

RESOLUTION NO. 3205-2008

RESOLUTION OF THE FORT BRAGG CITY COUNCIL

and

RESOLUTION NO. R149-2008

RESOLUTION OF THE FORT BRAGG REDEVELOPMENT AGENCY

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

WHEREAS, Georgia Pacific (GP) conducted lumber-milling operations at the Mill Site until 2002; and

WHEREAS, the Mill Site is a key property identified for redevelopment in the Fort Bragg Redevelopment Plan (the "Plan"); and

WHEREAS, since 2003, Fort Bragg has been involved in a public planning process for reuse of the Mill Site, the goal of which is to facilitate redevelopment of the site into a combination of residential, commercial/industrial, and recreational/open space uses that produce economic and aesthetic benefits to Fort Bragg and GP; and

WHEREAS, the City of Fort Bragg has worked, and wants to continue working, with GP to facilitate the remediation, redevelopment and reuse of the Mill Site, and its objectives in this regard are reflected in, among other places, the Statement of Position Regarding Reuse Of The Georgia-Pacific Mill Site adopted pursuant to Resolutions R115-2005 (Agency) and 2860-2005 (City); and

WHEREAS, Resolution 2860-2005 of the Fort Bragg City Council provides, in part, that the City has a policy of "full cost-recovery for all City staff and consultant services and related costs associated with the processing of development applications" including general plan, local coastal plan, specific plan, zoning amendment, subdivision maps, development agreement and related environmental review documentation. In addition, the City and Agency will incur costs associated with the preparation of a redevelopment plan amendment for the Mill Site; and

WHEREAS, with the exception of the grant funds the City obtained to promote sustainable development, the City and the Agency currently lack sufficient resources to fund the actions necessary to prepare (where necessary) and process for consideration the general plan amendment, local coastal plan amendment, specific plan, zoning amendment, subdivision maps, design review, development agreement, redevelopment plan amendment, environmental review documents required for the reuse and redevelopment of the Mill Site and related state and federal entitlements.

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.

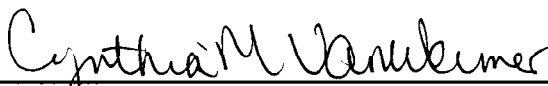
The above and foregoing Resolution was introduced by Council/Agency Member Melo, seconded by Council/Agency Member Turner, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg and Agency Board of the Fort Bragg Redevelopment Agency held on the 25th day of August, 2008, by the following vote:

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



DOUG HAMMERSTROM,
Mayor/Chair

ATTEST:



Cynthia M. VanWormer, CMC
City Clerk/Agency Secretary

EXHIBIT A

COST ADVANCEMENT AND REIMBURSEMENT AGREEMENT

This Cost Advancement Agreement (“Agreement”) 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”). This Cost Advancement Agreement is separate from and supplemental to the Cost Advancement Agreement (“Remediation Cost Advancement Agreement”) entered into by the City, the Agency and GP dated September 25, 2007 and related to remediation of the Mill Site.

RECITALS

- A. GP conducted lumber-milling operations at the Mill Site until 2002.
- B. The Mill Site is a key property identified for redevelopment in the Fort Bragg Redevelopment Plan (the “Plan”).
- C. Since 2003, Fort Bragg has been involved in a public planning process for reuse of the Mill Site, the goal of which is to facilitate redevelopment of the site into a combination of residential, commercial/industrial, and recreational/open space uses that produce economic and aesthetic benefits to Fort Bragg and GP.
- D. Fort Bragg has worked, and wants to continue working, with GP to facilitate the remediation, redevelopment and reuse of the Mill Site, and its objectives in this regard are reflected in, among other places, the Statement of Position Regarding Reuse Of The Georgia-Pacific Mill Site adopted pursuant to Resolutions R115-2005 (Agency) and 2860-2005 (City).
- E. Resolution 2860-2005 provides, in part, that the City has a policy of “full cost-recovery for all City staff and consultant services and related costs associated with the processing of development applications” including general plan, local coastal plan, specific plan, zoning amendment, subdivision maps, development agreement and related environmental review documentation. In addition, the City and Agency will incur costs associated with the preparation of a redevelopment plan amendment for the Mill Site.
- F. With the exception of the grant funds the City obtained to promote sustainable development, the City and the Agency currently lack sufficient resources to fund the actions necessary to prepare (where necessary) and process for consideration the general plan amendment, local coastal plan amendment, specific plan, zoning amendment, subdivision maps, design review, development agreement, redevelopment plan amendment, environmental review documents required for the reuse and redevelopment of the Mill Site and related state and federal entitlements. Accordingly, and on the terms and conditions stated herein, GP will advance funds to the City and Agency which the City and Agency will use pursuant to this Agreement.

