

RESOLUTION NO. 3539-2012

RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING OPERATING AGREEMENT BETWEEN CITY OF FORT BRAGG AND MENDOCINO COAST RECREATION AND PARK DISTRICT AND AUTHORIZING CITY MANAGER TO EXECUTE SAME

WHEREAS, on March 6, 2012, voters in the City of Fort Bragg passed Measure A which enacted Ordinance No. 902-2012 authorizing the City of Fort Bragg to levy a half-cent sales tax to make funds ("Sales Tax Revenues") available for the operation and maintenance of the C.V. Starr Community Center including the Sigrid & Harry Spath Aquatic Facility and surrounding property and facilities ("CVSCC"); and

WHEREAS, the Ordinance established that, prior to levying the sales tax, the parties must enter into a property tax sharing agreement and fee simple title to the CVSCC must be transferred to the City; and

WHEREAS, the parties have entered into a property tax sharing agreement that allows the City to allocate certain revenues ("Property Tax Revenues") for the operation and maintenance of the CVSCC; and

WHEREAS, the District Board adopted Resolution No 12-02 approving transfer of fee simple title of the CVSCC to the City on April 24, 2012; and

WHEREAS, the City Council now wishes to contract with the District for the operation and management of the CVSCC to provide recreational services and activities for the health and welfare of City residents and others in the Mendocino coast region; and

WHEREAS, the District has authority under the Public Resources Code and other applicable law to organize, promote, conduct, and advertise programs of community recreation that improve a community's quality of life, establish systems of recreation and recreation facilities, maintain and operate recreation facilities, and contract with other public agencies to provide recreation facilities and programs of community recreation within the District's boundaries; and

WHEREAS, the City has authority under the Government Code and other applicable law to contract with any other local agency for the performance of municipal services or functions within the City; and

WHEREAS, by virtue of its specialized experience and training, education and expertise, the District represents and warrants that it is fully qualified and authorized to perform the services described in the "Operating Agreement by and between the City of Fort Bragg and the Mendocino Coast Recreation and Park District for the C.V. Starr Community Center" ("Operating Agreement") which is attached as "Exhibit A" and incorporated herein by reference; and

WHEREAS, the District further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in the Operating Agreement; and

WHEREAS, the Board of Directors of the District on May 8, 2012, by minute action, authorized execution of the Operating Agreement on behalf of the District; and


WHEREAS, the Operating Agreement is a project for purposes of the California Environmental Quality Act ("CEQA") but is categorically exempt pursuant to Title 14 of the California Code of Regulations, Section 15323 as the Agreement allows for the normal operations of an existing public recreational facility and the Operating Agreement would not result in a foreseeable change in the operation of the facility; and

WHEREAS, funds in the amount of \$1,432,729 were appropriated in the Preliminary FY 2012/13 Budget for the CVSCC and sufficient funds will be available for the services.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby approve the Operating Agreement by and between the City of Fort Bragg and the Mendocino Coast Recreation and Park District for the C.V. Starr Community Center and authorize the City Manager to execute same.

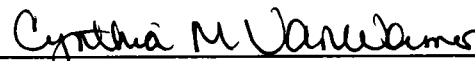
The above and foregoing Resolution was introduced by Councilmember Gjerde, seconded by Councilmember Courtney, and passed and adopted at a special meeting of the City Council of the City of Fort Bragg held on the 9th day of May, 2012, by the following vote:

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



DAVE TURNER,
Mayor

ATTEST:



Cynthia M. VanWormer, CMC
City Clerk

**OPERATING AGREEMENT BY AND BETWEEN THE CITY OF FORT BRAGG
AND THE MENDOCINO COAST RECREATION AND PARK DISTRICT
FOR THE C.V. STARR COMMUNITY CENTER**

This Operating Agreement ("Agreement") is made this ___ day of May, 2012 ("Effective Date"), by and between the City of Fort Bragg, a California general law city ("City"), and the Mendocino Coast Recreation and Park District, a California Recreation and Park District organized under the California Public Resources Code, Section 5780 et seq. ("District") for the operation of the C.V. Starr Community Center.

