

## RESOLUTION NO. 3490-2011

### RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING MEMORANDUM OF AGREEMENT BETWEEN CITY OF FORT BRAGG AND MENDOCINO COAST RECREATION AND PARK DISTRICT FOR PROPOSED C.V. STARR COMMUNITY CENTER SPECIAL SALES TAX MEASURE AND AUTHORIZING CITY MANAGER TO EXECUTE THE SAME

**WHEREAS**, additional funding is necessary for operation, maintenance and capital improvements at the C.V. Starr Community Center; and

**WHEREAS**, the Fort Bragg City Council ("City Council") has considered calling for a special election to seek voter authorization to levy a ½ cent sales tax increase to establish a dedicated revenue stream solely for operation, maintenance and capital improvements at the C.V. Starr Community Center; and

**WHEREAS**, the City Council has established several points of agreement between the City and the Mendocino Coast Recreation and Park District regarding the proposed sales tax measure for the C.V. Starr Community Center; and

**WHEREAS**, the agreements are contained within a document entitled "Memorandum of Agreement Between City of Fort Bragg and Mendocino Coast Recreation and Park District for Proposed C.V. Starr Community Center Special Sales Tax Measure" which is attached as "Exhibit A" to this resolution and incorporated herein; and

**WHEREAS**, based on all of the information presented to the City Council, both written and oral, including the staff reports, minutes, and other relevant materials (hereafter the "Record"), the City Council finds that under CEQA Guidelines 15060(c)(3) and 15378(b)(4) and (b)(5), the proposed Memorandum of Agreement does not constitute a project under CEQA and therefore review under CEQA is not required.

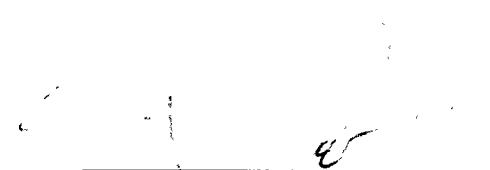
**NOW, THEREFORE BE IT RESOLVED** that the City Council of the City of Fort Bragg does hereby approve the Memorandum of Agreement Between City of Fort Bragg and Mendocino Coast Recreation and Park District for Proposed C.V. Starr Community Center Special Sales Tax Measure; and

**BE IT FURTHER RESOLVED** that the City Council of the City of Fort Bragg does hereby authorize the City Manager to execute said Memorandum of Agreement.

**The above and foregoing Resolution was introduced by Councilmember Courtney, 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 28<sup>th</sup> day of November, 2011, by the following vote:**

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

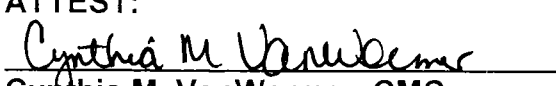
ABSENT: None.  
ABSTAIN: None.



---

DAVE TURNER,  
Mayor

ATTEST:



---

Cynthia M. VanWormer, CMC  
City Clerk

Attachment – “Exhibit A” – Memorandum of Agreement

**MEMORANDUM OF AGREEMENT**

**Between City of Fort Bragg and Mendocino Coast Recreation and Park District for Proposed  
C.V. Starr Community Center Special Sales Tax Measure**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of November, 2011, by and between CITY OF FORT BRAGG, a municipal corporation of the State of California, hereinafter referred to as "City," and MENDOCINO COAST RECREATION AND PARK DISTRICT, hereinafter referred to as "MCRPD." Collectively, City and MCRPD are referred to as "Parties" herein.

**Section 1. Purpose and Background**

The purpose of this Agreement is to establish the basic points of agreements between City and MCRPD regarding the proposed C.V. Starr Community Center Special Sales Tax Ordinance ("Ordinance") that is proposed to be put forth for a vote in a special election to be held on March 6, 2012. The Ordinance authorizes the Fort Bragg City Council to levy a local sales tax of one-half cent (\$.005) to provide dedicated revenue for operations, maintenance and capital improvements at the C.V. Starr Community Center ("CVSCC") contingent upon transfer of ownership of CVSCC to City and assignment of 45% of the MCRPD's annual property tax revenues to the City for CVSCC operations, maintenance and capital improvements and for other park and recreational purposes within the City limits.

