

RESOLUTION NO. 4069-2018

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL AUTHORIZING THE EXECUTION
OF AN EMPLOYMENT AGREEMENT FOR CITY MANAGER WITH TABATHA MILLER**

and

RESOLUTION NO. ID 399-2018

**RESOLUTION OF THE FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT BOARD
AUTHORIZING THE EXECUTION OF AN EMPLOYMENT AGREEMENT FOR AGENCY
MANAGER WITH TABATHA MILLER**

WHEREAS, the City Council/District Board has reviewed the experience and qualifications of Tabatha Miller to serve as City Manager of the City and District Manager of the District and has determined on the basis of her experience and qualifications that she is knowledgeable in the field of governmental and municipal administration; and

WHEREAS, the City Council/District Board believes that it is in the best interests of the City to employ Tabatha Miller as City/District Manager and to provide for the terms and conditions of City/District Manager's employment through an employment agreement;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Fort Bragg/District Board of the Fort Bragg Municipal Improvement District No. 1 as follows:

Section 1. The City Council/District Board and Miller have agreed to the terms and conditions set forth in the City/District Manager's employment agreement.

Section 2. The City Council/District Board approve the City Manager Employment Agreement, attached hereto as Exhibit "A", and incorporated herein by this reference, and authorizes the Mayor to execute the City Manager Employment Agreement with Tabatha Miller.

The above and foregoing Resolution was introduced by Council/Board Member Lee, seconded by Council/Board Member Cimolino, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg/District Board of the Fort Bragg Municipal Improvement District No. 1 held on the 26th day of February, 2018, by the following vote:

AYES: Council/Board Members Cimolino, Lee, Norvell and Mayor/Chair Peters.
NOES: None.
ABSENT: Council/Board Member Turner.
ABSTAIN: None.
RECUSED: None.



LINDY PETERS
Mayor/Chair

ATTEST:



June Lemos, CMC
City/District Clerk

EXHIBIT A

CITY MANAGER EMPLOYMENT AGREEMENT
Between the City of Fort Bragg,
a Municipal Corporation,
and Tabatha Miller

I. Parties and Date

This Agreement is dated February 14, 2018, and is effective as of final approval by the City of Fort Bragg City Council, by and between the City of Fort Bragg, California, a municipal corporation (the "City"), and Tabatha Miller, an individual (the "City Manager") (collectively the "Parties".)

- A. The City requires the services of a City Manager.
- B. The City Manager has the necessary education, experience, skills and expertise to serve as the City's City Manager;
- C. The City Council of the City (the "City Council") desires to employ the City Manager to serve as the City Manager of City;
- D. The Parties desire to execute this Agreement pursuant to the authority of and subject to the provisions of Government Code Section 53260 et seq.; and
- E. In consideration of these Recitals and the performance by the Parties of the promises, covenants, and conditions herein contained, the Parties agree as provided in this Agreement.

II. Employment

The City hereby employs the City Manager as its City Manager, and the City Manager hereby accepts such employment.

III. Commitments and Understandings

A. The City Manager's Commitments

- 1. Duties & Authority
 - a) The City Manager shall be the Chief Executive Officer of the City and be responsible to the City Council for the proper administration of all affairs of the City.
 - b) The City Manager shall perform all of the duties of the City Manager as set forth in Section 2.08.070 of the Fort Bragg Municipal Code (the "Municipal Code"), the California Government Code, and City resolutions, policies and procedures approved by the City Council, as may be provided from time to time.
 - c) The City Council designates the City Manager as the chief executive of other City-related legal entities. Such other legal entities include; the Successor Agency to the Redevelopment Agency of the City of Fort Bragg; the City's financing authority; its joint powers authorities; and the City of Fort Bragg Municipal Improvement District No. 1.
 - d) To accomplish this, the City Manager shall have the power and be required to:

- (1) Attend all meetings of the City Council, unless excused by the Mayor, and take part in the discussion of all matters before the City Council.
- (2) Review all agenda documents before preparing the agenda for any regular or special meetings of the City Council.
- (3) Direct the work of all appointive City officers and departments that are the concern and responsibility of the City Council, except those that are directly appointed by or report directly to the City Council. When the City Clerk and City Treasurer are also City employees, the City Manager will direct the work of those employees in conducting the day to day duties and affairs of the City, to the extent those duties do not directly conflict with their obligations to the City Council as direct appointees of the City Council. The City Manager may undertake any study or investigation that is necessary or desirable, or as directed by the City Council. The City Manager shall endeavor to implement changes that the City Manager believes will result in greater efficiency, economy, or improved public service in the administration of City affairs.
- (4) Recommend to the City Council adoption of such measures as the City Manager may deem necessary or expedient for the health, safety, or welfare of the community or for the improvement of administrative services.
- (5) Consolidate, combine, or reorganize offices, positions, departments, or units under the City Manager's jurisdiction. The City Manager may be the head of one or more City departments.
- (6) Conduct research in administrative practices in order to bring about greater efficiency and economy in City government, and develop and recommend to the City Council long-range plans to improve City operations and prepare for future City growth and development.
- (7) Provide management training and develop leadership qualities among department heads and staff as necessary to build a City management team that can plan for and meet future challenges.
- (8) Exercise control of City government in emergencies as authorized by the Municipal Code and California law.