Recitals

WHEREAS, on March 6, 2012, voters in the City of Fort Bragg passed Measure A which enacted Ordinance No. 902-2012 authorizing the City of Fort Bragg to levy a half-cent sales tax to make funds ("Sales Tax Revenues") available for the operation and maintenance of the C.V. Starr Community Center including the Sigrid & Harry Spath Aquatic Facility and surrounding property as further described in Exhibit A ("Premises"); and

WHEREAS, the Ordinance established that, prior to levying the sales tax, the parties must enter into a property tax sharing agreement and title to the Premises must be transferred to the City; and

WHEREAS, the parties have entered into a property tax sharing agreement that allows the City to allocate certain revenues ("Property Tax Revenues") for the operation and maintenance of the C.V. Starr Community Center; and

WHEREAS, the City anticipates taking title to the Premises on May 14, 2012 and wishes to contract with the District for the operation and management of the Premises to provide recreational services and activities for the health and welfare of City residents and others in the Mendocino coast region; and

WHEREAS, the District has authority under the Public Resources Code and other applicable law to organize, promote, conduct, and advertise programs of community recreation that improve a community's quality of life, establish systems of recreation and recreation facilities, maintain and operate recreation facilities, and contract with other public agencies to provide recreation facilities and programs of community recreation within the District's boundaries; and

WHEREAS, the City has authority under the Government Code and other applicable law to contract with any other local agency for the performance of municipal services or functions within the City; and

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

WHEREAS, the Board of Directors of the District on May 8, 2012, by minute action, authorized execution of this Agreement on behalf of the District; and

WHEREAS, the City Council of the City on May 9, 2012, by Resolution No. 3539-2012 authorized execution of this Agreement on behalf of the City;

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

Agreement

1. Premises.

The City authorizes the District to operate, control, and maintain the Premises and the District agrees to accept the Premises, including all structures, buildings and facilities covered by this Agreement, and take the same in their present condition "AS IS" with all faults, and agrees to maintain the same in a safe condition, and, at any termination of this Agreement, to promptly turn back the same to the City in the same or better condition, reasonable wear and tear excepted. The City shall not be obligated to make any alterations, additions, or betterments to the Premises, except as otherwise provided for in this Agreement.

2. Term.

2.1 The term of this Agreement shall commence on the Effective Date and terminate at midnight on June 30, 2013, unless earlier terminated by either party as provided in Section 2.2 or extended as provided in Section 2.3.

2.2 Either party may request an early termination of this Agreement. Such a request must be made in writing, and must be made a minimum of six months in advance of the proposed termination date, unless the parties mutually agree in writing to a lesser time. Provided that such written request is timely made, termination shall occur upon the specified termination date. The parties acknowledge and agree that such a termination will require a substantial amount of time to accommodate ongoing obligations at the Premises and to enable full separation of responsibilities and obligations of the parties. The parties agree to cooperate reasonably one with the other in such an event to facilitate such a separation as expeditiously as possible.

2.3 This Agreement may be extended by the written mutual agreement of the parties.

3. Use of Premises.

3.1 The District agrees to operate, control, and maintain the Premises for the use and enjoyment of the general public in accordance with all applicable Federal, State and City laws, regulations, and policies. The District shall not use or permit the Premises to be used in whole or in part during the term of this Agreement for any purpose other than as herein set forth without the prior written consent of the City.

3.2 Capital improvements to the facilities and structures on the Premises shall be subject to the approval of the City and shall be identified and approved in the Annual Budget along with a schedule for design, construction and completion. Prior to undertaking any capital improvement project, the parties shall confer on the methods and practices for contracting the work and reach agreement on

which party shall oversee the project. Title to all capital improvements shall immediately become vested in the City regardless of who constructs or oversees the project.

