

RESOLUTION NO. 3537-2012

RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING AGREEMENT FOR DEFENSE AND INDEMNIFICATION BETWEEN THE CITY OF FORT BRAGG AND THE COUNTY OF MENDOCINO RELATING TO DISTRIBUTION OF MENDOCINO COAST RECREATION AND PARK DISTRICT'S PROPERTY TAX REVENUES TO CITY

WHEREAS, the Mendocino Coast Recreation and Park District ("District") and the City of Fort Bragg ("City") entered into an agreement (hereinafter, "December 2011 Agreement") in which City agreed to submit a ballot measure to registered voters in the City authorizing the City Council to impose a \$0.005 (1/2 cent) transactions (sales) and use tax to be used for the operation, maintenance and improvement of the CV Starr Community Center ("CVSCC"); and

WHEREAS, pursuant to the December 2011 Agreement, District agreed that in the event voters approved the ballot measure, and City agreed to levy the sales and use tax, District would, among other things, execute a tax sharing agreement with City ("Tax Sharing Agreement") whereby 45% of District's annual property tax revenues would be assigned to the City to be used for the operation, maintenance and improvement of the CVSCC and other parks and recreation purposes within the City; and

WHEREAS, on March 6, 2012, Fort Bragg voters approved Measure A, the ballot measure that authorizes the City Council to levy a special sales and use tax for CVSCC; and

WHEREAS, the Tax Sharing Agreement requests that the County Auditor remit 45% of the District's allocable share of property tax revenue to City, pursuant to Article 2 of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code; and

WHEREAS, the County and the County Auditor are willing to comply with the request of City and District to remit 45% of District's allocable share of property tax revenue, in accordance with the terms of the Tax Sharing Agreement, subject to and conditioned upon an Agreement with City to defend and indemnify County and the County Auditor.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby:

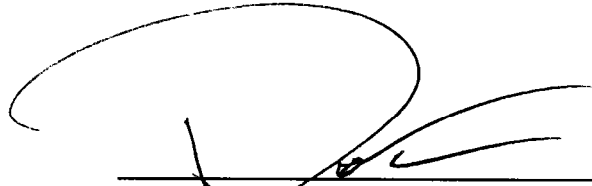
1. Find that the Agreement to Defend and Indemnify, as shown in Exhibit A, attached, is in the best interests of the City and its residents as it will allow the County Auditor to remit 45% of the District's allocable share of property tax revenue to City in accordance with, and for the purposes described in, the Tax Sharing Agreement.
2. Approve the Agreement to Defend and Indemnify, substantially in a form attached hereto as Exhibit A, and authorize the City Manager to execute the same.

BE IT FURTHER RESOLVED that the City Council of the City of Fort Bragg does hereby direct City staff to notify the Mendocino County Auditor of the City's approval of the Agreement to Defend and Indemnify by transmitting this resolution and a signed copy of said Agreement to the County Auditor.

The above and foregoing Resolution was introduced by Councilmember Hammerstrom, seconded by Councilmember Courtney, and passed and adopted at a

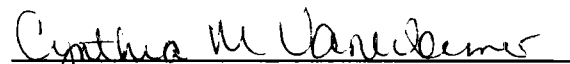
regular meeting of the City Council of the City of Fort Bragg held on the 23rd day of April, 2012, by the following vote:

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



DAVE TURNER,
Mayor

ATTEST:



Cynthia M. VanWormer, CMC
City Clerk

EXHIBIT "A"

AGREEMENT FOR DEFENSE AND INDEMNIFICATION BETWEEN THE CITY OF FORT BRAGG AND THE COUNTY OF MENDOCINO RELATING TO DISTRIBUTION OF MENDOCINO COAST RECREATION AND PARK DISTRICT'S PROPERTY TAX REVENUES TO CITY

This AGREEMENT FOR DEFENSE AND INDEMNIFICATION (hereinafter "Agreement") is made and executed this _____ day of _____, 2012 by and between the CITY OF FORT BRAGG, (hereinafter, "City"), and the COUNTY OF MENDOCINO, (hereinafter, "County").

RECITALS

A. City has entered into a Property Tax Sharing Agreement with the Mendocino Coast Recreation and Park District (hereinafter referred to as "DISTRICT") for purposes hereinafter described.

