

RESOLUTION NO. 3517-2012

RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING PROPERTY TAX EXCHANGE AGREEMENT BETWEEN THE CITY OF FORT BRAGG AND THE MENDOCINO COAST RECREATION AND PARK DISTRICT

WHEREAS, the Mendocino Coast Recreation and Park District ("District") is a special district formed in 1973 serving a population of approximately 25,000 persons with boundaries encompassing the City of Fort Bragg and generally extending from Westport to Gualala, and

WHEREAS, the District owns the C.V. Starr Community Center and Sigrid & Harry Spath Aquatic Facility ("CVSCC") which offers valuable and unique recreational and educational opportunities for coastal residents and visitors; and

WHEREAS, on December 8, 2011, for the purpose of ensuring the long-term economic sustainability of the CVSCC, the City and District entered into an agreement (hereinafter, the "December 2011 Agreement") in which the City agreed to submit a ballot measure to its residents authorizing the imposition of a \$0.005 (1/2 cent) transactions (sales) and use tax ("Sales and Use Tax"), the proceeds of which would be used exclusively for the operation, maintenance and improvement of the CVSCC; and

WHEREAS, pursuant to the December 2011 Agreement, the District agreed that in the event voters approved the ballot measure, and the City agreed to levy the Sales and Use Tax, the District would transfer ownership of the CVSCC to the City and execute a tax sharing agreement with the City whereby a portion of the District's annual property tax revenues would be assigned to the City to be used solely for parks and recreation purposes within the City (including the CVSCC); and

WHEREAS, Section 99.02 of the Revenue and Taxation Code provides that any local agency may, by adoption of a resolution of its governing board, determine to transfer any portion of its property tax revenues with one or more local agencies upon holding a noticed public hearing and making certain findings; and

WHEREAS, on February 28, 2012, the District held a public hearing which was properly noticed in accordance with Government Code Section 6061, adopted the requisite findings, and adopted District Resolution No. 2012-01 approving the Property Tax Exchange Agreement between the City of Fort Bragg and the Mendocino Coast Recreation and Park District which is attached as "Exhibit A," and

WHEREAS, on February 29, 2012, the City Council held a continued public hearing which was properly noticed in accordance with Government Code Sections 6061 and 54955.1 and, based upon all of the evidence presented, the Council finds as follows:

1. The City Council has considered the findings made by the Mendocino Coast Recreation and Park District Board of Directors as referenced in District Resolution No. 2012-01 and incorporated herein by reference.
2. The City Council has considered the effect of the proposed transfer on the City's fees, charges, assessments, taxes and other revenue.
3. The City Council concurs with the proposed transfer of property tax revenue as identified in Exhibit A.

4. The City Council finds that the Property Tax Exchange Agreement is exempt from the California Environmental Quality Act ("CEQA") as it is not considered a "Project" pursuant to Title 14, the California Code of Regulations ("CEQA Guidelines"), Section 15378(b)(4).

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


1. Approve the proposed transfer of property tax revenues from the Mendocino Coast Recreation and Park District to the City of Fort Bragg;
2. Approve the Property Tax Exchange Agreement, as shown in Exhibit A, attached, including any non-substantive corrections or modifications as may be necessary or appropriate to carry out the intent of said Agreement, subject to the approval of the City Attorney; and
3. Authorize the City Manager to execute the same.

BE IT FURTHER RESOLVED that if the March 6, 2012 special election results in voter approval of the ballot measure authorizing the City Council to levy a half-cent sales tax for the CVSCC, the Property Tax Exchange Agreement shall take effect immediately following the City Council's adoption of a resolution declaring the results of the March 6, 2012 special election.

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 Property Tax Exchange Agreement by transmitting this resolution, District Resolution No 2012-01 and a copy of the signed property tax sharing agreement to the County Auditor

The above and foregoing Resolution was introduced by Councilmember Gjerde, seconded by Councilmember Courtney, and passed and adopted at a continued regular meeting of the City Council of the City of Fort Bragg held on the 29th day of February 2012, by the following vote:

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



DAVE TURNER,
Mayor

ATTEST:



Cynthia M. VanWormer, CMC
City Clerk

"Exhibit A"

**PROPERTY TAX EXCHANGE AGREEMENT
BETWEEN
THE CITY OF FORT BRAGG AND THE
MENDOCINO COAST RECREATION AND PARK DISTRICT**

This PROPERTY TAX EXCHANGE AGREEMENT (hereinafter "Agreement") is made and executed this _____ day of _____, 2012 by and between the CITY OF FORT BRAGG (hereinafter referred to as "City"), and the MENDOCINO COAST RECREATION AND PARK DISTRICT, (hereinafter referred to as "District").

RECITALS

A The District is a special district formed in 1973 serving a population of approximately 25,000 persons with boundaries encompassing the City and generally extending from Westport to Gualala, and

B The District owns the C V Starr Community Center and Sigrid & Harry Spath Aquatic Facility (hereinafter the "CVSCC") which offers valuable and unique recreational and educational opportunities for coastal residents and visitors, and

C. On December 8, 2011, for the purpose of ensuring the long-term economic sustainability of the CVSCC, the City and District entered into an agreement (hereinafter the "December 2011 Agreement") in which the City agreed to submit a ballot measure to its residents authorizing the imposition of a \$0.005 (1/2 cent) transactions (sales) and use tax ("Sales and Use Tax"), the proceeds of which would be used exclusively for the operation, maintenance and improvement of the CVSCC; and