- 3.3 During the period of time following the Effective Date until July 1, 2012 (“Interim Period”), the parties will cooperate to cause the Premises to become fully operational. The District will be allowed to provide fitness classes during the Interim Period and retain all revenues derived from such classes. Fitness classes shall be staffed by District employees and shall be subject to cancellation by the City in order to accommodate necessary maintenance and new staff training exercises. The District will also perform facility maintenance services at the direction of the City during the Interim Period and the City shall reimburse the District for its costs in performing such services at agreed upon hourly rates.
- 3.4 Upon the Effective Date of this Agreement, the parties agree that the Joint Use Agreement between the City and the District dated October 30, 2009 for the construction, operation, and maintenance of the skate park facility (“Skate Park Facility”) on the Premises shall be terminated and any funds remaining in the Skate Park Repair and Maintenance Fund (identified in the Scope of Services attached to the Joint Use Agreement) shall become the property of the City. Notwithstanding Section 12 of the Joint Use Agreement, no portion of the Skate Park Facility shall be removed without the written approval of the City.
- 3.5 Upon the Effective Date of this Agreement, the District shall provide MCDOG written notice of its intent to terminate any Memorandum of Understanding between the District and MCDOG for the development and operation of the dog park (“Dog Park”) on the Premises. The termination shall take effect 60 days following the Effective Date or such earlier time as may be agreed to between the District and MCDOG. Prior to the termination date, the City shall grant MCDOG access to the Dog Park for the purposes provided in the MOU and the District shall perform its responsibilities as provided therein.
- 3.6 Upon the Effective Date of this Agreement, the District shall provide the NOYO YO YOS (“NYY”) written notice of its intent to terminate the Memorandum of Understanding between the District and NYY dated May 18, 2010 for the development and community enjoyment of the petanque courts (“Petanque Courts”) on the Premises. The termination shall take effect 60 days following the Effective Date or such earlier time as may be agreed to between the District and NYY. Prior to the termination date, the City shall grant NYY access to the Petanque Courts for the purposes provided in the MOU and the District shall perform its responsibilities as provided therein.
- 3.7 Upon the Effective Date of this Agreement, the District shall provide the College of the Redwoods, Mendocino Campus (“College”) written notice of its intent to terminate the Memorandum of Understanding between the District and the College dated August 17, 2011 for adaptive physical education classes at the Aquatic Facility. The termination shall take effect 60 days following the Effective Date or such earlier time as may be agreed to between the District and the College. Prior to the termination date, the City shall be under no obligation to grant the College access to the Premises.

4. Management and Staffing.

- 4.1 The District shall hire a director ("C.V. Starr Director") to efficiently administer and manage the day-to-day operation of the Premises in accordance with the terms and conditions of this Agreement. The District will consult with the City Manager prior to hiring any C.V. Starr Director and provide the City an opportunity to participate in the recruitment, evaluation and hiring of any C.V. Starr Director. The parties agree that initial staffing is an important consideration in the District's operation and maintenance of the Premises and, as such, the District and/or C.V. Starr Director will also consult with the City Manager prior to the initial hiring of individuals for key administrative positions (e.g., Accountant/ Administrative Services Coordinator, Aquatics & Programs Coordinator, Guest Services Coordinator, and Maintenance Coordinator).
- 4.2 The C.V. Starr Director shall report directly to the District's Board of Directors and have authority over all staff hiring decisions as well as all performance review and disciplinary measures. The C.V. Starr Director shall submit hiring recommendations to the District Board for confirmation prior to issuing employment offers for the key administrative positions (as defined in Section 4.1). The C.V. Starr Director shall manage staff pursuant to applicable District personnel policies and shall propose changes to such policies, in consultation with the City Manager, as necessary to implement best management practices for the operation and maintenance of the Premises. Any such proposed changes shall be subject to the approval of the District Board.
- 4.3 The C.V. Starr Director shall meet regularly with City staff to review administrative, operational, and financial issues related to the operation of the Premises and also consult with City staff on the establishment of detailed fiscal procedures, controls, reporting and auditing requirements. By the 15th day of each month, the C.V. Starr Director shall submit to the City Manager and District Board a monthly budget reconciliation for the previous month.
- 4.4 The C.V. Starr Director will be responsible for (i) scheduling programs, activities, rentals and other uses of the Premises with the goal of maximizing use of the facility consistent with budgetary goals and constraints, (ii) proposing hours of operation subject to the approval of the District Board, (iii) ensuring the establishment of an effective promotion and marketing program for the Premises (including web-based advertising, social media, print media, special events, and coordination with the Fort Bragg Promotion Committee and Friends of the Mendocino Coast Recreation & Park District), (iv) developing programs and opportunities for increasing patronage, and (v) working jointly with the City, and individually, to seek and secure grants or other sources of funding. He or she shall also reach out to, and identify opportunities to coordinate with, other organizations in the local area including, but not limited to, the Fort Bragg Unified School District, Mendocino Unified School District, Point Arena Unified School District, College of the Redwoods, Mendocino Coast District Hospital, Redwood Coast Senior Center, and local Chambers of Commerce.
- 4.5 At the request of the City, the District will provide the City the opportunity to provide input on the performance of the C.V. Starr Director and to raise any issues of concern regarding his or her performance and the management and