B. District was the owner of the C.V. Starr Community Center and Sigrid & Harry Spath Aquatic Facility (hereinafter, "CVSCC") which is operated to provide recreational and educational opportunities for coastal residents and visitors.

C. City and District have entered into a series of transactions for the purpose of ensuring the long-term economic sustainability of the CVSCC, one of which was an agreement by the City to submit a ballot measure to its residents authorizing imposition of a \$0.005 (1/2 cent) transactions (sales) and use tax, the proceeds of which would be used for the operation, maintenance and improvement of the CVSCC.

D. Another key element of the series of transactions between City and District was an agreement by District that in the event City voters approved the ballot measure, District would transfer ownership of the CVSCC to City and execute a property tax sharing agreement (hereinafter, "TAX SHARING AGREEMENT") whereby a portion of District's annual property tax revenues and all revenues received by District from the former Fort Bragg Redevelopment Agency would be assigned to City to be used solely for the operation, maintenance and improvement of CVSCC, as well as for parks and recreation purposes within the City.

E. On March 6, 2012, City's voters approved the ballot measure authorizing City to impose a 1/2 cent transactions (sales) and use tax within the City's boundaries.

F. As part of the Tax Sharing Agreement, City and District requested the County Auditor to remit 45% of the District's allocable share of property tax revenue to City, pursuant to Article 2 of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code.

G. County and the County Auditor are willing to comply with the request of City and District to distribute 45% of District's allocable share of property tax revenue, in accordance with the terms of the Tax Sharing Agreement, subject to and conditioned upon the defense and indemnity obligations described herein.

NOW THEREFORE, for valuable consideration, the receipt and adequacy of which is hereby acknowledged, City and County agree as follows:

Section 1. Distribution of Property Tax. County and the County Auditor hereby agree to remit 45% of District's allocable share of property tax revenue directly to City, and all revenues payable to District from the former Fort Bragg Redevelopment Agency, in accordance with the terms of the Tax Sharing Agreement.

Section 2. City to Defend and Indemnify County. In the event that County, the County Auditor or any other County official or employee (hereinafter, individually and collectively, "COUNTY INDEMNITEES") are made a party or parties to any court action or other proceeding relating to, or arising from the County and/or County Auditor's compliance with the terms of the Tax Sharing Agreement, City agrees to indemnify and defend, with counsel of County's choosing (such counsel being reasonably acceptable to City) County Indemnitees. City's defense and indemnification obligations hereunder shall not extend, nor be applicable, to any claims, demands, allegations, judgments or order relating to, or arising out of, any misconduct or malfeasance of County Indemnitees.

Section 3. Cooperation in Defense of Agreement. If this Agreement or the Tax Sharing Agreement, or both of them, are challenged in any legal action by a party other than the County or City, the parties shall cooperate in the defense of such action to the extent that cooperation furthers the intent of the parties in carrying out the provisions of this Agreement and the Tax Sharing Agreement.

Section 4. Modification. The provision of this Agreement and all of the covenants and conditions set forth herein may be modified or amended only by a writing duly authorized and executed by both the District and City.

Section 5. Term. This Agreement shall remain in full force and effect as long as the County is required to remit property tax payments to City in accordance with the terms of the Tax Sharing Agreement.

Section 6. Notices. All notices, requests, certifications or other correspondence required to be provided by the parties to this Agreement shall be in writing and shall be personally delivered or delivered by first class mail to the respective parties at the following addresses:

County

County of Mendocino
Attention: Chief Executive Officer
501 Low Gap Road, Room 1010
Ukiah, CA 95482

City

City of Fort Bragg
Attention: City Manager
416 North Franklin Street
Fort Bragg, CA 95437

Notice by personal delivery shall be effective immediately upon delivery. Notice by mail shall be effective upon receipt or three days after mailing, whichever is earlier.

Section 7. Governing Authority. This Agreement shall be governed by the laws of the State of California.

Section 8. Authorization. Each person signing on behalf of a party to this Agreement represents that he or she is duly authorized to do so by the party he or she represents and in signing this Agreement, each person binds such party hereto.

CITY

COUNTY

By: _____
Linda Ruffing, City Manager

By: _____
[Name and Title inserted]

APPROVED AS TO FORM:

By: _____
Michael Gogna, City Attorney

By: _____
Jeanine Nadel, County Counsel

ATTEST:

By: _____
Cynthia M. VanWormer, CMC
City Clerk

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