

RESOLUTION NO. 3319-2009

RESOLUTION OF THE FORT BRAGG CITY COUNCIL

and

RESOLUTION NO. R166-2009

RESOLUTION OF THE FORT BRAGG REDEVELOPMENT AGENCY

AUTHORIZING CITY MANAGER/EXECUTIVE DIRECTOR TO EXECUTE FIRST AMENDMENT TO COST ADVANCEMENT AND REIMBURSEMENT AGREEMENT WITH GEORGIA PACIFIC

WHEREAS, the City of Fort Bragg ("City") and Georgia-Pacific LLC ("GP") currently are in the process of preparing the Mill Site Specific Plan; and

WHEREAS, consistent with Resolution No. 3205-2008, the City and GP entered into a Cost Advancement and Reimbursement Agreement on August 25, 2008, ("Cost Advancement Agreement") which outlines GP's funding obligation for all City staff and consultant services and related costs associated with the processing of the Mill Site development applications, including general plan, local coastal plan, specific plan, zoning amendment, subdivision maps, development agreement and related environmental review documentation; and

WHEREAS, in accordance with the terms and conditions stated in the Cost Advancement Agreement, GP advances funds to the City and Agency which the City and Agency uses pursuant to the Cost Advancement Agreement for the processing of the Mill Site development applications; and

WHEREAS, the City has determined that it requires professional consulting services for the preparation of the environmental impact report ("EIR") for the Mill Site Specific Plan and associated development applications; and

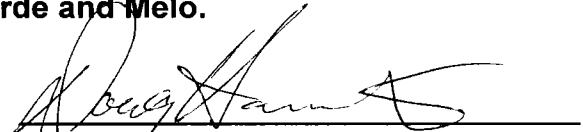
WHEREAS, on October 13, 2009, the City Council authorized execution of a Professional Services Agreement with and EIR consultant to provide environmental consulting services and to prepare the Mill Site Specific Plan EIR in accordance with the approved Scope of Work for the Mill Site Specific Plan EIR; and

WHEREAS, the City and GP desire to amend Section 2., Cost Advancement, of the Cost Advancement Agreement to clarify the timing and procedures for GP's advance funding of EIR-related costs authorized under the EIR Consultant's Professional Services Agreement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg/Agency Board of the Fort Bragg Redevelopment Agency does hereby authorize the City Manager/Executive Director to execute the Cost Advancement and Reimbursement Agreement with Georgia Pacific as attached as "Exhibit A" and incorporated herein.

The above and foregoing Resolution was introduced by Council/Agency Member Turner, seconded by Council/Agency Member Courtney, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg and Agency Board of the Fort Bragg Redevelopment Agency held on the 13th day of October, 2009, by the following vote:

- AYES:** Council/Agency Members Turner, Courtney, and Mayor Hammerstrom.
- NOES:** None.
- ABSENT:** Council/Agency Members Gjerde and Melo.
- ABSTAIN:** None.



DOUG HAMMERSTROM,
Mayor/Chair

ATTEST:



Cynthia M. VanWormer, CMC
City Clerk/Agency Secretary

EXHIBIT A

FIRST AMENDMENT TO COST ADVANCEMENT AND REIMBURSEMENT AGREEMENT

This First Amendment to the Cost Advancement Agreement (“First Amendment”) is made and entered into by and among the Fort Bragg Redevelopment Agency, a public body corporate and politic (“Agency”), the City of Fort Bragg, a municipal corporation (“City”) and when referred to collectively with the Agency, “Fort Bragg”, and Georgia Pacific LLC (“GP”) in connection with the property located at 90 West Redwood Avenue, Fort Bragg, California (the “Mill Site”).

RECITALS

- A. The City and GP currently are in the process of preparing the Mill Site Specific Plan.
- B. Consistent with Resolution No. 3205-2008, the City and GP entered into a Cost Advancement and Reimbursement Agreement on August 25, 2008, (“Cost Advancement Agreement”) which outlines GP’s funding obligation for all City staff and consultant services and related costs associated with the processing of the Mill Site development applications, including general plan, local coastal plan, specific plan, zoning amendment, subdivision maps, development agreement and related environmental review documentation.
- C. In accordance with the terms and conditions stated in the Cost Advancement Agreement, GP advances funds to the City and Agency which the City and Agency uses pursuant to the Cost Advancement Agreement for the processing of the Mill Site development applications.
- D. The City has determined that it requires professional consulting services for the preparation of the environmental impact report (“EIR”) for the Mill Site Specific Plan and associated development applications.
- E. The legislative body of the City on October 13, 2009, by Resolution No. 3318-2009 authorized execution of a Professional Services Agreement with Environmental Science Associates to provide environmental consulting services and to prepare the Mill Site Specific Plan EIR in accordance with the approved Scope of Work for the Mill Site Specific Plan EIR. For purposes of this First Amendment, Environmental Science Associates shall be referred to as, the “EIR Consultant.”
- F. The City and GP desire to amend Section 2., Cost Advancement, of the Cost Advancement Agreement to clarify the timing and procedures for GP’s advance funding of EIR-related costs authorized under the EIR Consultant’s Professional Services Agreement.

THEREFORE, for mutual consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Enforceability of Cost Advancement Agreement Terms. For purposes of this First Amendment, all Cost Advancement Agreement terms shall continue to apply unless otherwise modified by this First Amendment.

2. Amended Term of Payments By the City and Agency. This Section 2.B. shall replace and supersede Section 2.B. of the Cost Advancement Agreement.