operation of the Premises. Any dispute between the parties concerning the performance of the C.V. Starr Director shall be subject to the dispute resolution procedures described in Section 10.

- 4.6 The parties agree that there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, sexual orientation, or ancestry, in any activity or membership offered pursuant to this Agreement.

5. Operating Manual.

The C.V. Starr Director, with the assistance of City staff, shall prepare, and keep regularly updated, an Operating Manual containing the day-to-day operating procedures and protocols for the Premises. The Operating Manual, and any subsequent substantive changes, shall be subject to prior review by the City Manager and the approval of the District Board with a current copy provided to the City at all times. All procedures and protocols contained in the Operating Manual shall conform and be consistent with all applicable City ordinances, regulations, rules and policies. The Operating Manual shall include, but not be limited to:

- Financial procedures and fiscal controls (accounting, cash handling, payroll processing, purchasing/procurement, inventory controls, record-keeping, auditing, reporting, etc.)
- Customer service procedures and protocols
- Facility use reporting requirements
- Daily and long-term maintenance requirements, inspection requirements, and preventative maintenance schedules
- Licensing and permitting requirements
- Energy efficiency protocols
- Security systems and procedures (including key control policy)
- Emergency action plan
- Illness, Injury and Prevention Plan
- Safety Program (OSHA protocols, hazard mitigation, safety practices, safety training, incident reporting procedures, etc.)
- Lifeguard and Pool policies and procedures for the Aquatic Facility
- Volunteer policies
- Policies and procedures for the Skate Park Facility, Dog Park, and Petanque Courts.
- Facility use and rental procedures/risk transference protocols, including provisions regulating alcohol consumption at special events on the premises
- Accessibility procedures and protocols compliant with the requirements of the Americans with Disabilities Act of 1990 and all related regulations, guidelines and amendments.

- Solid waste disposal and recycling procedures for facility, including provisions for food-waste recycling at special events held at Premises.

6. Programs

The District shall provide, at a minimum, aquatics and fitness programs, enrichment classes, and special events. The District will ensure that all staff are trained in all safety-related matters as required by law or appropriate for all services to be provided by the District. This includes pre-employment screening, fingerprinting, and criminal history checks as required by law.

The District's Just For Kids and Adult & Youth Sports programs shall remain independent District programs paid for out of separate District revenues not otherwise dedicated to this Agreement. The parties agree to consult with one another from time to time on whether these programs and others serving the Fort Bragg area should be brought within the framework of this Agreement.

7. Grounds and Facilities.

- 7.1 Except as provided in this Agreement, the City shall retain all of its right, title and interest, as such may appear, in the grounds, buildings, structures and all other improvements and equipment on the Premises. Subject to the approval of the C.V. Starr Director, equipment owned by organizations using the Premises may be stored on the Premises and restricted to the use of the organization's members/guests. Such equipment shall be marked and clearly identifiable.
- 7.2 The cleanliness and sanitation of the Premises shall be a top priority. All buildings, facilities, and grounds shall be kept in a neat and clean condition at all times including appropriate containers through-out the Premises for non-recyclable and recyclable wastes. The District shall use reasonable means to ensure that recyclable wastes are separated and available for collection pursuant to the applicable terms and conditions of the City's current franchise agreement for such collection.
- 7.3 All equipment and furnishings on the Premises will be maintained in good working condition and any necessary maintenance and/or repairs shall be performed on a timely basis. Regular maintenance schedules shall be established and adhered to and regular reports regarding maintenance activities will be required to be maintained and available for inspection by City staff. The C.V. Starr Director shall promptly notify the City of any and all facility and/or equipment maintenance, repair or replacement issues that arise which have not been identified and/or funded through the Annual Budget.
- 7.4 The District may occupy the two offices, and use the adjoining storage room, in the north wing of the main building as administrative offices solely for District-related purposes. The District will be responsible for the costs of establishing and using telephone and internet services for the offices which shall only be used by District staff. The District shall notify the City in writing at least 60 days prior to vacating the offices.
- 7.5 Meeting rooms shall be made available free of charge for use by City or District staff subject to availability.