AGREEMENT

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

1. Land Use Entitlements and Redevelopment Plan Amendment.

2. Cost Advancement. In conjunction with the proposed reuse and redevelopment of the Mill Site, GP has requested or may request City and/or Agency consideration of a general plan amendment, local coastal plan amendment, specific plan, land use and development code amendment, development agreement, master and final subdivision map, subdivision improvement agreement, coastal development permits, design review, water supply assessment, a redevelopment plan amendment and related environmental review as required by state and federal law. Consistent with Resolution 2860-2005, this agreement sets forth the cost advancement and reimbursement obligations of GP.

A. Initial Deposits By GP. Within thirty (30) days of the execution of this Agreement by all of the parties, GP will provide a check payable to the City in the amount of one hundred sixty five thousand dollars (\$165,000.00), and the City will promptly deposit GP's check into the Mill Site Land Use Permit Cost Reimbursement Account ("Land Use Account"). Within thirty (30) days of the execution of this Agreement by all of the parties, GP will provide a check payable to the Agency in the amount of thirty thousand dollars (\$30,000.00), and the Agency will promptly deposit GP's check into the Mill Site Redevelopment Plan Amendment Processing Account (Redevelopment Plan Account). The funds referenced herein and in Section 2C shall be deposited into and retained by Fort Bragg in a separate interest bearing account and any interest earned shall be retained in the Land Use Account and the Redevelopment Plan Account. Any services charges incurred by Fort Bragg associated with the accounts shall be paid from funds within the account.

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 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.

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. In light of those budgets, GP will 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 environmental impact report and the redevelopment plan amendment, GP agrees that it shall deposit the full amount of those consultant contracts prior to the City and/or Agency issuing a notice to proceed to the consultants.

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.

D. *Authority and Obligations of City and Agency.*

- (i) The City and the Agency will confer in good faith with GP regarding the selection of consultants and advisors engaged by the City and Agency pursuant to this Agreement. The compensation of City and Agency’s consultants and advisors will be similar, in kind and amount, to compensation received by individuals or firms similarly situated for substantially the same work. Subject to those limitations, the ultimate determination of which persons, companies or legal counsel the City and Agency retain to provide services shall remain solely with the City and the Agency.

(ii) The advancement of funds for the City and Agency costs under this Agreement shall in no way influence the City's and/or Agency's actions with respect to the review, processing or approval of agreements, permits or entitlements whether current or future. GP is expressly prohibited from exercising any supervision or control over the work of City or Agency staff, City or Agency consultants or other City or Agency advisors.

(iii) Nothing in this Agreement or the parties' performance hereunder shall constitute or create any form of association, joint venture, or partnership for any purpose between the City/Agency and GP nor shall this Agreement or performance hereunder constitute or create a trust, express or implied for the benefit of GP or any other person. The City and Agency have no fiduciary duty to GP or any other person with respect to the Land Use Account or the Redevelopment Plan Account except for the City's and Agency's responsibility to exercise due care and use the funds deposited pursuant to this Agreement for the purposes specified in this Agreement.

E. Return of Unspent Funds. If, upon the completion of the process for consideration and action on all discretionary entitlements identified hereinabove and the issuance of all permits that implement such entitlements, there are funds remaining in either the Land Use Account or the Redevelopment Plan Account that were deposited by GP pursuant to this Agreement but have not been expended or committed for expenditures authorized by this Agreement, the City or Agency shall, within ninety (90) days, return any uncommitted funds and provide GP with a final accounting of the deposits and expenditures made from the Land Use Account or the Redevelopment Plan Account, respectively, pursuant to this Agreement. The funds returned shall include any remaining interest earned on the funds deposited into the account.

3. Use of Draft and Final Documents .

The City and Agency shall have the right to retain and utilize, as they deem appropriate, any draft and final planning and environmental documents prepared by GP consultants and submitted to the City or Agency as part of the entitlement process for the land use actions and the redevelopment plan amendment described in Section 1 herein. The documents the City and/or Agency may retain shall not include documents that contain proprietary information regarding GP, unless such proprietary information is redacted from the documents retained by the City and/or Agency. GP agrees that it will, upon request of the City or Agency, authorize its consultants to provide to the City or Agency electronic copies of said documents.

4. Remedies.

In the event any party materially defaults under this Agreement, and such default is not remedied in a timely fashion following written notice to the defaulting party and a reasonable opportunity to cure the default condition(s), the non-defaulting party or parties may seek any and all relief available under applicable legal and/or equitable principles.

