

**RESOLUTION NO. 3404-2010**

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING REVENUE SHARING AGREEMENT WITH COUNTY OF MENDOCINO AND AUTHORIZING CITY MANAGER TO EXECUTE THE SAME**

**WHEREAS**, the Mendocino County Board of Supervisors has placed an initiative measure on the November 2, 2010 general election ballot entitled the "County Vital Services Transactions and Use Tax"; and

**WHEREAS**, if approved, the County Vital Services Transactions and Use Tax would impose a half-cent sales tax which would apply throughout the incorporated and unincorporated territory of the County for a period of ten years; and

**WHEREAS**, the half-cent sales tax would result in a tax rate of 9.25% in the City of Fort Bragg; and

**WHEREAS**, the Board of Supervisors has approved a tax sharing agreement with the City of Fort Bragg which provides for the monthly remittance to the City of Fort Bragg of one half of the amount collected from businesses operating within the City of Fort Bragg for the County Vital Services Transactions and Use Tax; and

**WHEREAS**, Article XIII, Section 29 of the California Constitution allows cities and counties to enter into contracts to apportion sales and use tax revenue, by ordinance or resolution, and upon approval by a two-thirds vote of the legislative bodies of the parties to the contract; and

**WHEREAS**, Government Code sections 55700 et. seq. provides cities and counties with the option to approve contracts apportioning sales and use tax revenue consistent with the provisions of Article XIII, Section 29 of the California Constitution.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Fort Bragg does hereby approve the Tax Sharing Agreement for County Vital Services Transaction and Use Tax Revenues, attached hereto as Exhibit A, between the County of Mendocino and the City of Fort Bragg and authorizes the City Manager to Execute the Same.

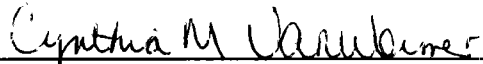
**The above and foregoing Resolution was introduced by Councilmember Courtney, seconded by Councilmember Gjerde, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 12<sup>th</sup> day of October, 2010, by the following vote:**

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

**ABSTAIN: None.**

  
\_\_\_\_\_  
**DOUG HAMMERSTROM,**  
**Mayor**

**ATTEST:**

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

**“Exhibit A”**

**TAX SHARING AGREEMENT FOR COUNTY VITAL SERVICES  
TRANSACTION AND USE TAX REVENUES BETWEEN THE COUNTY OF  
MENDOCINO AND THE CITY OF FORT BRAGG**

THIS AGREEMENT is made and entered into this \_\_\_ day of \_\_\_\_\_, 2010 by and between the County of Mendocino, a political subdivision of the State of California, (hereinafter “COUNTY”) and the City of Fort Bragg, a municipal corporation, (hereinafter “CITY”) with reference to the following facts:

**RECITALS:**

WHEREAS, Article XIII, Section 29 of the California Constitution allows cities and counties to enter into contracts to apportion sales and use tax revenue, by ordinance or resolution, and upon approval by a two-thirds vote of the legislative bodies of the parties to the contract; and

WHEREAS, Government Code sections 55700 et seq. provides cities and counties with the option to approve contracts apportioning sales and use tax revenue consistent with the provisions of Article XIII, Section 29 of the California Constitution; and

WHEREAS, it is the intent of the Parties to approve this Contract for apportionment of sales and use tax revenue by resolution, and by a two-thirds vote of the CITY Council and a two-thirds vote of the COUNTY Board of Supervisors in accordance with Government Code section 55704.5; and

WHEREAS, the purpose of this agreement is to make a fair and equitable distribution of sales tax revenues generated by the County Vital Services Transactions and Use Tax that are derived from businesses operating now or in the future within the territorial limits of the CITY to maximize each party’s ability to finance the delivery of essential governmental services.

NOW THEREFORE, in consideration of the foregoing recitals, the mutual promises contained herein, and for such other good and valuable consideration the receipt of which is hereby acknowledged by the Parties, the COUNTY and the CITY agree as follows:

**AGREEMENT**

**1. Term.** This Agreement shall become effective upon its approval by the governing bodies of each party and upon approval of the County Vital Services Transaction and Use Tax Ordinance by the voters and shall remain in effect until the tax expires by the terms of the ordinance or this agreement is terminated by mutual consent of both the CITY and the COUNTY.