**Section 2. Term**

The term of this Agreement shall commence upon successful passage of Ordinance by two-thirds of the electors voting on the Ordinance as determined by the official canvass of the votes. The Agreement shall continue in effect until termination as provided herein.

**Section 3. Definitions**

- a. **"Operating Agreement"** means a contractual agreement that establishes basic contractual obligations of MCRPD including but not limited to payment schedule, terms and conditions, standards of performance, reporting requirements, fiscal procedures and controls, purchasing and procurement procedures, inventory controls, security protocols, energy efficiency protocols, emergency and safety plans, facilities and grounds maintenance requirements, information technology requirements, insurance requirements, indemnification requirements, dispute resolution, and termination and remedies.
- b. **"Special Sales Tax"** means special retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.91 of Part 1.7 of Division 2.

**Section 4. Transfer of Ownership of CVSCC to City**

Upon successful passage of the Ordinance, MCRPD shall convey title to CVSCC to the City pursuant to and in accordance with escrow instructions prepared by the City and subject only to those exceptions to clear title as are acceptable to the City. The City shall pay all escrow and closing costs. The transfer of ownership will include the real property, all improvements, equipment and furnishings.

**Section 5. Assignment of MCRPD Revenues to City**

The Parties shall enter into a tax-sharing agreement whereby, upon successful passage of the Ordinance, MCRPD shall assign to the City 45% of MCRPD's annual property tax revenues and all revenues that it receives from the Fort Bragg Redevelopment Agency with said revenues to be used by the City for the CVSCC and for other parks and recreation purposes within the City limits. Said revenues shall be paid based on actual payments received from the Fort Bragg Redevelopment Agency and as a proportion of property tax revenues actually received by MCRPD and payments shall be made in accordance with a schedule established in the tax-sharing agreement.

**Section 6. Council Action to Levy Special Sales Tax for CVSCC**

Upon successful passage of the Ordinance and compliance with the requirements established in Sections 4 and 5 herein, Council shall take action to levy the Special Sales Tax and to contract with the State Board of Equalization to perform all functions incident to the administration and operation of the Special Sales Tax. The Special Sales Tax shall be operative on July 1, 2012 or on the first day of the first calendar quarter that is at least 110 days after the City's action to enter into a contract with the State Board of Equalization for administration of the tax, whichever occurs later.

**Section 7. MCRPD Reimbursement of Certain City Costs Associated with CVSCC Special Sales Tax Election and CVSCC Property Transfer**

MCRPD agrees to reimburse City for its legal costs associated with the CVSCC Special Sales Tax Ordinance and associated agreements, for Mendocino County fees associated with administering the special election, and for legal, escrow and closing costs associated with transfer of CVSCC to City. The reimbursement shall be included as a line item expense in the first year Annual Operating Plan & Budget for the CVSCC.

**Section 8. Operation and Maintenance of CVSCC**

The City intends to enter into an Operating Agreement with MCRPD for day-to-day operation and maintenance of CVSCC. The Operating Agreement will be augmented on an annual basis by an Annual Operating Plan & Budget. Parties agree to collaborate in preparation of Annual Operating Plan & Budget. City Council approval of Annual Operating Plan & Budget is required prior to its adoption by the MCRPD Board. If the City and MCRPD do not execute an Operating Agreement and/or if MCRPD fails to satisfactorily perform in accordance with Operating Agreement, City reserves the right to contract with a separate entity for operation and maintenance of CVSCC.

**Section 9. Responsibility for CVSCC Expenses and Obligations Incurred Prior to Transfer of CVSCC to City**

All MCRPD expenses and obligations incurred prior to transfer of CVSCC to City shall remain the sole responsibility of MCRPD.

#### **Section 10. Indemnity and Hold Harmless**

Each party shall defend, indemnify, and hold harmless the other parties and their respective officers, officials, employees, agents and volunteers from and against all claims, damage, losses, and expenses, including attorney's fees, arising out of or in connection with the proposed C.V. Starr Community Center Sales Tax Measure. Additional indemnity language will be provided in the Operating Agreement.