5. Indemnification and Hold Harmless.

GP agrees to indemnify, defend with counsel approved by the City and/or Agency, and hold harmless City and/or Agency and their officials, officers, employees and agents for all costs and expenses,

including attorney's fees, incurred by City and/or Agency or held to be the liability of the City and/or Agency in connection with City/Agency's defense of any claim, action or proceeding filed by a third party in any State or Federal court challenging the City and/or Agency's actions or approvals related to the entitlements identified herein (in Section 1) and requested by GP from the City and/or Agency. GP's obligations pursuant to this section shall not apply when (1) the injury or violation of law arises wholly from the gross negligence or willful misconduct of the City and/or Agency or its/their officers, employees, or agents and (2) the actions of GP or its employees or agents have contributed in no part to the injury or violation of law.

6. Time is of the Essence.

The parties agree that time is of the essence in performing work under this Agreement.

7. Notices and Submission of Other Materials.

Any and all notices required to be provided pursuant to this Agreement, shall be sent to the following representatives of the parties. Any notice required to be provided under this Agreement will be deemed sufficiently given when delivered personally or on the third business day after the notice is deposited in the United States mail, with first-class postage affixed, or the business day after the notice is sent for overnight delivery by established overnight courier, addressed to the parties as follows or upon sending a facsimile with confirmation of receipt sent to the following telephone numbers:

"City or Agency" City of Fort Bragg

Attn: Linda Ruffing
City Manager/Executive Director
City of Fort Bragg
416 North Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Facsimile: (707) 961-2802

"GP" Roger "Chip Hilarides"
General Manager
Georgia Pacific
300 West Laurel Street
Bellingham, WA 98225
Phone: (404) 652-6420
Facsimile: (404)

8. Assignment of Agreement.

No party may assign this Agreement, or any part thereof, without the prior express written consent of the other parties.

9. Modification, Waiver and Amendments.

Neither this Agreement nor any of its terms may be terminated, amended, modified or waived except by a written instrument executed by the parties.

10. Governing Law.

This Agreement will be governed by the laws of the State of California. Any and all litigation to enforce the terms of this Agreement must be brought in Mendocino County or the United States District Court for the Northern District of California.

11. Attorneys' Fees.

In any action or proceeding arising out of this Agreement the prevailing party shall be entitled to reasonable attorneys' fees and costs.

12. Severability.

If any provision of this Agreement, or its application to any person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision will not affect any other provision of this Agreement or the application of such provision to any other person or circumstance, and the remaining portions of this Agreement will continue in full force and effect, unless enforcement of this Agreement as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Agreement.

13. Counterparts, Effective Date and Facsimile Signatures.

This Agreement 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 Agreement 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 Agreement.

14. Term and Termination.

Any party may terminate this Agreement for any reason by giving sixty (60) days written notice. Upon issuance of a termination notice by the Agency or the City, or receipt of a termination notice from GP, City and/or Agency shall immediately cease and refrain from authorizing work to be paid from either the Land Use Account or the RDA Plan Account. All funds deposited into either the Land Use Account or the RDA Plan Account pursuant to this Agreement and not committed as of the City and/or Agency's receipt of a termination notice issued by GP, or not committed as of the Agency or City's issuance of a termination notice, shall be returned to GP no later than the 90th day after the effective date of the termination notice. Notwithstanding the provisions set forth in this Section, GP may not terminate this Agreement if the City and/or Agency have approved any of the discretionary actions or entitlements listed in Section 1 and a lawsuit challenging any of said discretionary actions or entitlements has been threatened and/or filed against the City and/or Agency. The City and/or Agency shall, within five

business days of receipt, notify GP of any claim, action or proceeding threatened and/or filed against the City and/or Agency that relates to the discretionary actions or entitled referenced herein.

15. Authorization to Bind Parties.

Each undersigned representative of the parties to this Agreement warrants and certifies that she or he is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind the party for whom she or he has executed this Agreement.

16. Integration.

This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

17. Incorporation of Recitals.

The parties agree that the Recitals summarize certain significant aspects of the factual background upon which the parties have entered into this Agreement. The parties acknowledge the general accuracy of the Recitals and agree that the Recitals are material provisions of this Agreement and thus are relevant to the proper interpretation and enforcement of this Agreement.

18. No Party Deemed Drafter.

Each party represents and warrants that it has been represented by counsel in negotiating and entering into this Agreement and as such, no single party has drafted this Agreement. This Agreement will not be interpreted against either party as the drafting party.

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

Fort Bragg Redevelopment Agency

Dated: _____, 2007

Linda Ruffing, Executive Director

APPROVED AS TO FORM:

ATTEST:

Michael Gogna, Agency Counsel

Cynthia M. VanWormer, CMC, Agency Secretary

Dated: _____, 2007

The City of Fort Bragg

Linda Ruffing, City Manager

APPROVED AS TO FORM:

ATTEST:

Michael Gogna, City Attorney

Cynthia M. VanWormer, CMC, City Clerk

Dated: _____, 2007

Georgia Pacific LLC

By: Roger "Chip" Hilarides
Its: General Manager

APPROVED AS TO FORM:

Attorney for Georgia Pacific

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