

## RESOLUTION NO. 3585-2012

### RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING AN AGREEMENT FOR LEGAL SERVICES BETWEEN THE CITY OF FORT BRAGG AND MEYERS NAVE RIBACK SILVER & WILSON AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAME

**WHEREAS**, the City of Fort Bragg ("City") has contracted with the firm of Meyers, Nave, Riback, Silver and Wilson ("Meyers Nave") for legal services since 1999; and

**WHEREAS**, the current contract between the City and Meyers Nave for legal services was approved and executed in July of 2004 ("2004 Contract"); and

**WHEREAS**, the 2004 Contract covers a range of legal services that are currently provided by Meyers Nave to the City; and

**WHEREAS**, there have been several amendments to the 2004 Contract since July of 2004, making a review of the 2004 Contract, and each of the amendments, cumbersome; and

**WHEREAS**, Meyers Nave has requested that the parties enter into a new contract (rather than amend the 2004 Contract once again) to incorporate changes to the current rates for legal services to more closely reflect the value of the services being provided under the 2004 Contract, as amended; and

**WHEREAS**, the City Council has deemed it to be in the best interest of the City to replace the 2004 Contract, as amended, with a new contract substantially in a form set forth in Exhibit "A", attached, and to incorporate hourly rates for legal services into the new contract that more closely reflects the value of legal services currently being provided to the City; and

**WHEREAS**, approval of the Contract for Legal Services will not result in a direct or reasonably foreseeable indirect change in the environment; therefore the requested action is not subject to the California Environmental Quality Act and does not require environmental review, pursuant to Title 14, Chapter 3 of California Code of Regulations (CEQA Guidelines), section 15060(c)(2);

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Fort Bragg does hereby approve an Agreement for Legal Services, as set forth in Exhibit "A", attached, and authorizes the City Manager to execute said Agreement on behalf of the City.

The above and foregoing Resolution was introduced by Councilmember Deitz, seconded by Councilmember Hammerstrom, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 10<sup>th</sup> day of December, 2012, by the following vote:

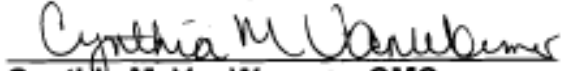
**AYES:** Councilmembers Courtney, Deitz, Hammerstrom, and Mayor Turner.  
**NOES:** None.  
**ABSENT:** None.

**ABSTAIN: None.**



**DAVE TURNER,  
Mayor**

**ATTEST:**



**Cynthia M. VanWormer, CMC**  
City Clerk

# EXHIBIT A

## AGREEMENT FOR LEGAL SERVICES CITY OF FORT BRAGG AND THE FORT BRAGG REDEVELOPMENT SUCCESSOR AGENCY

This Agreement for Legal Services ("Agreement") is entered into between Meyers Nave Riback Silver & Wilson, a professional law corporation ("Meyers Nave"), the City of Fort Bragg ("City"), which (for purposes of this Agreement shall include the Fort Bragg Municipal Improvement District No. 1 and the Fort Bragg Redevelopment Successor Agency ("Agency"). This agreement replaces and supersedes all prior agreements between the City and/or Agency and Meyers Nave.

### 1. Legal Services to be Provided

The City agrees to continue to retain Meyers Nave to provide legal services as City Attorney of the City and General Counsel for Agency. Such legal services shall generally include general and specialized legal services as more particularly described below.

#### A. General or Routine Legal Services

General or routine legal services shall include the following:

- i. Agenda item, agenda, routine ordinance, staff report, resolution, agreement, and similar legal document review, revision and preparation
- ii. Brown Act and Government Claims Act advice and analysis, and advice and analysis regarding other laws applicable to public entities
- iii. Conflicts of interest and ethical laws advice and analysis
- iv. Meetings with City Council members as requested to discuss City business
- v. Planning Commission or other subordinate body meeting attendance, if requested
- vi. Public Records Act advice and assistance with public records requests
- vii. Regular City Council meeting attendance
- viii. Routine legal advice and guidance to the City Council, the City Manager and staff
- ix. Special City Council meeting attendance, if requested
- x. Staff meeting attendance, as requested.
- xi. Status updates to the City Council and staff on general legal services matters
- xii. Routine review and drafting of contracts and advice on contract issues
- xiii. Updates on new legislation and case law which could affect the City
- xiv. Training and preparation of training materials for City elected and appointed officials and staff