2. Hours of Work

- a) The City Manager is an exempt employee without set hours of work, but is expected to be available at all times and to engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position.
- b) The City Manager shall spend sufficient hours on site to perform the City Manager's duties; however, the City Manager has discretion over the City Manager's work schedule and work location.

3. Disability or inability to perform

In the event the City Manager becomes mentally or physically incapable of performing the City Manager's functions and duties with reasonable accommodation and it reasonably appears such incapacity will last for more than six months; the City Council may terminate the City Manager. If the City Council does elect to terminate the City Manager due to incapacity, the City Manager shall receive all severance benefits provided in Section V.C below.

B. City Commitments

1. The City shall provide the City Manager with the compensation, incentives and benefits, specified elsewhere in this Agreement.
2. The City shall provide the City Manager with office space, staff, equipment, supplies, automobile allowance, and all other facilities and services adequate for the performance of the City Manager's duties.
3. The City shall pay for or provide the City Manager reimbursement for all actual business expenses. The City shall provide the City Manager a credit card to charge appropriate and lawful business expenses.
4. The City agrees to pay the professional dues and subscriptions on behalf of the City Manager for participation in national, regional, state, or local associations and organizations, as necessary and desirable for the good of the City, and for the City Manager's continued professional participation and advancement.
5. The City agrees to pay the travel and subsistence expenses of the City Manager for purposes such as official functions, meetings, occasions, short courses, institutes and seminars that are necessary for the good of the City or for the professional development of the City Manager.

C. City Council Commitments

1. The City Council sets policy for the governance and administration of the City, and it implements its policies through the City Manager.
2. Except for the purpose of inquiry, the City Council and its members shall deal with all subordinate City employees, officers, contractors, and consultants solely through the City Manager or the City Manager's designee, and neither the City Council nor any member thereof shall give orders to any subordinate of the City Manager, either publicly or privately.
3. The City Council agrees none of its individual members will order the appointment or removal of any person to any office or employment under the supervision and control of the City Manager.
4. The City Council agrees that any criticism of a City staff member shall be done privately through the City Manager.
5. Neither the City Council nor any of its members shall interfere with the execution of the powers and duties of the City Manager. The City Manager shall take orders and instructions from the City Council only when it is sitting as a body in a lawfully held

meeting.

D. Mutual Commitments

1. Performance Evaluation

a) The City Council recognizes that for the City Manager to respond to its needs and to grow in the performance of the City Manager's job, the City Manager needs to know how the City Council members evaluate the City Manager's performance. To assure that the City Manager gets this feedback, the City Council shall conduct an evaluation of the City Manager's performance at least once each year, and/or when it deems necessary to discuss any concerns or direction in performance.

b) The City Council and City Manager shall jointly define goals and performance objectives which they deem necessary for the proper operation of the City in the attainment of the City Council's policy objectives, and shall establish the relative priority among the various goals and objectives.

2. ICMA Code of Ethics

a) The Parties acknowledge that the City Manager is committed to the ideals of the International City Management Association ("ICMA"). The Parties mutually desire that the City Manager be subject to and comply with the ICMA Code of Ethics.

b) The City Manager commits to comply with the ICMA Code of Ethics.

c) The City and the City Council agree that neither the City Council nor any of its members will give the City Manager any order, direction, or request that would require the City Manager to violate the ICMA Code of Ethics.

IV. COMPENSATION

The City agrees to provide the following compensation to the City Manager during the term of the agreement:

A. Salary

1. The annual base salary for the position of City Manager shall be \$149,611.00. This salary will be increased at the same time and amount as that of other Fort Bragg management employees in the Exempt At-Will Executive Classification, or by amendment to this Agreement.

2. The City Manager shall be paid at the same intervals and in the same manner as regular City employees; in the event that there are more than twenty-six pay periods in a calendar year the periodic payments shall be adjusted accordingly so that the salary shall not exceed any amount approved by the City Council.

