the ground shall not exceed 60 feet in the PF zoning district and 40 feet in a commercial or industrial zoning district. The review authority may grant an exception to allow towers of up

to 80 feet where the review authority determines that the increased height is necessary for adequate coverage, and the tower will co-locate service providers.

3. The height of a communications facility located on a structure other than a dedicated support tower shall not exceed 20 feet above the highest point of the structure and shall at no time exceed the height allowed by the subject zoning district.

4. An antenna mounted on the side of a structure shall not extend above the structure's parapet so that it is visible from below against the sky.

C. Colors and materials. All antennas, poles, towers, or equipment, including ancillary support equipment, shall have a non-reflective finish and shall be painted or otherwise treated to match or blend with the primary background and minimize visual impacts. Antennas attached to a structure shall be painted or otherwise treated to match the exterior of the structure or the antenna's background color. All ground-mounted equipment shall be covered with a clear anti-graffiti type material of a type approved by the Director or shall be adequately secured to prevent graffiti.

D. Screening, landscaping. All ground mounted equipment, antennas, poles, or towers shall be sited to be screened by existing development, topography, or vegetation. Ground mounted facilities shall be located within structures, underground, or in areas where substantial screening by existing structures or vegetation can be achieved. Additional new vegetation or other screening may be required by the Director or by the Commission. The applicant shall use the smallest and least visible antennas possible to accomplish the owner/operator's coverage objectives.

E. Additional screening and landscaping. As part of project review, the Director, the Commission, or the Council (on appeal) may require additional screening and/or landscaping, undergrounding, an alternative color scheme, or relocation of a tower or ancillary equipment to a less obtrusive area of the site where it would have a less prominent visual presence due to slope, topography, size, or relationship to public rights-of-way.

F. Power lines. All power lines to and within a communication facility site shall be underground.

G. Backup power supplies. A backup power supply (i.e., generator) shall be enclosed within a structure and operated in compliance with Section 18.44.060.D (Screening). In any zoning district, ancillary power supplies and fuel storage tanks to support backup power supplies shall require Use Permit approval.

18.44.070 - Operation and Maintenance Standards

A. Contact and site information. The owner or operator of any facility shall submit and maintain current at all times basic contact and site information. The applicant shall notify the City of any changes to the information submitted within 30 days of any change, including change of the name or legal status of the owner or operator. This information shall include the following:

1. Identity, including name, address, and telephone number, and legal status of the owner of the facility including official identification numbers and FCC certification, and if different from the owner, the identity and legal status of the person or entity responsible for operating the facility;

2. Name, address, and telephone number of a local contact person for emergencies;

3. Type of service provided; and

4. Identification signs, including emergency phone numbers of the utility provider, shall be posted at all communication facility sites.

B. Facility maintenance. All communication facilities and related equipment, including lighting, fences, shields, cabinets, and poles shall be maintained in good repair, free from trash, debris, litter, graffiti, and other forms of vandalism, and any damage from any cause shall be repaired as soon as reasonably possible so as to minimize occurrences of dangerous conditions or visual blight. Graffiti shall be removed by the service provider from any facility or equipment as soon as practicable, and in no instances more than 48 hours from the time of notification by the City.

C. Landscaping maintenance. All trees, foliage, and other landscaping elements on a communication facility site, whether or not used as screening, shall be maintained in good condition at all times in compliance with the approved landscape plan. The facility owner or operator shall be responsible for replacing any damaged, dead, or decayed landscaping as promptly as reasonably possible. Amendments or modifications to the landscape plan shall require approval by the Director. The Commission may also require a landscape maintenance agreement.

D. Noise. Each communication facility shall be operated so as to minimize the generation of noise that is audible from off the site. Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 10:00 p.m. and 7:00 a.m. At no time shall equipment noise from any source exceed an exterior noise level of 60 dB at the property line.

E. Site inspection required. Each owner or operator of a facility shall routinely and regularly inspect each site to ensure compliance with the standards identified in this Chapter.

F. Exterior lighting. Any exterior lighting shall be manually operated and used only during night maintenance or emergencies, unless otherwise required by applicable Federal law or FCC rules. The lighting shall be constructed or located so that only the intended area is illuminated and off-site glare is fully controlled. Light fixtures shall be low wattage, hooded, and downward directed.

18.44.080 - Discontinuance and Site Restoration

All equipment associated with a communication facility shall be removed within 30 days of the discontinuance of the use and the site shall be restored to its original pre-construction condition, subject to the approval of the Director. The service provider shall provide the City with a notice of intent to vacate a site a minimum of 30 days before site vacation. This removal requirement, and appropriate bonding requirements, shall be included in the terms of a lease for a facility on public property. A private lease for a facility located on private property is encouraged to include terms for equipment removal, since the property owner shall be ultimately responsible for removal of the equipment.