

RESOLUTION NO. 2939-2006

RESOLUTION OF THE FORT BRAGG CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE GRANT AGREEMENT #05-007 WITH THE STATE COASTAL CONSERVANCY TO RECEIVE \$4,165,000 FOR ACQUISITION OF PROPERTY ON THE GEORGIA-PACIFIC MILL SITE

WHEREAS, on May 18, 2005, the California State Coastal Conservancy ("Conservancy") approved a grant in the amount of four million one hundred sixty-five thousand dollars (\$4,165,000) for the purchase of approximately 35 acres of coastal property on the former Georgia-Pacific Mill Site, known as the "Fort Bragg Waterfront Acquisition"; and

WHEREAS, the property included in the Fort Bragg Waterfront Acquisition includes portions of County Assessor's Parcel Nos. 008-010-26, 008-020-09, 018-430-01, and 018-430-02; and

WHEREAS, the City Council intends that the property in the Fort Bragg Waterfront Acquisition be used for purposes of public access, and natural resource, open space and scenic protection; and

WHEREAS, to complete the Fort Bragg Waterfront Acquisition purchase, the City must enter into a grant agreement with the Conservancy and a purchase and sale agreement with the property owner; and

WHEREAS, the City Council has reviewed Grant Agreement No. 05-007 and agrees to all of its terms and conditions, including the "Conditions Precedent to Disbursement."

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Fort Bragg that the City Council approves the terms and conditions of Grant Agreement No. 05-007; and

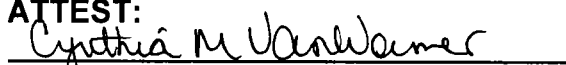
BE IT FURTHER RESOLVED by the City Council of the City of Fort Bragg that the City Manager is hereby authorized to execute Grant Agreement No. 05-007(Exhibit A) agreeing to the terms and conditions for acquisition of the Fort Bragg Waterfront Acquisition.

The above and foregoing Resolution was introduced by Councilmember Melo, seconded by Councilmember Baltierra, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 13th day of March, 2006, by the following vote:

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



DAVE TURNER,
Mayor

ATTEST:

Cynthia M. VanWormer, CMC
City Clerk

STANDARD AGREEMENT - APPROVED BY THE ATTORNEY GENERAL
 (STD. 20REV. 5-91)

CONTRACT NUMBER 05-007	AM. NO.
TAXPAYERS FEDERAL EMP. IDENTIFICATION NUMBER 94-6000335	

THIS AGREEMENT, made and entered into this _____ day of _____ in the State of California, by and between State of California, through its duly elected or appointed, qualified and acting

TITLE OF OFFICER ACTING FOR STATE Executive Officer	AGENCY State Coastal Conservancy	<i>(to be filled in by State, and Contractor)</i>
CONTRACTOR'S NAME City of Fort Bragg		

WITNESSETH: That the Contractor for and in consideration of the covenants, conditions, agreements, and stipulations of the State hereinafter expressed, does agree to furnish to the State services and materials as follows: (Set forth service to be rendered by Contractor, amount to be paid Contractor, time for performance, and attach plans and specifications, if any.)

SCOPE OF AGREEMENT

Pursuant to Chapter 9 of Division 21 of the California Public Resources Code, the State Coastal Conservancy ("the Conservancy") hereby grants to the City of Fort Bragg ("the grantee") a sum not to exceed four million one hundred sixty-five thousand dollars

(Continued on following pages)

CONTINUED ON _____ SHEETS, EACH BEARING NAME OF CONTRACTOR AND CONTRACT NUMBER.

The provisions on the reverse side hereof constitute a part of this agreement.

IN WITNESS WHEREOF, this agreement has been executed by the parties hereto, upon the date first above written.

