

RESOLUTION NO. 4043-2017

RESOLUTION OF THE FORT BRAGG CITY COUNCIL

and

RESOLUTION NO. ID 395-2017

RESOLUTION OF THE FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT BOARD

and

RESOLUTION NO. RS 18-2017

RESOLUTION OF THE FORT BRAGG REDEVELOPMENT SUCCESSOR AGENCY

- (1) APPROVING AN AGREEMENT BETWEEN THE CITY OF FORT BRAGG AND JONES & MAYER FOR THE PROVISION OF LEGAL SERVICES AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAME; AND**
- (2) APPOINTING RUSSELL HILDEBRAND TO SERVE AS CITY ATTORNEY, DISTRICT GENERAL COUNSEL AND AGENCY GENERAL COUNSEL, AND APPOINTING RYAN JONES TO SERVE AS DEPUTY CITY ATTORNEY, DEPUTY DISTRICT GENERAL COUNSEL AND DEPUTY AGENCY GENERAL COUNSEL**

WHEREAS, in June 2017, Fort Bragg's City Attorney, Samantha Zutler, informed the City Council that Burke, Williams & Sorensen, LLP would not be renewing its contract to provide City Attorney services to Fort Bragg; and

WHEREAS, the City subsequently conducted a procurement process for City Attorney services which resulted in the submittal of proposals from six different entities; five of which were interviewed by the Council on September 25, 2017; and

WHEREAS, the City Council has deemed it to be in the best interest of the City to enter into a Retainer Agreement with the Law Offices of Jones & Mayer for the provision of legal services; and

WHEREAS, approval of the Retainer Agreement for City Attorney Services will not result in a direct or reasonably foreseeable indirect change in the environment; therefore the requested action is not subject to the California Environmental Quality Act and does not require environmental review, pursuant to Title 14, Chapter 3 of California Code of Regulations (CEQA Guidelines), section 15060(c)(2).

WHEREAS, Jones & Mayer has proposed that Russell Hildebrand, an attorney with Jones & Mayer, serve as City Attorney, District General Counsel to the Fort Bragg Municipal Improvement District No. 1 ("District") and Agency General Counsel to the Fort Bragg Redevelopment Successor Agency ("Agency"); and

WHEREAS, Jones & Mayer also proposed that Ryan Jones, an attorney with Jones & Mayer, serve as Deputy City Attorney, Deputy District General Counsel, and Deputy Agency General Counsel; and

WHEREAS, based on Mr. Hildebrand's experience and expertise in general municipal law matters, including his experience in providing counsel on labor and employment law, general municipal law, land use and environmental law, the Council finds that Mr. Hildebrand is

well qualified to serve as City Attorney for the City, General Counsel for the District, and General Counsel for the Agency and Mr. Jones is well qualified to serve as Deputy City Attorney, Deputy District General Counsel; and Deputy Agency General Counsel; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg, the District Board of the Fort Bragg Municipal Improvement District No. 1, and the Agency Board of the Fort Bragg Successor Agency each hereby declare, determine and order as follows:

Section 1. A Retainer Agreement for City Attorney Services, as set forth in Exhibit "A," attached hereto and incorporated herein by reference, is hereby approved and the City Manager is authorized to execute said Agreement on behalf of the City.

Section 2. Russell Hildebrand is hereby appointed to the position of City Attorney of the City, General Counsel of the District, and General Counsel of the Agency, said appointment to become effective upon being sworn in to those positions, and upon being so sworn, Russell Hildebrand shall be empowered to perform the duties of City Attorney, District General Counsel and Agency General Counsel, respectively.

Section 3. Ryan Jones is hereby appointed to the position of Deputy City Attorney of the City, Deputy General Counsel of the District, and Deputy General Counsel of the Agency, said appointment to become effective upon being sworn in to those positions, and upon being so sworn, Ryan Jones shall be empowered to perform the duties of Deputy City Attorney, Deputy District General Counsel and Deputy Agency General Counsel, respectively.

Section 4. The appointments made through, and the authority granted by, this resolution shall include the responsibility and authority to regularly advise the City Council, the District Board, the Agency Board, and their respective staffs and perform various other duties as needed.

Section 5. Russell Hildebrand and Ryan Jones shall be bound by the Retainer Agreement for City Attorney Services with the Law Offices of Jones & Mayer, as the same may be amended from time to time.

Section 6. Russell Hildebrand and Ryan Jones shall comply with City of Fort Bragg Conflict of Interest rules, and the Political Reform Act (Government Code §8100, et seq.) and the FPPC Regulations (2 Cal. Code of Regulations §18109, et seq.).