#### B. Specialized legal services

Specialized legal services shall include the following:

- i. Analysis and advice regarding CEQA and environmental issues
- ii. Cost-recovery services (legal services charged to third parties)
- iii. Debt services (including bond counsel services, disclosure counsel services, and special counsel services on public financing matters)
- iv. Election law matters (such as referenda and initiatives)
- v. Eminent domain services
- vi. Enterprise and special fund services

- vii. Financing mechanism formation (such as assessment district formation)
- viii. Labor and employment representation (including labor negotiations, staff reductions, employment hearings, disciplinary matters, FLSA audits)
- ix. Land use matter advice and analysis
- x. Litigation (including pre-litigation claims handling, mediation, arbitration, administrative proceedings and other formal hearings and proceedings)
- xi. Public contract and construction claims and disputes
- xii. Real estate matters (such as property acquisition and sale)
- xiii. General Agency matters

Time for attorneys representing the City on specialized matters will be charged at the applicable rate for specialized matters contained in Attachment A, including where such non-routine work includes attendance at City Council meetings, meetings with City officials, etc.

**2. Outside Counsel**

Without affecting the appointment on the part of the City Council and designation in this Agreement of a Meyers Nave attorney to serve as the appointed, sworn City Attorney of the City of Fort Bragg, nothing in this Agreement precludes the City from engaging outside legal counsel by separate agreement whenever the City Council determines it serves the interests of the City. As well, Meyers Nave may from time to time recommend or refer the City to outside legal counsel whenever Meyers Nave believes such a recommendation or referral may serve the City's interests.

**3. Term of Agreement**

This Agreement shall be effective as of January 1, 2013 and continue in effect unless or until terminated in accordance with paragraph 17.

**4. Staffing Assignments**

David S. Warner shall be assigned as City Attorney and Agency General Counsel and shall be primarily responsible for the provision of legal services to the City. Other attorneys and legal assistants shall be utilized where necessary to assist in providing legal services as is appropriate for their level of experience and the complexity of the matter involved.

**5. Compensation**

City will compensate Meyers Nave for services rendered in accordance with this Agreement at the rates specified in Attachment A.

**6. Cooperation to Control and Reduce Legal Service Costs**

Meyers Nave and the City will cooperate to identify and implement strategies to control and reduce the City's legal services costs, particularly legal service costs for routine matters. Such cooperation at a minimum will include:

- A. Preparation of standard contract forms, and preparation and provision of staff training and materials, to minimize the need for attorney services for routine contracts.
- B. Preparation of standard response forms, and preparation and presentation of staff training and materials to reduce reliance on attorney services for responding to routine public records requests.

- C. Coordination with other clients on matters of mutual interest to provide, where possible and desirable, coordinated legal representation and reduced legal service costs.

**7. Costs and Expenses**

Meyers Nave shall bill the City and be reimbursed monthly for overhead costs incurred for normal duplicating, long distance telephone, express mail, postage, messenger services, computer research, and the like. City shall not be charged for travel time and attendance at two regular staff meetings per month.

The City shall reimburse Meyers Nave for the actual costs incurred by outside vendors working directly on the case/matter, such as court costs, including filing fees, witness fees, experts and depositions and discovery costs not directly paid by the City.

**8. Monthly Billing**

Meyers Nave billings will be in accordance with the Statement of Fee and Billing Information attached as Attachment B subject to the terms of this agreement. Meyers Nave shall keep a record of time spent on all matters (routine and non-routine) in increments of one-tenth (0.1) of an hour. Each task shall be distinctly and completely identified. The billing entry will contain the name or initials of the individual performing the task, the nature of the task, the date it was performed, the length of time it took and the fee. Invoices may be submitted electronically.