STATE OF CALIFORNIA	CONTRACTOR
AGENCY State Coastal Conservancy	CONTRACTOR (if other than an individual, state whether a corporation, partnership, etc.) City of Fort Bragg
BY (AUTHORIZED SIGNATURE)	BY (AUTHORIZED SIGNATURE)
PRINTED NAME OF PERSON SIGNING Samuel Schuchat	PRINTED NAME AND TITLE OF PERSON SIGNING Linda Ruffing, City Manager
TITLE Executive Officer	ADDRESS 416 North Franklin Street Fort Bragg, CA 95437

AMOUNT ENCUMBERED BY THIS DOCUMENT \$4,165,000.00	PROGRAM/CATEGORY (CODE AND TITLE) Capital Outlay Other Capital Outlay	FUND TITLE California Clean Water Coastal Trust Fund	Department of General Services Only		
PRIOR AMOUNT ENCUMBERED FOR THIS CONTRACT \$-0-	OPTIONAL USE Fort Bragg Waterfront Acquisition				
TOTAL AMOUNT ENCUMBERED TO DATE \$4,165,000.00	ITEM	CHAPTER	STATUTE	FISCAL YEAR	I Certify that this grant agreement is exempt from Department of General Services approval
	3760-301-6029(1.5) \$4,065,000.00	208	2004	04/05	
	3760-801-8029011(C) \$100,000.00	224	2004	04/05	
	OBJECT OF EXPENDITURE (CODE AND TITLE) Access				

I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.

SIGNATURE OF ACCOUNTING OFFICER	T.S.A. NO.	P.R. NO.
	DATE	

CONTRACTOR STATE AGENCY DEPT. OF GEN. SER. CONTROLLER

SCOPE OF AGREEMENT (Continued)

(\$4,165,000), subject to the terms and conditions of this agreement. These funds shall be used to acquire real property (“the real property”) known as the Fort Bragg Headlands located in the County of Mendocino, State of California (portions of County Assessor’s Parcel Nos. 008-010-26, 008-020-09, 018-430-01, and 018-430-02), consisting of the parcels identified as the “Glass Beach Staging Area”, the “North Soldier’s Bay Headlands”, the “Southern Parkland” and the “Coastal Trail Corridor”, as shown in Exhibit 1, which is incorporated by reference and attached. The Glass Beach Staging Area, the North Soldiers Bay Healdlands and the Southern Parkland (each of which is referred to herein as a “parcel”) will be acquired through purchase, and the Coastal Trail Corridor will be dedicated to the city by the landowner as part of the overall transaction, without payment of additional consideration.

The real property is being acquired for the purposes of public access, and natural resource, open space and scenic protection.

→ The grantee shall provide any funds beyond those granted under this agreement which are needed to complete the acquisition of the real property.

CONDITIONS PRECEDENT TO ACQUISITION AND DISBURSEMENT

1. The grantee shall not acquire any portion of the real property and the Conservancy shall not be obligated to disburse any funds under this agreement unless and until the following conditions precedent have been met:
 - a. A resolution has been adopted by the City Council of the grantee authorizing the execution of this agreement and approving its terms and conditions.
 - b. The Executive Officer of the Conservancy (“the Executive Officer”) has reviewed and approved in writing:
 - (i) The landowner’s signed and acknowledged Irrevocable Offer to Dedicate fee title to the Coastal Trail Corridor to the City of Fort Bragg or other public agency, whose form and content shall be approved by the Executive Officer; provided, however, that the acceptance of title to any portion of the coastal trail may be conditioned on remediation of that portion and purchase of another parcel of the real property.
 - (ii) The number, location, design, and wording of signs and placards to be placed on the real property as provided in the “SIGNS” section of this agreement.