7.6 The City retains the right to enter the Premises at anytime to ensure the District's compliance with the terms and conditions of this Agreement and to exercise any of the rights granted to the City by this Agreement.

8. Budget and Funding.

8.1 The parties agree that it is the intent of the arrangement governed by this Agreement that the District shall operate and maintain the Premises pursuant to an annual budget ("Annual Budget") and fee schedule ("Fee Schedule") approved by the City Council. (For purposes of this Agreement, "fiscal year" shall mean the twelve consecutive months beginning July 1 of the year first referenced and ending June 30 of the year last referenced. For example, "fiscal year 2012-13" means the period beginning July 1, 2012 and ending June 30, 2013.)

- a. For the Interim Period, the City Council will approve an Interim Period Budget at the time it approves this Agreement.
- b. The City Council will also approve a preliminary fiscal year 2012-13 Annual Budget at the time it approves this Agreement.
- c. For fiscal year 2012-13, the Annual Budget and Fee Schedule will be approved by the City Council prior to June 30, 2012.
- d. In February of each year, the City Manager and the C.V. Starr Director shall develop budget assumptions related to the operating budget for the Premises for the following fiscal year.
- e. Before March 15, or on another mutually-agreed upon date, the City Manager and C.V. Starr Director shall develop the proposed Annual Budget and Fee Schedule and the District Board shall review the proposed Annual Budget and Fee Schedule.
- f. The Annual Budget will include estimated revenues from activities, rentals, sales and other usage of the Premises as well as projected Sales Tax and Property Tax Revenues. The Annual Budget will also include estimated line item costs and expenses related to the operation and maintenance of the Premises including wages and benefits, program expenses, utilities and overhead, general and administrative expenses, City costs for administration of this Agreement and the provision of support services to the District, and capital improvement reserves.
- g. The Fee Schedule will include rates for facility use, room rentals, programs, and services intended to encourage maximum use of the Premises while providing sufficient revenue to cover annual operating expenses.
- h. The City Council may authorize free or discounted memberships and/or passes as part of the Fee Schedule or as a separate addendum. Unless expressly authorized by the City Council free or discounted memberships and/or passes are prohibited.

- i. The proposed Annual Budget and Fee Schedule will be included in the City Manager's annual budget recommendation to the City Council and shall be subject to modification by the City Council prior to final approval by the Council at its sole discretion.
- j. Once the Annual Budget and Fee Schedule are approved by the City Council, the City shall notify the District and the approved Annual Budget and Fee Schedule shall be implemented by the C.V. Starr Director for the upcoming fiscal year. The District shall be responsible for notifying the City of any anticipated cost overruns on a timely basis. The Annual Budget and Fee Schedule may be modified by the City Council, at its sole discretion, to address unanticipated expenses or revenue shortfalls, however, the District shall be solely responsible for costs or expenses paid or incurred by the District during the fiscal year in excess of those authorized in the Annual Budget.

8.2 The City will establish an enterprise fund in which will be deposited the Sales Tax and Property Tax Revenues. The District shall request transfers from the enterprise fund on an as needed basis solely for the purposes of carrying out its obligations under this Agreement in accordance with the Annual Budget. The District shall establish a dedicated bank account, with the City and District each holding signatory authority, to hold all transferred Sales Tax and Property Tax Revenues and all revenues generated from its operation of the Premises. The District will operate the Premises as a stand-alone financial enterprise distinct from other District operations and will cause to be implemented separate payroll and accounting systems.