#### **Section 11. Insurance**

- a. Liability Insurance. The Operating Agreement will establish coverage requirements for MCRPD for Comprehensive General Liability Insurance and Workers' Compensation Insurance and Employer's Liability Insurance.
- b. Property Insurance. MCRPD shall be solely responsible for maintaining adequate property insurance coverage for the CVSCC until the time at which ownership of the property is transferred to City, at which time the City shall provide property insurance coverage.
- c. Notification of Change. Required insurance coverage may not be suspended, voided, canceled, or reduced in coverage or in limits, unless thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the other Parties to this Agreement.

#### **Section 12. Defaults**

In the event of any party's default of any material obligation under this Agreement, the non-defaulting Parties must 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 Parties may perform the obligation at the expense of the defaulting party. The defaulting party shall reimburse the non-defaulting Parties for their reasonable expenses arising directly from actions required to cure the default within thirty (30) days after any non-defaulting party submits a detailed invoice of such costs.

#### **Section 13. Termination**

Any party, at any time during the term of this Agreement, shall have the unconditional right to terminate the Agreement upon thirty (30) days prior written notice to the other parties. From and after the effective date of termination, all rights and obligations the parties have with respect to one another shall cease, except for those rights and obligations set forth in Sections 10 and 11 and this Section 13.

#### **Section 14. Successors and Assigns**

None of the Parties may transfer or assign its rights or obligations under this Agreement, in part or in whole, without the other Parties' prior written consent. The terms and provisions of this Agreement shall extend to and be binding upon and inure to the benefit of the successors and permitted assigns of the Parties.

**Section 15. Amendments**

This Agreement can only be amended by a writing duly authorized and signed by all of the Parties

**Section 16. Dispute Resolution**

The Parties agree to make a good faith attempt to resolve any dispute arising out of this Agreement through mediation prior to commencing litigation. The Parties shall mutually agree upon the mediator and shall divide the costs of mediation equally.

**Section 17. Time is of the Essence**

Time is of the essence for each and all of the terms and provisions of this Agreement.

**Section 18. Written Agreement**

None of the Parties have relied on any promise or representation not contained in this Agreement. This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between any or all of the Parties regarding the subject matter of this Agreement and supercedes all prior written or oral understandings or agreements of the Parties. Upon execution of this Agreement by the Parties, all prior written agreements between any or all of the Parties as to the subject matter of this Agreement shall be deemed terminated in their entirety, save and except for the Operating Agreement which shall survive execution of this Agreement.

**Section 19. Headings**

The headings of the paragraphs are for convenience only and are not a part of this Agreement, nor shall they be considered in construing the intent of this Agreement nor affect any of the rights or obligations of the Parties.

**Section 20. Governing Law**

This Agreement shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be brought solely in a court of competent jurisdiction in Mendocino County, California.

**Section 21. Notices**

All notices, including invoices, given hereunder shall be in writing and shall be deemed to have been given if personally delivered or deposited in the United States mail postage prepaid, certified or registered, return receipt requested, and addressed to the other Parties as follows or as otherwise designated by written notice hereunder from time to time:

To CITY: City of Fort Bragg  
Linda Ruffing, City Manager  
416 North Franklin Street  
Fort Bragg, CA 95437

To MCRPD: Mendocino Coast Recreation and Park District  
Jim Hurst, Executive Director  
300 South Lincoln Street  
Fort Bragg, CA 95437

**Section 22. 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 OF FORT BRAGG MENDOCINO COAST RECREATION AND PARK DISTRICT

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

By: \_\_\_\_\_  
Jim Hurst, Executive Director

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Michael Gogna, City Attorney

By: \_\_\_\_\_  
MCRPD Counsel

IN WITNESS HEREOF, the parties have caused their authorized representative to execute this Agreement on this \_\_\_\_\_ day of November, 2011.

ATTEST:

[Attach Notary Page]

By: \_\_\_\_\_  
Cynthia M. VanWormer, CMC  
City Clerk