CONDITIONS PRECEDENT TO ACQUISITION AND DISBURSEMENT

(Continued)

- (iii) A site management plan that provides for public access, natural resource, open space, and scenic protection.
2. The grantee shall not acquire the Glass Beach Staging Area, the North Soldier's Bay Headlands, or the Southern Parkland, and the Conservancy shall not be obligated to disburse any funds under this agreement toward the acquisition of any parcel unless and until all of the following conditions precedent have been met, with respect to the parcel to be acquired:
- (i) The Executive Officer has reviewed and approved all title and acquisition documents pertaining to acquisition of the parcel, including, without limitation, appraisals (the specifications for which are incorporated and attached as Exhibit 2), environmental assessments, preliminary title reports, agreements for purchase and sale, escrow instructions, title documents, and instruments of conveyance.
 - (ii) The Regional Water Quality Control Board, North Coast Region, or other appropriate lead agency for site remediation, has indicated in writing that the relevant parcel has been remediated to standards adequate to at least support the "highest and best use" as established by the approved appraisal, and appropriate for the intended use of the property.
 - (iii) The Executive Officer has reviewed and approved, and the grantee has signed and acknowledged, an Irrevocable Offer to Dedicate Title in Fee, permanently dedicating the parcel for public access, and natural resource, open space and scenic protection. Each Offer shall be recorded concurrently with the instrument conveying title to the parcel to the grantee.
 - (iv) The grantee has accepted (or will upon acquisition of the parcel accept) fee title to the portions of the Coastal Trail Corridor for which remediation has been completed, as provided in (ii) above.
3. The purchase price of any interest in land purchased under this agreement may not exceed fair market value as established by the approved appraisal.

COSTS AND DISBURSEMENTS

Upon satisfaction of all provisions of the "CONDITIONS PRECEDENT TO ACQUISITION AND DISBURSEMENT" section of this agreement, the Conservancy

COSTS AND DISBURSEMENTS (Continued)

shall disburse a total amount not to exceed four million one hundred sixty-five thousand dollars (\$4,165,000), as follows:

The purchase price, plus closing costs consisting of escrow, recording and title insurance fees to the extent not included in the purchase price, shall be disbursed directly into one or more escrow account(s) established for the acquisition of specified parcels of the real property.

The grantee shall request disbursement for each acquisition by sending a letter to the Conservancy. The grantee shall include in the letter the name and address of the grantee, the number of this agreement, the date, the amount to be disbursed, and a description of the items for which disbursement is requested. Additionally, the letter shall include the name, address and telephone number of the title company or escrow holder and the escrow account number to which the funds will be disbursed. The letter shall be signed by an authorized representative of the grantee. Failure to send the required letter will relieve the Conservancy of its obligation to disburse funds.

TERM OF AGREEMENT

This agreement shall be deemed executed and effective when signed by both parties and received in the offices of the Conservancy together with the resolution described in “CONDITIONS PRECEDENT TO ACQUISITION AND DISBURSEMENT” section of this agreement. An authorized representative of the grantee shall sign the first page of the originals of this agreement in ink.

The term of this agreement shall run from its effective date through June 30, 2025 (“the termination date”).

COMPLETION DATE

The grantee shall complete acquisition of the real property no later than December 31, 2008 (“the completion date”).

Prior to the completion date, either party may terminate this agreement for any reason by providing the other party with seven days notice in writing.

If the Conservancy terminates prior to the completion date, the grantee shall take all reasonable measures to prevent further costs to the Conservancy under this agreement.

COMPLETION DATE (Continued)

The Conservancy shall be responsible for any reasonable and non-cancelable obligations incurred by the grantee in the performance of this agreement prior to the date of the notice to terminate, but only up to the unpaid balance of funding authorized in this agreement.

AUTHORIZATION

The signature of the Executive Officer on the first page of this agreement certifies that at its May 18, 2005 meeting, the Conservancy adopted the resolution included in the staff recommendation attached as Exhibit 3. This agreement is executed pursuant to that authorization.

Standard Provisions

ESSENTIAL PROVISIONS OF IRREVOCABLE OFFER TO DEDICATE TITLE IN FEE

The Irrevocable Offer to Dedicate Title in Fee by which the grantee offers to dedicate title to the real property shall include the following essential provisions, and shall be recorded concurrently with the instrument that conveys title to each portion of the real property to the grantee.