Section 2.B. Payments By the City and Agency. Subject to Section 2.C. below, the City and Agency will use funds deposited into the Land Use Account pursuant to this Agreement to pay costs reasonably incurred by the City and Agency only for activities related to processing (through the City/Agency's entitlement process and as necessary, the Coastal Commission entitlement process) the general plan amendment, local coastal plan amendment, specific plan, zoning, subdivision map, design review, development agreement, environmental review (which includes the environmental impact report) documents and related state and federal entitlements associated with the reuse and redevelopment of the Mill Site. The City and Agency costs, payable by GP, for related state and federal entitlements (other than costs associated with the Coastal Commission entitlement process) shall not exceed \$5,000 for each six-month period identified in Section 2C unless such costs are approved in advance pursuant to the process set forth in Section 2C. In addition, the City shall not use funds from the Land Use Account to pay for any costs incurred by the City related to preparation or processing of the Coastal Trail Master Plan. The City and Agency will use funds deposited into the Redevelopment Account only for the preparation and processing the redevelopment plan amendment and related environmental review document. Disbursement of funds deposited into the Land Use Account and the Redevelopment Plan Account pursuant to this Agreement for the purposes described herein shall not require, nor be dependent upon, prior approval of GP.

3. Amended Term of Budgets and Additional Deposits by GP. This Section 2.C shall replace and supersede Section 2.C. of the Cost Advancement Agreement.

Section 2.C. Budgets and Additional Deposits by GP. Commencing on July 31, 2008 and continuing every six (6) months thereafter, the City and Agency will provide GP with a written accounting of costs incurred pursuant to this Agreement by the City and Agency during the prior six months (either January through June or July through December) The parties agree that the first report will cover January 1, 2008 through June 30, 2008. The parties also agree that during the final month of each six month period identified above, the City and Agency will provide a written estimate of the costs to be incurred and a description of the work to be performed during the following six-month time period. Within fifteen days of receiving the City and Agency report, the parties shall arrange for a "meet and confer" to review the submission and to agree on a budget for the upcoming six-month period. The meet and confer process need not be lengthy or in person.

The parties agree to work cooperatively and in good faith in this biannual process to set mutually acceptable budgets for the City and Agency's work pursuant to this Agreement. With the exception of the environmental impact report, for costs incurred for the Mill Site development applications, GP will, consistent with the mutually acceptable budgets, replenish the Land Use Account and the Redevelopment Plan Account from time to time through additional wire transfers or other appropriate methods of payment. With regards to the consultant costs for preparation of the redevelopment plan

amendment, GP agrees that it shall deposit the full amount of that consultant contract prior to the City and/or Agency issuing a notice to proceed to the consultants.

With regards to the consultant costs for preparation of the environmental impact report, within seven days of approval of the contract with ESA, Fort Bragg will provide GP with an estimate of the costs for the remainder of the current three-month quarter plus the first month of the following three-month quarter. For purposes of this paragraph, three-month quarters are defined as January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Thereafter, within 30 days of close of the three-month quarter, City will provide GP with (1) a written accounting of the EIR expenditures by the City and EIR Consultant for the prior three-month quarter and of the EIR costs incurred to date pursuant to the this First Amendment and (2) an estimate of the costs for the remainder of the current three-month quarter plus the first month of the following three-month quarter. Following receipt by GP of such written estimate from City, and provided that GP concurs with the budget estimate for the upcoming period which concurrence GP shall not unreasonably withhold, GP shall advance funds in the amount of the written estimate into the Land Use Account for the upcoming period. Accordingly, the Land Use Account shall at all times provide funds sufficient to cover the costs authorized for the next three-month period plus one month of the subsequent three-month quarter.

If at any point, the City or Agency reasonably anticipate that it or they will encounter costs pursuant to this Agreement that (1) have not previously been addressed through the biannual submission/meet and confer process and (2) cannot reasonably be addressed through existing uncommitted funds in the respective accounts, the City and/or Agency will provide GP with a written explanation of the circumstances giving rise to such out of the ordinary course costs. The parties will thereafter promptly meet and confer to resolve the issue in a mutually acceptable manner.

If GP elects not to provide additional funds as requested by the City and/or Agency, or to the extent that there are insufficient funds to support continuing costs and expenses incurred by the City and/or Agency consistent with the terms of this Agreement, the City and/or Agency shall have no further obligations under this Agreement or to continue processing GP's applications and/or the redevelopment plan until such time as additional funds from GP are deposited. In addition, the City and Agency will not authorize additional consultant contracts or authorize additional work by consultants related to the entitlements identified in Section 1 unless: (1) such work is necessary for the City or Agency to satisfy any state or federal requirements and (2) GP has not submitted a written request to the City to withdraw its application for all development entitlements identified in Section 1 of this Agreement.

4. Counterparts, Effective Date and Facsimile Signatures.

This First Amendment may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument. This First Amendment shall be binding and effective as of the date it has been fully executed by all the parties, and facsimile copies of signatures shall be sufficient for purposes of executing this First Amendment.

IN WITNESS WHEREOF, GP, Agency, and City have executed this Agreement as of the dates below.

Dated: _____, 2009

Fort Bragg Redevelopment Agency

Linda Ruffing, Executive Director

APPROVED AS TO FORM:

Michael Gogna, Agency Counsel

ATTEST:

Cynthia VanWormer, CMC, Agency Clerk

Dated: _____, 2009

The City of Fort Bragg

Linda Ruffing, City Manager

APPROVED AS TO FORM:

Michael Gogna, City Attorney

ATTEST:

Cynthia VanWormer, CMC, City Clerk

Dated: _____, 2009

Georgia Pacific LLC

By: Roger "Chip" Hilarides
Its: General Manager

APPROVED AS TO FORM:

Attorney for Georgia Pacific

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