All revenues transferred by the City to the District and all revenues generated by the District from its operation of the Premises shall be used for the maintenance, operation, and administration of the Premises. Any portion of such revenues that may exceed the costs of maintaining, operating, and administering the Premises as provided in this Agreement shall be remitted to the City to be used solely for the costs of (i) operating and maintaining the Premises, (ii) any capital improvements at the Premises, or (iii) other parks and recreation purposes within the City. The City will ensure that all Sales Tax Revenues are used in accordance with the limitations of Ordinance No. 902-2012 as approved by the voters.

8.3 The City and the District shall undertake a mid-year budget review process in which the C.V. Starr Director will be responsible for providing a report to the City Council detailing all revenues received, costs incurred, and expenditures paid for the current fiscal year as well as any estimated changes to the budget assumptions approved by the Council in the Annual Budget. The report shall also identify any new capital improvements not identified in the Annual Budget process as well as any additional information requested by the Council relating to the District's operation and maintenance of the Premises. After providing the report, the City Council may approve modifications or adjustments to the Annual Budget at its sole discretion.

9. Audits, Record Retention and Inspection.

- 9.1. At all times during the term of this Agreement, the District shall keep separate, true, and complete books, records, and accounts of all income and fees received and expenditures made relating to the services being performed by the District hereunder. The parties understand and agree that they are public entities and, as such, are subject to various laws including, but not limited to, the California Public Records Act, and, as such, members of the public as well as representatives of governmental agencies have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, or other records of each party relating to this Agreement. Such material, including, but not limited to, all pertinent costs, accounting, and financial records shall be retained by each party for a period of at least five (5) years after their creation date.
- 9.2. The District grants the City, at the City's expense, the right to conduct at any reasonable time an audit and re-audit of the books, records and accounts conducted related to this Agreement and observe the operation of the business so that the accuracy of the above records and any of the invoices for services provided can be confirmed. In addition, an annual stand-alone audit of the District's books, records, and accounts described in Section 9.1 pertaining to the services being performed by the District hereunder shall be conducted by an auditor chosen by the City, the costs of which will be included in the Annual Budget.

10. Dispute Resolution.

- 10.1 Any dispute between the parties concerning the terms or conditions of this Agreement shall be resolved by the City Manager and the C.V. Starr Director. If the two cannot come to an agreement, the City Manager's decision shall be final.
- 10.2 If the City Council or District Board desire to review the City Manager's decision, the party desiring review shall notify the other party and an ad hoc committee will be formed consisting of two members of the City Council and two members of the District Board. The ad hoc committee shall have 30 days following its formation to review the City Manager's decision and either recommend agreement, recommend agreement with modifications, or make no recommendation.
- 10.3 If, after receiving the recommendation of the ad hoc committee, or 30 days following formation of the committee if no such recommendation is made, either the City Council or District Board desire to submit the dispute to non-binding mediation, the party requesting mediation shall notify the other party. The mediation process will provide for the selection within 15 days by both parties of a disinterested third person as mediator, will be commenced within 30 days of the submittal, and will be concluded within 45 days from the commencement of the mediation unless a time requirement is extended upon the request of both parties. In the event of any dispute between the parties as to the accuracy of a party's books and records, the mediator may choose an independent auditor to conduct an investigation of the disputed matter.

11. Indemnification.

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

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

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

12. Insurance.

12.1 Before commencing performance of the Agreement, the District must: a) procure "occurrence coverage" insurance of the kinds and in the amounts specified below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of this Agreement by the District or its agents, representatives, employees, or subcontractors; and b) submit to the City certificates of insurance and endorsements, or other comparable documentation, evidencing insurance coverage that meets the requirements of this section including naming the City, its officers, employees, agents and volunteers as additional insureds. The coverage shall be primary as to any loss arising out of this Agreement. In the event the District participates in a public risk sharing pool, that pool shall provide evidence of coverage and shall provide City with an endorsement to the JPA Memorandum of Coverage adding the City as an additional covered party for the limits provided in this Agreement. An allocable portion of the District's costs for insurance required under this Agreement will be included in the Annual Budget.