1. The real property was acquired by the grantee pursuant to a grant of funds from the State Coastal Conservancy, an agency of the State of California, for the purpose of public access, and natural resource, open space and scenic protection, and no use of the real property inconsistent with that purpose is permitted.

Without limitation, the grantee shall not use or allow the use of any portion of the real property for mitigation (in other words, to compensate for adverse changes to the environment elsewhere) without the written permission of the Executive Officer. All funds generated in connection with any authorized or allowable mitigation on the real property shall be remitted promptly to the Conservancy until the Conservancy has been fully paid for all of its past, present, and future costs with respect to the real property, including, without limitation, staff, planning, development, restoration, operation and maintenance, and monitoring costs, and acquisition costs at fair market value as of the time mitigation is to begin.

2. The real property (including any portion of it or any interest in it) may not be used as security for any debt without the written approval of the State of California, acting through the Executive Officer of the Conservancy, or its successor.
3. The real property (including any portion of it or any interest in it) may not be transferred without the approval of the State of California, through the Executive Officer of the Conservancy, or its successor.
4. The grantee is obligated to use, manage, operate and maintain the real property as described in the "USE, MANAGEMENT, OPERATION AND MAINTENANCE" section of California State Coastal Conservancy Grant Agreement No. 05-007, as it may be amended from time to time.
5. If the existence of the grantee ceases for any reason or if any of the essential provisions stated above are violated, all of the grantee's right, title and interest in the real property shall automatically vest in the State of California for the benefit of the Conservancy or its successor, upon acceptance of the real property and approval by the State Public Works Board; provided, however, that the State, through the Executive Officer of the Conservancy, or its successor, may designate another public

**ESSENTIAL PROVISIONS OF IRREVOCABLE OFFER TO DEDICATE TITLE
IN FEE** (Continued)

agency or a nonprofit organization to accept the right, title and interest, in which case vesting shall be in that agency or organization rather than in the State.

6. The offer is irrevocable.

SIGNS

The grantee shall erect signs identifying the acquired lands for public use. Specifically, the grantee shall identify public access opportunities and the California Coastal Trail, and acknowledge Conservancy funding, by erecting and maintaining signs on the property, the designs and locations of which have been reviewed and approved by the Executive Officer. The number, design, wording and placement of the signs shall be submitted to the Executive Officer for review and approval prior to the acquisition of the real property. The Conservancy shall provide specification for the Conservancy sign and logo.

USE, MANAGEMENT, OPERATION AND MAINTENANCE

The grantee shall use, manage, operate and maintain the real property in a manner consistent with the purpose of the acquisition. The grantee further assumes all management, operation and maintenance costs associated with the real property, including the costs of ordinary repairs and replacements of a recurring nature, and costs of enforcement of regulations. The Conservancy shall not be liable for any cost of such management, operation or maintenance. The grantee shall refrain from developing or otherwise using any other property it owns or controls in the vicinity of the real property in such a way as to interfere with or inconvenience the use, management, operation or maintenance of the real property or to detract from the purpose of the acquisition. The grantee may be excused from its obligations for management, operation and maintenance only upon the written approval of the Executive Officer of the Conservancy or his or her successor.

Mitigation. Without the written permission of the Executive Officer, the grantee shall not use or allow the use of any portion of the real property for mitigation (in other words, to compensate for adverse changes to the environment elsewhere). All funds generated in connection with any authorized or allowable mitigation on the real property shall be remitted promptly to the Conservancy until the Conservancy has been fully paid for all of its past, present, and future costs with respect to the real property, including, without limitation, staff, planning, development, restoration, operation and maintenance, and

USE, MANAGEMENT, OPERATION AND MAINTENANCE (Continued)

monitoring costs, and acquisition costs at fair market value as of the time mitigation is to begin.