3. The City shall not at any time during the term of this Agreement, reduce the base salary, compensation or other financial benefits of the City Manager, unless as part of a general City management salary reduction, and then in no greater percentage than the average reduction of all City department heads.

B. Benefits

In addition to salary, the City Manager shall be entitled to the following specific benefits:

1. Moving Expenses. City Manager shall secure three bids from reputable moving companies for City Manager's relocation to Fort Bragg. The City will select the company to be used and pay those expenses directly to the moving company. Should City Manager separate from employment with the City for any reason before the 1st anniversary of the first day of the term of this Agreement, City Manager agrees to reimburse the City for moving expenses incurred by the City, and should City Manager be entitled to severance pay under Sec. V. of this Agreement, City Manager authorizes City to deduct the moving expenses from any severance pay owed to City Manager.
2. Retirement. City Manager shall be a member of the Public Employee Retirement System (PERS) at the PEPRRA - 2%@62 formula. City Manager shall pay City Manager's contribution to PERS, City shall pay the required Employer contribution.
3. Life Insurance. City shall obtain and pay for a life insurance policy for City Manager in the amount of \$150,000.
1. 4. Health Insurance. City shall pay 100% of the premiums for medical, dental and vision plans for City Manager and dependents. City Manager shall receive all other insurance benefits as employees in the management unit.

C. Sick Leave and Vacation

1. Upon final approval of this employment agreement, City Manager shall be credited with 96 hours of sick leave. Subsequent accrual of hours and conversion and compensation upon separation from the City shall be governed by the Executive Management Resolution.
2. Upon final approval of this employment agreement 80 hours of vacation shall be credited. Vacation hours shall accrue at a rate of 120 hours per year. The vacation hours accrual rate shall increase to 160 hours per year upon the anniversary of City Manager's 10th year of service, and increase to 200 hours per year at 15 years of service. City Manager accrual of vacation hours shall be capped at 360 hours.
3. Car and Cell Phone Allowance. City Manager shall be paid a car allowance in the amount of \$250 a month and a technology allowance in the amount of \$40 per month for a City Manager owned cell phone and, if applicable, \$20 per month for a City Manager owned tablet, all payable on the City's regular payroll under the procedures currently used by the City for making such payments.

D. Benefits that Accrue to Other Employees

The City Manager shall be entitled to all benefits, rights, and privileges accorded to non-public safety City Department Directors as set forth in Resolution No. 4022-2017 (as amended from time to time, or as replaced by a successor resolution) applicable to Exempt At-Will Executive Classifications, except as otherwise provided in this Agreement. If there is any conflict between this Agreement and any resolution fixing compensation and benefits for non-public safety City

Exempt At-Will Executive Classification employees or other non-classified employees, this Agreement shall control.

V. SEPARATION

A. Resignation/Retirement

The City Manager may resign at any time and agrees to give the City at least 45 days' advance written notice of the effective date of the City Manager's resignation, unless the Parties otherwise agree in writing. If the City Manager retires from full time public service with the City, the City Manager may provide six months' advance notice. The City Manager's actual retirement date will be mutually established.

B. Termination & Removal

1. Manager is an at-will employee serving at the pleasure of the City Council as provided in Government Code Section 36506.
2. The City Council may remove the City Manager at any time, either with or without cause, by a majority vote of its members at a noticed and conducted meeting of the City Council. Notice of termination shall be provided to the City Manager in writing. The City Council may also elect not to renew this Agreement. Notice of nonrenewal shall also be provided to the City Manager in writing. The City Council understands that termination or nonrenewal of employment without cause could result in an adverse financial impact not completely mitigated by any severance compensation as provided in this Agreement. Therefore, the City Council agrees that if termination or nonrenewal is made without cause, it shall provide not less than 180 days' notice of termination to the City Manager. If the City Manager resigns after receiving notice of termination, or notice of nonrenewal, the resignation shall be considered "involuntary" as described in Section V.6 of this Agreement. Termination as used in this section shall also include a request that the City Manager resign, a reduction in salary or other financial benefits of the City Manager (excluding a general City Management salary reduction), a material reduction in the powers and authority of the City Manager, or the elimination of the City Manager's position. Any such notice of termination or act constituting termination shall be given at or effectuated at a duly noticed and conducted meeting of the City Council.
3. As provided in Municipal Code Section 2.16.050, the City Manager shall not be terminated during the 90-day period following any City election for membership on the City Council.