D Pursuant to the December 2011 Agreement, the District agreed that in the event voters approved the ballot measure, and the City agreed to levy the Sales and Use Tax, the District would transfer ownership of the CVSCC to the City and execute a tax sharing agreement with the City whereby a portion of the District's annual property tax revenues would be assigned to the City to be used solely for parks and recreation purposes within the City (including the CVSCC), and

E Section 99.02 of the Revenue and Taxation Code provides that any local agency may by adoption of a resolution of its governing board, determine to transfer any portion of its property tax revenues with one or more local agencies upon holding a noticed public hearing and making certain findings

F. Having held the required public hearings and made the requisite findings, the parties now wish to formalize the agreement to transfer property tax revenues in the event the ballot measure is approved by the voters on March 6, 2012

District and City now hereby agree as follows:

Section 1 Purpose of Agreement. The purpose of this Agreement is to set forth the transfer of Property Tax Revenue from the District to the City. "Property Tax Revenue" shall mean revenue from "ad valorem real property taxes on real property", as said term is used in Section 1 of Article XIII A of the California Constitution and more particularly defined in subsection (c) of Section 95 of the California Revenue and Taxation Code, that is currently allocated to the District

Section 2 Effective Date. If the March 6, 2012 special election results in voter approval of the ballot measure authorizing the City Council to levy a half-cent sales tax for the CVSCC, this Agreement shall take effect immediately following the City Council's adoption of a resolution declaring the results of the March 6, 2012 special election ("Effective Date")

Section 3 Transfer of Property Tax Revenues. The City shall be entitled to the lesser of (i) 45% of the District's allocable share of Property Tax Revenue or (ii) that portion of the District's Property Tax Revenue that is allocable to those tax rate area(s) located within the jurisdictional limits of the City, distributed by the County Auditor on or after the Effective Date, as such revenues are apportioned by the County Auditor pursuant to Article 2 of Chapter 6 of Part 05 of Division 1 of the Revenue and Taxation Code, to be used solely for parks and recreation purposes within the City (including the CVSCC)

Section 4 Transfer to be Made by County Auditor. The District and the City agree that all of the transfers of Property Tax Revenue required by this Agreement shall be made by the County Auditor and the City's share shall be remitted directly to the City by the County Auditor

Section 5 Bankruptcy Court. The District has a petition pending before the United States Bankruptcy Court for the Northern District of California ("Bankruptcy Court"). In the event any decision, judgment or other order of the Bankruptcy Court reduces, delays or limits the transfer of District Property Tax Revenue to the City as authorized by this Agreement, the City shall have the right but not the obligation, in its sole discretion, to terminate this Agreement and reconvey the CVSCC to the District. The District agrees to take immediate possession of the CVSCC upon any such reconveyance and agrees that all Property Tax Revenues distributed to the City by the County Auditor prior to the date of termination of this Agreement shall remain the property of the City

Section 6 Mutual Defense of Agreement. If the validity of this Agreement is challenged in any legal action by a party other than the District or City, the parties agree that the City shall defend the City and District against the legal challenge and have the sole authority to determine the scope and extent of such defense. The District agrees to reimburse the City for fifty percent (50%) of the City's costs incurred in such defense, including all attorneys fees, within thirty (30) days following the District's receipt of invoice(s) itemizing such costs. However, in the event the City is required to defend the validity of this Agreement in any action related to the District's bankruptcy proceedings, the District agrees to reimburse the City for 100% of the City's costs within thirty (30) days following the District's receipt of invoice(s) itemizing such costs

Section 7 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 8 Term. This Agreement shall remain in full force and effect as long as the District, and any approved successor or assign of the District, is entitled to receive the District's allocable share of Property Tax Revenue

Section 9 Entire Agreement. With respect to the subject matter hereof only, this Agreement supersedes any and all previous negotiations, proposals, commitments, writings and

understandings of any nature whatsoever between the District and City except as otherwise provided herein.

Section 10 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

District

Mendocino Coast Recreation and Park District
Attention Executive Director
300 South Lincoln Street
Fort Bragg, CA 95437

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 11. Approval, Consent, and Agreement. Wherever this Agreement requires a party's approval, consent, or agreement, the party shall make its decision to give or withhold such approval, consent or agreement in good faith, and shall not withhold such approval, consent or agreement unreasonably or without good cause.

Section 12. Construction of Captions. Captions of the sections of this Agreement are for convenience and reference only. The words in the captions in no way explain, modify, amplify or interpret this Agreement.

Section 13. Default. In the event of any party's default of any material obligation under this Agreement, the non-defaulting party shall give the defaulting party written notice of and a reasonable time to cure the default. If the defaulting party has not made a substantial effort to cure the default within a reasonable time, the non-defaulting party may take all such actions, legal or otherwise, to cause performance of the defaulting party's obligations and the defaulting party shall reimburse the non-defaulting party for the non-defaulting party's reasonable expenses, including all attorneys fees arising from actions required to cure the default. Such reimbursement shall be paid within thirty (30) days after the non-defaulting party submits a detailed invoice of such costs.

Section 14. Successors and Assigns. The terms and provisions of this Agreement shall extend to and be binding upon and inure to the benefit of any third party.

Section 15. Governing Authority. This Agreement shall be governed by the laws of the State of California.

Section 16. 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

DISTRICT

By _____
Linda Ruffing, City Manager

By _____
Jim Hurst, Executive Director

APPROVED AS TO FORM

By _____
Michael Gogna, City Attorney

By _____
District Counsel

IN WITNESS HEREOF, the parties have caused their authorized representative to execute this Agreement on this _____ of _____, 2012

ATTEST:

[Attach Notary Page]

By: _____
Cynthia M VanWormer, CMC
City Clerk

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