12.2 The District must maintain the coverages required by this Agreement throughout the term. The District may not allow any subcontractor to commence work on the

Premises until the District and/or the subcontractor have obtained all insurance required by this Agreement for the subcontractor(s) and submitted certificates of insurance and endorsements evidencing such coverage to City.

- 12.3 The District must maintain Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by the District. Workers' Compensation Insurance as required by the State of California, with coverage providing Statutory Limits, and Employer's Liability Insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence must be provided. The insurance must be endorsed to waive all rights of subrogation against City and its officials, officers, employees, and volunteers for loss arising from or related to the services to be provided under this Agreement.
- 12.4 The District must maintain (i) Commercial General Liability insurance, or participate in a public risk-sharing pool, for the term of this Agreement in an amount not less than TWENTY-FIVE MILLION DOLLARS (\$25,000,000.00) per occurrence, combined single limit coverage for risks associated with its obligations under this Agreement and (ii) Automobile Liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage, for risks associated with its obligations under this Agreement. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.
- 12.5 Required commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage must be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement may be attached limiting the coverage.
- 12.6 Except for Workers' Compensation, all other insurance coverages required pursuant to this Agreement must include or be endorsed to include the following:
- a. City and its officials, officers, employees, agents, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of the District, products and completed operations of the District; premises owned, occupied, or used by the District; and automobiles owned, leased, or used by the District. The coverage may contain no special limitations on the scope of protection afforded to City or its officials, officers, employees, agents, or volunteers.
 - b. Required insurance coverage must be primary insurance with respect to the City and its officials, officers, employees and volunteers. No insurance or self-insurance maintained by the City may be called upon to contribute to a loss under the coverage.

- 12.7 Insurance coverage required pursuant to this Agreement must include or be endorsed to include the following:
- a. Any failure of District to comply with reporting provisions of the policy shall not affect coverage provided to the City and its officers, employees, agents, and volunteers.
 - b. Required insurance coverage may not be suspended, voided, canceled, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
- 12.8 All insurance required under this Agreement must be placed with insurers with a Best's rating of no less than A unless otherwise approved by the City.

13. Notices.

Any notice, consent, authorization or other communication to be given shall be in writing and deemed duly given and received when (a) delivered personally, (b) transmitted by facsimile, (c) one business day after being deposited for next-day delivery with a nationally recognized overnight delivery service, or (d) three business days after being mailed by first class mail, charges and postage prepaid, and in all cases properly addressed to the party to receive such notice at the last address furnished for such purpose by the party to whom notice is directed.

In the case of notices to be given to the City, notice shall be addressed as follows:

City Manager
City of Fort Bragg
416 N Franklin Street
Fort Bragg, CA 95437

With a copy to:

City Clerk
City of Fort Bragg
416 N Franklin Street
Fort Bragg, CA 95437

In the case of notices to be given to the District, notice shall be addressed as follows:

C.V. Starr Center Director
Mendocino Coast Recreation & Park District
300 South Lincoln Street
Fort Bragg, CA 95437

Either party may change its address or other contact information by giving notice in writing to the other party as specified in this section.

14. Amendments.

This Agreement shall only be amended by a writing signed by both parties after approval by the City Council and District Board.

15. Appropriations.

The payment of any obligations of the City described in this Agreement is subject to the annual appropriation of funds for said payments by the City Council.