C. Severance Pay

1. In the event the City Manager is terminated by the City Council during such time that the City Manager is willing and able to perform the City Manager's duties under this Agreement, the City shall pay the City Manager a lump sum cash payment equal to the lesser of (a) the actual number of months' salary remaining on the current term of employment and the cash equivalent of health (medical, dental and vision) benefits for that same period, and (b) six (6) months' base salary and cash equivalent of health (medical, dental and vision) benefits then in effect as provided in Section IV. above. It is the intention of the parties that this paragraph complies with the requirements of Government Code Section 53260 et seq. In the event of any conflict between this

provision and those code sections, the terms of those code sections shall govern the contractual relationship between the employer and employee.

2. In addition, the City shall extend to the City Manager the right to continue health insurance as may be required by and pursuant to the terms and conditions of the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA).

3. In the event the City refuses, following written notice of non-compliance, to comply with any provision in this Employment Agreement benefiting the City Manager, or the City Manager resigns following a suggestion, whether formal or informal, by a majority of the City Council that the City Manager resign, then, in that event, the City Manager may, at the City Manager's option, be deemed to be "terminated" as of the date of such refusal to comply or suggestion to resign and this severance pay provision shall be actuated.

4. All payments required under this Section V. are subject to and shall be interpreted to comply with the limitations set forth in Government Code Section 53260.

D. Involuntary Resignation

1. In the event that the City Council formally or a majority of the City Council informally asks the City Manager to resign, then the City Manager shall be entitled to resign and still receive the severance benefits provided in Section V.C above.

2. The City Manager has relied upon the provisions of the Municipal Code upon entering into this Agreement, as it pertains to the City Manager's role, powers, duties, authority, responsibilities, compensation, and benefits. In the event the City Council adds, deletes or amends the Municipal Code without the consent of the City Manager, and such addition, deletion or amendment is inconsistent with the terms of this Agreement and the City Manager's role, powers, duties, authority, responsibilities, compensation and benefits as currently provided, then the City Manager shall have the right, at the City Manager's sole option, to give the City Council notice that such amendment(s) constitute a request by the City Council for the City Manager's involuntary resignation.

3. Upon receipt of such notice the City Council shall have thirty days in which to do one of the following: (a) rescind the amendment (s); (b) renegotiate this Agreement to the City Manager's satisfaction; (c) confirm that the City Manager is being asked to involuntarily resign; or (d) take no action. In the event that either (c) or (d) occurs, or the City is unable to accomplish (b), then the City Manager is entitled to resign and still receive the severance benefits provided in Section V.C above.

E. Separation for Cause

1. Notwithstanding the provisions of Section V.C, the City Manager may be terminated for cause. As used in this section, "cause" shall mean only one or more the following:

a) Conviction of, or no contest plea to, a felony;

b) Conviction of, or no contest plea to, any illegal act involving moral turpitude or personal gain;

- c) Continued abuse of non-prescription drugs or alcohol that materially affects the performance of the Manager's duties;
- d) Any act constituting a knowing and intentional violation of the City's conflict of interest code; or
- e) Repeated and protracted unexcused absences from the City Manager's office and duties;

2. In the event the City terminates the City Manager for cause, then the City may terminate this Agreement immediately, and the City Manager shall be entitled to only the compensation accrued up to the date of termination, payments required by Section V.F. below, and such other termination benefits and payments as may be required by law. The City Manager shall not be entitled to any severance benefits provided by Section V.C.

3. If the City Manager is terminated for cause, and "cause" meets the definition of "abuse of office or position," as defined in Government Code section 53243.4, the provisions of Government Code sections 53243 through 53243.4 shall apply and prevail over any contrary terms and conditions of this Agreement.

F. Payment for Unused Leave Balance

1. On separation from City employment, the City Manager shall be paid for all unused accrued leave allowances provided in Section IV.B above in accordance with the current salary and benefits plan for Exempt At-Will Executive Classification employees. Accumulated leave balances shall be paid at the City Manager's monthly base salary rate at the effective date of separation.

2. In the event the City Manager dies while employed by the City under this Agreement, the City Manager's beneficiaries or those entitled to the City Manager's estate, shall be entitled to the City Manager's earned salary, and any in-lieu payments for accrued benefits, including compensation for the value of all accrued leave balances.

G. Joint Statements of Separation

In the event of resignation or retirement of the City Manager, termination by the City (with or without cause), or other separation of employment as described in the Section V., the City and the City Manager agree that neither any member of the City Council, or the City's management staff, nor the City Manager, shall make any written, oral or electronic statement to any member of the public, the press, or any City employee concerning the City Manager's termination or separation, except in the form of a joint press release or statement, the contents of which is mutually agreeable to both the City and the City Manager. The joint press release or statement shall not contain any text or information that is disparaging to either Party. Either Party may verbally repeat the substance of this Section V.G, and the joint press release or statement, in response to any inquiry.