**9. Independent Contractor**

Meyers Nave hereby declares that it is engaged in an independent business and agrees to perform the services provided for in this Agreement as an independent contractor and not as the agent, servant, or employee of the City. Meyers Nave shall be solely responsible for its own matters relating to payment of employees, including compliance with social security, withholding and all other regulations governing such matters.

**10. Joint Representation/Of Counsel**

Meyers Nave maintains of-counsel agreements with certain attorneys who are deemed independent contractors under the applicable provisions of the tax laws. They are not considered employees of Meyers Nave. The arrangement has no effect whatsoever on the cost of the City's legal services. It is merely an ethical requirement that Meyers Nave disclose this fact and that the City consents. The City consents by signing this Agreement.

**11. Insurance**

During the term of this engagement, Meyers Nave will take out and maintain the following insurance which may not be canceled or reduced in required limits of liability unless Meyers Nave provides the City with at least ten days advance written notice:

- A. General liability and property damage insurance in the minimum amount of \$1,000,000 per occurrence and \$2,000,000 aggregate
- B. Professional errors and omissions insurance, not below \$2,000,000 per occurrence
- C. \$4,000,000 aggregate minimum

The City, and its respective officials, officers, employees, agents and volunteers will be added as additional insureds concerning general liability and property damage liability arising from the performance of legal services pursuant to this Agreement, and Meyers Nave agrees to provide the City evidence of such coverage satisfactory to the City.

**12. No Guarantee Of Outcome**

Any comments made by us about the potential outcome of the matters are expressions of opinion only and are not guarantees or promises about any outcome or results.

**13. Dispute Resolution**

In the event the City becomes dissatisfied with any aspect of its relationship with Meyers Nave, Meyers Nave encourages the City to bring such concerns to its attention immediately. If the City and Meyers Nave are unable to resolve any dispute, either arising out of or in connection with this Agreement or relating to the services performed by the firm or any of its attorneys, to the mutual satisfaction of the City and Meyers Nave, Meyers Nave will first comply with any mandatory dispute resolution procedures that may apply to any such dispute. If the City and Meyers Nave are unable to resolve any dispute after mandatory dispute resolution procedures have been waived or exhausted, the City and Meyers Nave may attempt to resolve the dispute by whatever means on which the City and Meyers Nave may agree, including by mediation or arbitration, subject to applicable law, and in the absence of such agreement, the City and Meyers Nave may pursue resolution of such dispute as permitted by law. As well, the City and Meyers Nave are free to terminate this Agreement as a result of a dispute or for any other reason pursuant to section 17.

**14. Professional Standing**

Meyers Nave's lawyers working with the City shall, at all times, be members in good standing of the State Bar of California, and shall conduct themselves in full compliance with the standards of Professional Conduct of the State Bar.

**15. Nondiscrimination**

Meyers Nave shall not discriminate on the basis of race, religion, color, creed, national origin, gender, sexual orientation, marital status, age, physical or mental disability, legally protected medical condition, veteran status, or any other basis protected by state or federal laws.

**16. Entire Agreement; Full Understanding; Modifications in Writing**

This Agreement contains our entire agreement about our representation. Any modifications or additions to this Agreement must be made in writing.

**17. Termination**

This Agreement may be terminated, with or without cause, by Meyers Nave at any time upon thirty (30) days written notice to the City, and by the City upon thirty (30) days written notice to Meyers Nave. In the event of termination, City shall be responsible only for fees and costs incurred through the effective date of the termination.

**18. Conflicts**

Meyers Nave represents many public agencies in California, Nevada and Arizona. Since 1986, Meyers Nave has represented over seven hundred public clients, including numerous cities, redevelopment agencies, special districts, counties and other public entities, and Meyers Nave is accepting new engagements all the time. It is virtually inevitable that Meyers Nave will work on

projects for other clients having different governmental or political objectives, beliefs or views from the City. Meyers Nave will advise and/or seek approval from the City in accordance with rules and laws applicable to conflicts of interest in matters where the objectives or interests of the City may differ from or conflict with those of other Meyers Nave clients or potential clients.