LIABILITY

The grantee shall be responsible for, indemnify and save harmless the Conservancy, its officers, agents and employees from any and all liabilities, claims, demands, damages or costs resulting from, growing out of, or in any way connected with or incident to this agreement, except for active negligence of the Conservancy, its officers, agents or employees. The duty of the grantee to indemnify and save harmless includes the duty to defend as set forth in Civil Code Section 2778. This agreement supersedes the grantee's right as a public entity to indemnity (see Gov. Code Section 895.2) and contribution (see Gov. Code Section 895.6) as set forth in Gov. Code Section 895.4.

The grantee waives any and all rights to any type of express or implied indemnity or right of contribution from the State, its officers, agents or employees, for any liability resulting from, growing out of, or in any way connected with or incident to this agreement.

AUDITS/ACCOUNTING/RECORDS

The grantee shall maintain financial accounts, documents, and records (collectively, "records") relating to this agreement, in accordance with the guidelines of "Generally Accepted Accounting Practices" ("GAAP") published by the American Institute of Certified Public Accountants. The records shall include, without limitation, evidence sufficient to reflect properly the amount, receipt, deposit, and disbursement of all funds related to the acquisition, use, management, operation and maintenance of the real property. The grantee shall maintain adequate supporting records in a manner that permits tracing of transactions from the request for disbursement forms to the accounting records and to the supporting documentation.

Additionally, the Conservancy or its agents may review, obtain, and copy all records relating to performance of the agreement. The grantee shall provide the Conservancy or its agents with any relevant information requested and shall permit the Conservancy or its agents access to the grantee's premises upon reasonable notice, during normal business hours, to interview employees and inspect and copy books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this agreement and any applicable laws and regulations.

AUDITS/ACCOUNTING/RECORDS (Continued)

The grantee shall retain the records related to the acquisition for three years following the date of final disbursement for the acquisition by the Conservancy. All other records shall be retained by the grantee for three years following the later of final payment and the final year to which the records pertain. The records shall be subject to examination and audit by the Conservancy and the Bureau of State Audits during the retention periods.

If the grantee retains any contractors to accomplish any of the work of this agreement, the grantee shall first enter into an agreement with each contractor requiring the contractor to meet the terms of this section and to make the terms applicable to all subcontractors.

The Conservancy may disallow all or part of the cost of any activity or action that it determines to be not in compliance with the requirements of this agreement.

NONDISCRIMINATION CLAUSE

During the performance of this agreement, the grantee and its contractors shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of sex, race, religion, color, national origin, ancestry, disability, medical condition, marital status, age (over 40), or denial of family-care leave, medical-care leave, or pregnancy-disability leave. The grantee and its contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. The grantee and its contractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.) and the applicable regulations (California Code of Regulations, Title 2, Section 7285.0 et seq.). The regulations of the Fair Employment and Housing Commission regarding Contractor Nondiscrimination and Compliance (Chapter 5 of Division 4 of Title 2 of the California Code of Regulations) are incorporated into this agreement. The grantee and its contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. This nondiscrimination clause shall be included in all contracts and subcontracts entered into to perform work provided for under this agreement.

INDEPENDENT CAPACITY

The grantee, and the agents and employees of the grantee, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California.

ASSIGNMENT

Without the written consent of the State, this agreement is not assignable by the grantee either in whole or in part.

TIMELINESS

Time is of the essence in this agreement.

EXECUTIVE OFFICER'S DESIGNEE

The Executive Officer shall designate a Conservancy project manager who shall have authority to act on behalf of the Executive Officer with respect to this agreement. The Executive Officer shall notify the grantee of the designation in writing.

AMENDMENT

No change in this agreement shall be valid unless made in writing and signed by the parties to the agreement. No oral understanding or agreement not incorporated in this agreement shall be binding on any of the parties.

LOCUS

This agreement is deemed to be entered into in the County of Alameda.