VI. **MISCELLANEOUS PROVISIONS**

A. Term

The initial term of this Agreement shall be for a period of thirty-six (36) months beginning 12:00

a.m. March 5, 2018 and continuing until 12:00 a.m. March 6, 2021 (the "initial Termination Date").

B. Subsequent Terms

Unless the City gives the City Manager written notice of non-renewal at least 180 days prior to the initial Termination Date or the termination date of any Renewal Term (as hereinafter defined) this Agreement may be renewed by the parties for one or more additional terms of up to three (3) years each, each renewal term to be reflected by a written amendment signed by the parties. If the parties cannot mutually agree to the term of any renewal this Agreement shall continue in effect for automatic renewals of one (1) year each (whether renewed by amendment or renewed by operation of this Section each, a "Renewal Term").

C. Provisions that Survive Termination

Many sections of this Agreement are intended by their terms to survive the City Manager's termination of employment with the City, including but limited to Sections V. and VI.F. These sections, and the others so intended, shall survive termination of employment and termination of this Agreement.

D. Amendments

This Agreement may be amended at any time by mutual agreement of the City and the City Manager. Any amendments are to be negotiated, put in writing, and adopted by the City Council.

E. Conflict of Interest

1. The City Manager shall not engage in any business or transaction or have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties.
2. The City Manager shall also be subject to the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to the City Manager's City employment.
3. The City Manager is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements at the time of appointment, annually thereafter, and at the time of separation from the position.

F. Indemnification

1. To the full extent of the law, the City shall defend and indemnify the City Manager, in her capacity as City Manager, and as the chief executive of other City-related legal entities as provided in Section III.(A)(1)(c) above, against and for all losses sustained by the City Manager in direct consequences of the discharge of the City Manager's duties on the City's behalf for the period of the City Manager's employment, save and except those losses sustained as a result of the willful act or omission of the City Manager including any "abuse of office or position," as described in Section VI.(E)(3) of this Agreement.
2. The City shall defend, save harmless and indemnify the City Manager against any tort, professional liability claims or demand or other legal action, whether groundless or

otherwise, arising out of an alleged act or omission occurring in the performance of the City Manager's duties as City Manager. The City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

3. Whenever the City Manager shall be sued for damages arising out of the performance of the City Manager's duties, the City shall provide defense counsel for the City Manager in such suit and indemnify the City Manager from any judgment rendered against the City Manager; provided that such indemnity shall not extend to any judgment for damages arising out of any willful wrongdoing. This indemnification shall extend beyond termination of employment and the otherwise expiration of this Agreement to provide protection for any such acts undertaken or committed in the City Manager's capacity as City Manager, regardless of whether the notice of filing of a lawsuit occurs during or following employment with the City. This indemnity provision shall survive the termination of the Agreement and is in addition to any other rights or remedies that the City Manager may have under the law.

4. The City and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the City Manager, while acting within the scope of the City Manager's duties, from all claims, losses and liabilities arising out of or incident to activities or operations performed by or on behalf of the City or any party affiliated with or otherwise claiming under it or through it, regardless of any prior, concurrent, or subsequent active or passive negligence by the City Manager.

G. Severability

If any clause, sentence, part, section, or portion of this Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, such clause, sentence, part, section, or portion so found shall be regarded as though it were not part of this Agreement and the remaining parts of this Agreement shall be fully binding and enforceable by the Parties hereto.

H. Laws Affecting Title

In addition to those laws affecting a City Manager, the City Manager shall have the same powers, rights and responsibilities as a Chief Executive Officer, City Administrative Officer, Administrator, and City Administrator as those terms are used in local, state or federal laws.

I. Jurisdiction and Venue

This Contract shall be construed in accordance with the laws of the State of California, and the Parties agree that venue shall be in Mendocino County, California, unless the Parties mutually agree to removal to a different county.

J. Entire Agreement

This Contract represents the entire agreement of the Parties, and no representations have been made or relied upon except as set forth herein. This Contract may be amended or modified only by a written, fully executed agreement of the Parties.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

CITY OF FORT BRAGG

CITY MANAGER

By: _____

Lindy Peters, Mayor

By: Tabatha Miller

Tabatha Miller

Attest:

Approved as to Form:

By: _____

June Lemos, City Clerk

By: _____

Russell Hildebrand, City Attorney