CITY OF FORT BRAGG

MEYERS NAVE RIBACK SILVER & WILSON

By \_\_\_\_\_  
Linda Ruffing  
Title: City Manager

By \_\_\_\_\_  
Eric W. Dany  
Principal

Date: \_\_\_\_\_

Date: \_\_\_\_\_

FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT NO. 1

By \_\_\_\_\_  
Linda Ruffing  
Title: Executive Director

FORT BRAGG REDEVELOPMENT SUCCESSOR AGENCY

By \_\_\_\_\_  
Linda Ruffing  
Title: Agency Director

ATTEST: \_\_\_\_\_  
Cynthia VanWormer, CMC  
City Clerk

ATTACHMENT A

MEYERS, NAVE, RIBACK, SILVER & WILSON

RATE SCHEDULE

Effective January 1, 2013

<u>Service</u>	<u>Rates</u>
General or Routine Legal Services	\$210
Specialized Legal Services (advice) (CEQA consultation, water rights, water quality, labor/employment advice, land use, assessment districts, and tax matters)	\$250/220
Successor Agency advice	\$240
Litigation, arbitration, labor negotiations, eminent, domain, inverse condemnation	\$250/220
Litigation and litigation support performed by Greg Newmark	\$280
Cost Recovery Matters	\$300
Paralegal/Legal Assistant	\$110
Travel Time	\$105



## ATTACHMENT B

### MEYERS, NAVE, RIBACK, SILVER & WILSON STATEMENT OF FEE AND BILLING INFORMATION

**Professional Fees.** Our fees at Meyers Nave for professional legal services are based on the fair value of the services we have rendered. Our attorneys and paralegals maintain time records for each client and matter in order to determine the value of our services according to established hourly rates. The hour rates are based on their years of experience, specialization, training and level of professional attainment. We adjust our rates periodically (usually, beginning of each year) respective to inflation and the increased experience of our professional personnel.

We believe that legal work that does not require more experienced attorneys will be performed—where feasible and in order to keep professional fees within reason—by attorneys with lower billing rates. With this in mind, we still believe that quality of our work is no less paramount—and therefore we do not sacrifice quality for the sake of economy.

Prior to any services being rendered, we will gladly provide our client with a fee estimate to the extent possible, if requested. In some instances, we cannot provide estimates, given that the scope of our professional legal services will not be clear from the outset. When a fee estimate is given, please keep in mind that the amount quoted is merely an estimate and may not reflect the actual minimum or maximum fee quotation. The actual fee may be more or less than the quoted estimate.

**Billing And Payment Procedures.** Unless other arrangements are made at the time of the engagement, Meyers Nave will send invoices monthly. Invoices for outside services exceeding \$100 may be billed separately. In some cases, we may defer billing for a given month or months if the accrued fees and costs do not warrant current billing or if other circumstances would make it appropriate to defer billing.

Our invoices contain a brief narrative description of the work performed—including, if requested, the initials of the attorney who performed the work on the invoice. The invoice will also include a line item reflecting in-house administrative costs. Meyers Nave's in-house administrative costs include, but are not limited to, duplicating, facsimile charges, telephone charges, E-mail, postage, mileage and other administrative expenses.

Meyers Nave will be reimbursed for all outside services incurred in the course of providing legal services to our client(s). Outside services will include, but are not limited to, all third-party expenses, delivery charges, travel expenses, outside research services, filing fees, expert witness and expert consultant fees. Such charges shall be invoiced at our cost without additional markup.

**Late Payments.** Meyers Nave sends statements on a monthly basis for services and they are payable upon presentation within thirty (30) days after receipt. We do understand that occasionally a client has difficulty in making timely payments and as such in order to avoid burdening those clients who pay their statements promptly with the added costs, we will incur and assess a late charge on statements not paid within thirty (30) days. The maximum monthly late payment charge will be 1.5% per month. In the unlikely event we are required to institute legal proceedings to collect fees and costs, we will incur any additional reasonable attorneys' fees and other costs in the course of our collection to the prevailing parties. We also reserve the right to access retainer funds to cover late payments as noted above. If you have any questions regarding an invoice, the Director of Finance or Chief Operating Officer (COO) are available to answer your questions. For any unresolved matters, the Bar Association has an arbitration mechanism that can be used to resolve such matters.

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