**2. Share of Revenues.** During each calendar year, and on a monthly basis, commencing June 20, 2011, revenues from the County Vital Services Transactions and Use Tax that are generated from taxable sales occurring within the territorial limits of the City will be shared fifty percent (50%) by each party. Payments shall be calculated by COUNTY and remitted to CITY on the last business day of each month following collection from the State Board of Equalization.

**3. Cost of Administration.** COUNTY will be responsible for the administration and distribution of funds. The total cost of administration ("Administration Costs") shall in no event exceed 4 hours of staff time per month at the employee's weighted hourly rate. The Administration Costs will be calculated on a monthly basis and divided equally between the CITY and COUNTY if no other CITY enters into a similar agreement with COUNTY. In the event that any of the cities of Willits and Ukiah, enter into agreements with COUNTY, the COUNTY will bear ½ the Administration Costs and the remaining ½ share of Administration Costs will be divided proportionately amongst the participating cities based on the amount of sales tax received by each participating city. Said Costs shall be deducted from the revenue owed to CITY in each monthly installment.

**4. Dispute Resolution.**

(a) Inadmissibility. Should any disputes arise as to the performance of this Agreement, COUNTY and CITY agree to use the dispute resolution process set forth below. All conduct, testimony, statements or other evidence made or presented during the meeting described in subsection 4(b) shall be confidential to the extent permitted by applicable laws and inadmissible in any subsequent arbitration proceedings brought to prove liability for any claimed breach or damages which are the subject of the dispute resolution process.

(b) Initiation of Process. COUNTY or CITY may initiate the dispute resolution process by submitting written notification to the other of a potential dispute concerning the performance of this Agreement. This written notification shall state what is in dispute, shall include all supporting documentation, and shall request a meeting between the County Executive Officer and the City Manager, or their respective designees, to determine whether a resolution of the disagreement is possible without third party intervention. The party receiving the written notification, upon receipt, shall undertake to locate all information and documentation that is relevant to the alleged dispute and provide the notifying party with copies of the same at least five business days prior to the meeting. This meeting shall be scheduled to take place within thirty (30) days of receipt of the written notification of the dispute. At the meeting, the respective representatives of the COUNTY and the CITY shall attempt to reach an equitable settlement of the disputed issue(s), subject to review and approval by the Board of Supervisors and the City Council. The parties shall continue to meet for as long as progress is being made toward a resolution of the dispute. If one party

determines that further meetings are not warranted and that binding arbitration should be commenced, as described in subsection (c), below, that party shall provide the other party with notice of an intent to initiate binding arbitration.

(c) Binding Arbitration. If the meeting(s) and subsequent review by the parties' governing bodies provided for in subsection 4(b) fails to fully resolve the dispute, the matter may then be submitted by either party to the American Arbitration Association ("Arbitrator"), following the notice requirement in subsection (b), above, to appoint a single, neutral arbitrator for a decision. Both CITY and COUNTY waive the requirement of filing a claim and other procedural requirements as described in Government Code Section 905 et seq. The arbitration shall be conducted pursuant to the procedures set forth in Chapter 3 (commencing with Section 1282) of Title 9 of the California Code of Civil Procedure. The Arbitrator's decision shall be based on the following factors, but the Arbitrator shall have no authority to alter or refuse to apply and enforce the provisions of this Agreement:

- (1) evidence relevant to the scope of the issue being decided;
- (2) timeliness of raising the issue at hand;
- (3) whether the submitting party has met its burden of persuasion; and
- (4) any other factors the Arbitrator deems appropriate.