16. Miscellaneous Provisions.

- 16.1 Good Faith and Cooperation. The City and the District agree that it is in their mutual best interest and in the best interest of the public that the Premises be operated and managed as herein agreed and, to that end, the parties shall in all instances cooperate and act in good faith in compliance with all of the terms, covenants, and conditions of this Agreement and shall deal fairly with each other.
- 16.2 Severability. If any provision of this Agreement, or the application of such provision to any party or circumstance, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to such party or circumstance other than those to which it is held to be invalid or unenforceable, shall not be affected thereby.
- 16.3 Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of California, without regard to that state's conflict of laws principles.
- 16.4 Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes all prior to contemporaneous written or oral negotiations, correspondence, understandings and agreements between the parties regarding the subject matter hereof.
- 16.5 Parties in Interest. Nothing in this Agreement shall confer any rights or remedies under or by reason of this Agreement on any party other than the parties nor shall anything in this Agreement relieve or discharge the obligation or liability of any third party to any party to this Agreement nor shall any provision give any third party any right of subrogation or action over or against any party to this Agreement.
- 16.6 Waiver. Failure of either party to complain of any action, non-action or default of the other party shall not constitute a waiver of such party's rights hereunder with respect to such action, non-action or default. Waiver by the District or the City of any right or any default hereunder shall not constitute a waiver of any subsequent default of the same obligation or for any other default, past, present or future. No payment by a party, or acceptance by the other party, of a lesser amount than shall be due from one party to the other shall be treated otherwise than as a payment on account. The acceptance by a party of a check for a lesser amount, with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full, shall be given no effect, and a party may accept such check without prejudice to any rights or remedies which it may have against the other party.

- 16.7 Construction. This Agreement has been negotiated by the parties and their respective legal counsel and will be fairly interpreted in accordance with its terms and without strict construction in favor of or against any party.
- 16.8 No Assignment. This Agreement, nor any part of it nor any right or obligation arising from it shall be assigned without the express written consent of the parties.
- 16.9 Subcontracting. The District may subcontract portions of the services to be provided under this Agreement only with the prior written approval of the City. The District will be solely responsible for payment to such subcontractors and no contractual relationship will exist between any subcontractors and the City.
- 16.10 Independent Contractor Status. The parties shall at all times be acting as independent contractors. This Agreement is not intended, and shall not be construed to create the relationship of servant, employee, partner, joint venture or association as between the parties. The parties understand and agree that any of their personnel furnishing services to the Premises under this Agreement are employees solely of the party which hired such personnel for purposes of wages, salaries, workers' compensation liability and for purposes of receiving all other types of employee benefits including, but not limited to, retiree pension and health benefits. The parties shall bear the sole responsibility and liability for furnishing workers' compensation benefits to any personnel hired by them for injuries arising from or connected with services performed under this Agreement, and shall bear the sole responsibility and liability for paying compensation and furnishing all other employee benefits as described herein to any personnel hired by them.

IN WITNESS WHEREOF, the District and the City have executed this Agreement as of the day and year first above written.

MENDOCINO COAST RECREATION AND
PARK DISTRICT

By: _____
Elizabeth Pine
Executive Director

CITY OF FORT BRAGG

Approved as to form:

Michael Gogna
City Attorney

By: _____
Linda Ruffing
City Manager

“Exhibit A”

That certain real property situated in the City of Fort Bragg, County of Mendocino, State of California and being a portion of Section 7, Township 18 North, Range 17 West, Mount Diablo Meridian, more particularly defined and lying within the following described boundaries:

The bearing used in this description are in terms of the California State Grid, Zone 2.

Commencing at the Southwest corner of the intersection of Maple and Lincoln Streets, described by deeds of record as being East, 3330 feet and South 2300 feet of the section corner common to Sections 6 and 7, Township 18 North, Range 17 West, and Sections 1 and 12, Township 18 North, Range 18 West, Mount Diablo Meridian; thence from said point of commencement South 88° 36' 40" East, 57.44 feet to the true point of beginning; thence from said true point of beginning and along the exterior boundary lines of the parcel of land to be described as follows:

North 0° 45' 30" East along the Easterly sideline of Lincoln Street as it now exists, 288.58 feet to an intersection with the Southerly sideline of Willow Street as it now exists; thence South 88° 51' 31" East along said Willow Street sideline 571.27 feet; thence South 1° 37' 50" West along the Westerly sideline of an alley as now fenced, 395.67 feet; thence leaving said alley sideline North 87° 39' 45" West, 391.07 feet; thence South 0° 53' 42" West, 30.86 feet; thence North 88° 51' 31" West, 174.25 feet to a point in the Easterly sideline of the above mentioned Lincoln Street; thence North 0° 45' 30" East along said street sideline 129 78 feet the true point of beginning.

APN: 008-280-62