Section 7. The appointment of Russell Hildebrand as City Attorney, District General Counsel, and Agency General Counsel and the appointment of Ryan Jones as Deputy City Attorney, Deputy District General Counsel, and Deputy Agency General Counsel are not a "project" as that term is defined under the California Environmental Quality Act, and therefore, is not subject to environmental review.

The above and foregoing Resolution was introduced by Council/Board/Agency Member Turner, seconded by Council/Board/Agency Member Norvell, 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/Fort Bragg Redevelopment Successor Agency held on the 23rd day of October, 2017, by the following vote:


AYES: Council/Board/Agency Members Cimolino, Lee, Norvell, Turner and Mayor/Chair Peters.

NOES: None.
ABSENT: None.
ABSTAIN None.
RECUSE: None.



LINDY PETERS,
Mayor/Chair

ATTEST:



June Lemos, CMC
City/District Clerk/Agency Secretary

EXHIBIT A

**RETAINER AGREEMENT
FOR CITY ATTORNEY SERVICES
CITY OF FORT BRAGG**

This Retainer Agreement for City Attorney Services ("Agreement") is made and entered into by and between the LAW OFFICES OF JONES & MAYER ("Jones & Mayer") and the CITY OF FORT BRAGG (the "City"), a municipal corporation of the State of California.

RECITALS

- A. Jones & Mayer is a firm in the general practice of law with extensive municipal experience, and is fully able to carry out the duties described in this Agreement.
- B. The City desires to contract with Jones & Mayer to provide contract legal services to the City.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual terms and conditions set forth in this Agreement, Jones & Mayer and the City agree as follows:

1. **APPOINTMENT OF CONTRACT CITY ATTORNEY**

A. Russell A. Hildebrand is hereby designated and appointed as Contract City Attorney ("City Attorney") of the City, with Ryan R. Jones as the designated Assistant City Attorney, and they shall serve and be compensated as provided by this Agreement. The City Attorney shall process, coordinate, and direct, as necessary, all legal services provided under this Agreement in order to maximize the timeliness and usefulness of the delivery of such services. To the extent required by the City Council, the City Attorney shall attend all City Council meetings and other meetings, and be available at all reasonable times to the Mayor and City Council, the City Manager, and persons designated by the City Manager, in relationship to all legal services to be furnished by Jones & Mayer under this Agreement. The City Attorney shall also direct and coordinate all internal activities so that all services provided by Jones & Mayer under this Agreement to the City shall be fully competent, professional, consistent, timely, and in accordance with the standards prevalent in the industry. It is expressly understood that the experience, knowledge, capability, and reputation of the designated and appointed City Attorney are a substantial inducement for the City to enter into this Agreement. The City Attorney shall be responsible during the term of this Agreement for directing all activities of Jones & Mayer on behalf of the City and devoting such time as necessary to personally supervise such services. The primary assignment of the City Attorney shall not be changed by Jones & Mayer without the express approval of the City.

B. All attorneys of Jones & Mayer assigned to perform approved City business shall, at all times while this Agreement is in effect and at their sole cost and expense, be fully qualified and licensed to practice law in the State of California and before all appropriate federal courts and other bodies and tribunals.

C. The term of this Agreement shall commence on November 13, 2017, and shall continue unless it is terminated in accordance with Section 11 of this Agreement, or amended by mutual written agreement of the parties.

2. SCOPE OF WORK

A. Jones & Mayer agrees to perform all necessary legal services as Contract City Attorney, and shall:

1. Attend regularly scheduled and special City Council meetings and City Council study sessions.
2. Attend other meetings at City Hall or via conference call as required by the City Council or the City Manager.
4. Advise the City Council; appointed Commissions, Committees, and Boards; City staff; and other City officials on all legal matters pertaining to City business.
5. Prepare, review, and approve as to form, contracts, agreements, resolutions, ordinances, and all other standard City documents.
6. Prepare such written and oral legal opinions as shall, from time to time, be requested by the City.
7. Perform such other routine legal services as are required, from time to time, by the City Council or the City Manager.
8. Represent the City and the City's officials, officers, and employees in litigation and administrative proceedings as directed by the City Council or the City Manager.
9. At the request of the City, Jones & Mayer may be asked to provide an estimate of hours and cost to complete a special project or task assigned by the City Manager, or designee, or the City Council.
10. Prosecution of Fort Bragg Municipal Code violations shall be provided by Jones & Mayer, if requested under this Agreement. The City Prosecutor or his/her designees shall provide those legal services which are determined to be reasonably required to represent City, and shall take reasonable steps to keep City informed of progress and to respond to City's inquiries. City understands that the City Prosecutor and his/her designees will be exercising their independent prosecutorial judgment in connection with all code enforcement matters in consultation with City's staff.

B. The City reserves the right to retain, at its sole option, other legal counsel for specialized legal matters. The City Attorney will supervise outside legal counsel's work. This reservation of rights does not preclude the City from assigning these matters to Jones & Mayer as

part of the scope of duties under this Section 2 or requesting recommendations concerning the selection of outside legal counsel.

3. COMPENSATION

Jones & Mayer shall be compensated under the terms of this Agreement as follows:

A. General Legal Services

The City shall pay Jones & Mayer a retainer of \$10,960 per month, which amount will cover general legal services up to 45 hours per month and travel time, lodging, and meal expenses and mileage reimbursement for 2 meetings at the City per month. General legal services in excess of a total of 45 hours shall be billed at the rate of \$205.00 per hour. After six months of Jones & Mayer providing legal services for the City, and on an annual basis thereafter, the City may evaluate whether 45 hours of general legal services adequately serves the City's legal needs. Should the City desire more or less than 45 hours of general legal services, the City and Jones & Mayer shall reasonably agree to adjust the number of hours under the retainer accordingly.

General legal services are those services which involve regular, recurring legal and factual issues. General legal services include: Attendance at City Council and other committee or commission meetings as necessary, attendance at regular Staff meetings, providing legal counsel and advice to elected and appointed Officials as to City business, work with City Staff on all agenda items for City meetings, drafting, review and revision of City agendas, agreements, contracts, instruments, ordinances, reports, resolutions, and other documents as requested by City, and providing legal advice concerning Brown Act, Public Records Act, Political Reform Act and other conflict of interest compliance, and supervision of legal services performed by special counsel.

If any part of the retainer hours or a scheduled meeting is not used in a particular month, those excess hours and/or trips would roll over and be available to the City in the next month. The retainer shall be prorated for the first partial month of services provided hereunder.

B. Specialized Legal Services/Special Projects

Specialized projects and non-litigation legal services not included within the retainer shall be billed to the City at the rate of \$225 per hour. Paralegal services, for non-litigation legal services not included in the retainer shall be billed at the rate of \$115 per hour. All costs and expenses, except for those as set forth in Section 3.F below shall be deemed included in the foregoing hourly billing rates.

Special legal services or special projects include those matters which present unique legal and/or factual issues. Special legal services differ from general legal services in that they are of an irregular non-recurring basis. Examples includes work of unusual complexity or requiring an extraordinary dedication of attorney time, as determined by the City Manager or City Council, such as preparation and review of environmental documents under CEQA, NEPA, the Integrated

Waste Management Act, the Clean Water Act, initiatives and referendums, interagency conflicts/issues, negotiation and drafting of complex real estate and development agreements, etc. The City Attorney may not unilaterally designate any matter as a special project.

C. Litigation Services

Litigation matters approved by the City Manager and/or City Council shall not be included in the retainer amount. Litigation legal services shall be billed at the rate of \$225 per hour. Paralegal services shall be billed at the rate of \$115 per hour. All costs and expenses, except for those as set forth in Section 3.F below shall be deemed included in the foregoing hourly billing rates. The City Attorney will first get approval from the City Manager or City Council before commencing work on litigation matters.

D. Code Enforcement Services

Jones & Mayer agrees to perform all necessary legal services as Contract City Prosecutor. Fees for code enforcement matters shall be \$225.00 per hour. Paralegal services shall be billed at the rate of \$115 per hour. All costs and expenses, except for those as set forth in Section 3.F below shall be deemed included in the foregoing hourly billing rates.

E. Third Party Reimbursable Rate. Whenever the City provides work on a project that is reimbursed by a third party (for example, cost recovery for processing applications from developers, or litigation funded by a third party) to the City, such work will be billed at the rate of \$245 per hour and will not be charged against the retainer.

F. Billing and Rate Increases

Jones & Mayer shall provide a monthly billing report indicating actual time spent under the retainer, litigation matters, and additional specialized projects.

The foregoing retainer and hourly rates shall remain in full force and effect for two (2) years. Thereafter, the foregoing billing rates shall be adjusted annually (effective as of the anniversary date of this Agreement) to reflect any increase in the cost of living based on the Consumer Price Index increase for the prior year utilizing the standard as established by the Bureau of Labor Statistics of the U.S. Department of Labor for consumers in the Mendocino County area, or another mutually agreed upon index based on comparable data should the Consumer Price Index established by the Bureau of Labor Statistics be unavailable not to exceed 5% per year.

G. Billable Activities for General Legal Services/Expenses

Under General Legal Services, Jones & Mayer will bill travel to and from Fort Bragg at 50% of the time expended travelling between Jones & Mayer's Roseville office and the City. For travel not included in the retainer, the firm will bill automobile mileage at the standard rate for business use as announced from time to time by the Internal Revenue Service for travel to and from the City, or other locations as the City may direct, and lodging at a cost not to exceed

\$135 per night. Otherwise, the firm does not bill mileage, fax, word processing, small reproduction matters (under 100 pages), or simple computer legal research costs. Additionally, it is agreed that the cost for administrative staff to perform clerical duties including but not limited to reviewing emails, scheduling meetings or general office filing will not be billable expenditures. When billing for legal research, the entry must reflect a description of the topic researched and its relevance to the effort.

Jones & Mayer shall be reimbursed for direct out-of-pocket expenses actually and necessarily incurred in the course of providing legal services under this Agreement in preparation for and maintaining the prosecution or defense of litigation, including without limitation: court costs, jury fees, service costs, witness fees, deposition costs, reporters' fees, title reports, photographs, diagrams, maps, and similar expenses.

H. Monthly Statements

Jones & Mayer shall submit statements of all payments due under this Agreement on a monthly basis to the City Manager. All work performed by Jones & Mayer shall be billed in increments of tenths of an hour. The statement shall be in a form approved by the City, and shall set forth a description of all work performed, the hours worked, the identity of each person performing the work, the rate charged, the identity of the person requesting work, and any litigation costs or expenses eligible for reimbursement.

I. Payment

All hours shall be billed by the 15th day of each month following the close of the month for which hours are being provided. Payment for hours shall be due and payable within thirty (30) days following submission of the billing statement to the City.

4. PROHIBITION AGAINST SUBCONTRACTING DELEGATING OR ASSIGNMENT

Jones & Mayer shall not contract with or delegate to any individual or other entity to perform on the City's behalf, in whole or in part, any of the services required under this Agreement without the prior express approval of the City Council, or if they so delegate, the City Manager. In addition, neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior express approval of the City.

5. CONFLICT OF INTEREST

Jones & Mayer shall at all times avoid conflicts of interest in the performance of this Agreement. In the event that a conflict arises, Jones & Mayer shall immediately notify City. Within thirty (30) days following execution of this Agreement, Jones & Mayer shall file a conflict of interest disclosure statement setting forth any information related to potential conflicts of interest to the extent such disclosure is required by law, including City's adopted conflict of interest code.

6. INDEPENDENT CONTRACTOR

Jones & Mayer shall perform all services required under this Agreement as an independent contractor of the City, and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Jones & Mayer shall not at any time or in any manner represent that it or any of its employees or agents are City employees.

7. DISPUTE RESOLUTION

If any dispute or disagreement arises between the City and Jones & Mayer as to any matter relating to this Agreement, including but not limited to the scope of services, the performance of the respective responsibilities of the City and Jones & Mayer, the quality of the services rendered, and the billing of such services, the City and Jones & Mayer agree to confer and attempt to resolve the matter informally. If the parties cannot agree, they agree that they will refer the dispute for resolution to mediation to the fullest extent permitted by law. The parties are aware that mediation is a voluntary process and pledge to cooperate fully and fairly with the mediator in an attempt to reach a mutually satisfactory compromise of any dispute or disagreement. The mediator shall be chosen by mutual agreement of the parties, and mediation shall commence within thirty (30) days of either party's written request to the other for mediation. Any agreement reached by the mediation shall be reduced to writing, be signed by the parties, and be binding on them. This provision for mediation is an effort to protect, preserve, and respect the requisites of a productive attorney-client relationship, but shall be without prejudice to either party pursuing its other lawful remedies.

8. INSURANCE AND INDEMNIFICATION

A. Insurance

1. Jones & Mayer shall procure and maintain, at its cost:
 - a. Commercial General Liability insurance with limits not less than \$1 million per occurrence. Such insurance shall designate City, its elected and appointed officials, employees, and volunteers as additional insureds. Such insurance shall be primary and not contribute with any insurance or self-insurance maintained by City.
 - b. Business automobile liability insurance with limits not less than \$1 million per occurrence. Such insurance shall include coverage for owned, non-owned, and hired automobiles.
 - c. Professional liability insurance with limits not less than \$2 million per occurrence.
 - d. Workers' compensation insurance as required by California law and Employer's Liability insurance with limits not less than \$1 million per

accident for bodily injury or disease. The workers' compensation insurance shall contain an endorsement stating the insurer waives any right of subrogation against City, its elected and appointed officials, employees and volunteers.

2. All such policies shall provide City thirty (30) days' notice of cancellation. Self-insured retentions must be declared and approved by City.
3. Prior to commencement of work, and throughout the term of this Agreement, Jones & Mayer shall furnish City with certificates evidencing compliance with the insurance requirements above. Jones & Mayer agrees to provide complete, certified copies of all required insurance policies if requested by the City.
4. Insurance shall be placed with insurers that maintain an A.M. Best rating of A-, VII or better, or otherwise meet the written approval of the City.
5. The Contractor shall ensure that subcontractors maintain insurance that complies with the requirements stated herein.

B. Indemnification

Jones & Mayer shall defend, indemnify, and hold harmless the City, and its officers and employees, from and against any and all actions, suits, proceedings, claims, demands, losses, costs and expenses, including legal costs and attorneys' fees, for injury to person(s) or damages to property (including property owned by the City), and for errors and omissions committed by Jones & Mayer, its officers, employees, and agents, to the extent arising out of Jones & Mayer's performance under this Agreement, except where such injury, damage, error(s) or omission(s) may be caused by City's sole negligence, active negligence, or willful misconduct or that of the City's officers or employees.

9. RECORDS AND REPORTS

A. Records

Jones & Mayer shall keep such books and records as shall be necessary to perform the services required by this Agreement and to enable the City to evaluate the performance of the required services. The City shall have full and free access to such books and records that deal specifically with the services performed by Jones & Mayer for City at all reasonable times, including the right to inspect, copy, audit, and make summaries and transcripts from such records.

B. Ownership of Documents

All reports, records, documents, and other materials prepared by Jones & Mayer, its employees and agents in the performance of this Agreement shall be the property of the City and

shall be delivered to the City upon request by the City or upon termination of this Agreement. Jones & Mayer shall have no claim for further or additional compensation as a result of the exercise by the City of its full rights of ownership of the documents and material hereunder. Jones & Mayer may retain copies of such documents for its own use.

C. Release of Documents

No report, record, document, or other material prepared by Jones & Mayer in the performance of services under this Agreement shall be released publicly without prior written approval of the City, except as may be required by law.

10. NONDISCRIMINATION

Jones & Mayer pledges there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry in the performance of services under this Agreement.

11. TERMINATION

A. Termination By City

Jones & Mayer shall at all times serve under the terms of this Agreement at the pleasure of the City Council, and the City Council hereby reserves the right to terminate this Agreement at will, with or without cause, by providing written notice to Jones & Mayer. Upon receipt of any notice of termination, Jones & Mayer shall cease all services under this Agreement except as may be specifically approved by the City. At that time, all further obligations of the City to pay Jones & Mayer for services rendered under this Agreement shall thereupon cease, except as set forth in Section 11.C below; provided, however, that the City shall be obliged to pay for all services, costs, and expenditures lawfully incurred by Jones & Mayer prior to the effective date of such termination, or subsequent to the date of termination at the direction of City.

B. Termination By Jones & Mayer

Jones & Mayer reserves the right to terminate this Agreement by giving ninety (90) days' advance written notice to City.

C. Mutual Obligations Upon Termination By Either Party

In the event of termination of this Agreement by either party, Jones & Mayer shall cooperate with the City in transferring the files and assignments to the City Clerk or other person designated by City pending the hiring of another City Attorney. Jones & Mayer shall be compensated at the hourly rates set forth in Section 3.A of this Agreement should Jones & Mayer be called upon to perform any services after the effective date of termination, including the transfer of files and assignments.

12. NOTICES

Notices regarding this Agreement shall be given in writing to the parties at the following addresses:

City Manager
City of Fort Bragg
416 N. Franklin Street
Fort Bragg, CA 95437

Jones & Mayer
8150 Sierra College Boulevard
Roseville, CA 95661

13. AMENDMENT OF AGREEMENT

This Agreement contains all of the agreements of Jones & Mayer and the City. This Agreement may be amended at any time by mutual consent of the parties by an instrument in writing.

14. LEGAL REPRESENTATION

Both parties have had the opportunity to consult with legal counsel of its choice in the negotiation, review and execution of this Agreement. Each party shall bear its own fees in connection with the preparation and negotiation of this Agreement.

15. WARRANTY OF AUTHORIZED SIGNATURES

Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Agreement in duplicate the 23rd day of October, 2017.

CITY OF FORT BRAGG
Municipal Corporation of the State of
California

By: 
Linda Ruffing, City Manager

ATTEST:


June Lemos, City Clerk

JONES & MAYER

By: 
Richard D. Jones, Owner