The matter shall be heard by the Arbitrator within forty five 45 days from one party serving a Notice of Request for Arbitration on the other party and a final decision by the Arbitrator must be made within thirty 30 days from the day upon which the arbitration hearing is completed. The arbitration hearing date and the hearing procedures shall be established by the Arbitrator in accordance with the Code of Civil Procedure section 1282.2. The Arbitrator shall prepare in writing and provide to the parties factual findings and the reasons on which the decision of the Arbitrator is based. The decision of the Arbitrator shall be served on the parties in accordance with Code of Civil Procedure section 1283.6, shall be controlling between the CITY and the COUNTY and shall be final. Except as provided in Code of Civil Procedure sections 1286.2 and 1286.4, neither party shall be entitled to judicial review of the Arbitrator's decision. The party against whom the award is rendered shall pay any monetary award and/or comply with any other order of the Arbitrator within sixty (60) days of service of the award. If not paid within said sixty (60) days, the award may be enforced pursuant to Code of Civil Procedure sections 1285 et seq. and Government Code sections 970-971.2 or as otherwise authorized by law.

(d) Costs. The parties shall share equally the Arbitrator's fees and expenses. Each party shall bear its own costs, expenses and attorney's fees and no party shall be awarded its costs, expenses, or attorney's fees incurred in the dispute resolution process.

**5. Mutual Defense of Agreement.** If the ability to enter into this Agreement is challenged in any legal action by a party other than COUNTY or CITY, then COUNTY and CITY agree to defend jointly against the legal challenge and to share equally any award of costs, including attorney's fees, against COUNTY, CITY, or both.

**6. Indemnification.** Both the CITY and COUNTY agree to hold harmless, defend and indemnify each other in the event that there is a challenge to the receipt or use of funds distributed pursuant to this agreement.

**7. Waiver of Retroactive Recovery.** If the validity of this Agreement is challenged in any legal action, CITY and COUNTY hereby waive any right to the retroactive recovery of any Sales Tax Revenue transferred pursuant to this Agreement prior to the date on which such legal action is filed in a court of competent jurisdiction.

**8. Audit.** CITY at any time during the term of this agreement may request an audit of the sales tax revenue that is the subject of this agreement, such audit to be conducted by a person(s), or entity, of CITY's selection. The request shall be made in writing and all costs associated with such audit shall be borne initially by CITY. If the results of the audit show that CITY is entitled to additional sales tax revenue in an amount that is in excess of the cost of the audit, then COUNTY shall reimburse CITY for the cost of the audit. Otherwise, the cost of the audit shall be borne by CITY.

COUNTY will make any adjustments to payment of tax revenues which are required as a result of the audit within 60 days of receipt of the audit. The adjustments will in the form of an additional transfer of tax revenues or in the form of an offset against the future distribution of tax revenues if the audit discloses that CITY received more revenue than it should have received. CITY shall have the right to inspect records associated with the transfer of tax revenues within 10 days of making such request.

**9. 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 COUNTY and CITY.

**10. Entire Agreement.** With respect to the sharing of sales tax revenues generated by the County Vital Services Transactions and Use Tax, this Agreement supersedes any and all previous negotiations, proposals, commitments, writings, and understandings of any nature whatsoever between COUNTY and CITY except as otherwise provided herein.

**11. 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 OF MENDOCINO**  
Executive Office  
Attn: Chief Executive Officer  
Administration Center  
501 Low Gap Road, Rm. 1010  
Ukiah, CA 95482

**CITY OF FORT BRAGG**  
Administration  
ATTN: City Manager  
416 N. Franklin Street  
Fort Bragg, CA 95437

and shall be effective upon receipt or three (3) days after mailing, whichever is earlier.

**12. 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.

**IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.**

**COUNTY OF MENDOCINO**  
By: \_\_\_\_\_  
CHAIR, Board of Supervisors

**CITY OF FORT BRAGG**  
By: \_\_\_\_\_  
Linda Ruffing, City Manager

**APPROVED AS TO FORM FOR CITY:**

By \_\_\_\_\_

CARMEL ANGELO, Clerk of said Board

By \_\_\_\_\_  
Deputy

**NAME AND ADDRESS OF CITY:**  
Name: Linda Ruffing  
Department: City Manager  
City of Fort Bragg  
416 N. Franklin Street  
Fort Bragg, CA 95437

ATTEST:

**INSURANCE REQUIREMENTS:**

KRISTIN McMENOMEY, Risk Manager

By \_\_\_\_\_  
**RISK MANAGER**

**APPROVED AS TO FORM FOR  
COUNTY:**

JEANINE B. NADEL, County Counsel

By: \_\_\_\_\_

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement