

## **RESOLUTION NO. 4008-2017**

### **RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING CONCESSIONAIRE AGREEMENT BETWEEN THE CITY OF FORT BRAGG AND NORTH COAST SEGWAY TOURS TO OPERATE SEGWAY TOURS IN CITY PARKS AND AUTHORIZING CITY MANAGER TO EXECUTE SAME**

**WHEREAS**, the City of Fort Bragg desires to enhance the recreational experience as well as accessibility options for Fort Bragg visitors and residents by allowing the use of Segways and Segway-like vehicles ("Segways") in City parks; and

**WHEREAS**, per City Ordinance No. 929-2017, use of Segways by commercial Segway tour operators in City parks is consistent with recreational goals of parks if operated in compliance with a concessionaire agreement; and

**WHEREAS**, North Coast Segway Tours (aka North Coast Ninebot Tours) operates a guided tour business using Segways, and North Coast Segway Tours desires to operate commercial tours on the Fort Bragg Coastal Trail which is located in the City's Noyo Headlands Park; and

**WHEREAS**, pursuant to City Ordinance No. 929-2017, commercial Segway tours may occur within City parks if operated in compliance with a Concessionaire Agreement that limits tour size, requires a tour guide, and imposes additional requirements as determined by the City; and

**WHEREAS**, on April 24, 2017, City Council directed that the City should enter into a Concessionaire Agreement with North Coast Segway Tours for operation of commercial tours on the Fort Bragg Coastal Trail located within the Noyo Headlands Park, provided that conditions consistent with Ordinance No. 929-2017 are included in the Concessionaire Agreement (attached hereto as Exhibit A); and

**WHEREAS**, in addition, City Council directed that general liability insurance coverage of two million dollars (\$2 million) that names the City of Fort Bragg as additional insured shall also be required of North Coast Segway Tours prior to commencement of activities; and

**WHEREAS**, use of Segways by commercial Segway tour operators has been found to be exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations); and

**WHEREAS**, based on all the evidence presented, the City Council finds as follows:

1. The Concessionaire Agreement incorporates terms and conditions that are consistent with City Ordinance No. 929-2017 regarding commercial use of Segways and Segway-like vehicles in City parks.
2. The Concessionaire Agreement includes other conditions including acquisition by North Coast Segway Tours of required liability insurance in the amount of two million dollars, and no activities will commence in City parks until proof of insurance is received by the City.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Fort Bragg does hereby approve the Concessionaire Agreement between the City of Fort Bragg and North Coast Segway Tours to Operate Segway Tours in City Parks and Authorizes City Manager to Execute Same.

The above and foregoing Resolution was introduced by Councilmember Lee, seconded by Councilmember Turner, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 12<sup>th</sup> day of June, 2017, by the following vote:

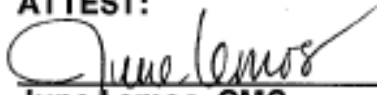
**AYES:** Councilmembers Cimolino, Lee, Norvell, Turner and Mayor Peters.  
**NOES:** None.  
**ABSENT:** None.  
**ABSTAIN:** None.  
**RECUSED:** None.



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**LINDY PETERS**  
Mayor

**ATTEST:**



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June Lemos, CMC  
City Clerk

# EXHIBIT A

## CONCESSIONAIRE AGREEMENT

### AGREEMENT

This Agreement is made and entered into this 12th day of June, 2017 by and between the City of Fort Bragg, a California Municipal Corporation, 416 N. Franklin Street, Fort Bragg, California, 95437 ("City"), and North Coast Segway Tours (aka North Coast Ninebot Tours), PO Box 2235, Fort Bragg, CA 95437 ("Concessionaire").

### RECITALS

**WHEREAS**, City desires to enhance the recreational experience as well as accessibility options for Fort Bragg visitors and residents by allowing the use of Segways and Segway-like vehicles ("Segways") in City parks; and

**WHEREAS**, per City Ordinance No. 929-2017, use of Segways by commercial Segway tour operators in City parks is consistent with recreational goal of parks if operated in compliance with a concessionaire agreement; and

**WHEREAS**, Concessionaire provides commercial, fee-based, guided Segway tours including rental of Segway vehicle, issue of radio-equipped helmet, and provision of training for persons age ten to seventy-five (the "Tours") and desires to include the Fort Bragg Coastal Trail, located in the Noyo Headlands City Park, in its Tours; and

**WHEREAS**, City and Concessionaire desire to enter into this Agreement on the terms and conditions set forth, herein.

**NOW, THEREFORE**, in consideration of the mutual promises hereinafter set forth, City and Concessionaire agree as follows:

#### 1. DESCRIPTION OF SERVICES

The services to be performed under this Agreement ("Services") are as follows: Concessionaire shall provide guided Tours on the Fort Bragg Coastal Trail, which is located within and part of the City of Fort Bragg Noyo Headlands Park.

Concessionaire acknowledges and agrees that Concessionaire will provide Tours on the Fort Bragg Coastal Trail within the Noyo Headlands Park subject to the following terms and conditions:

- a. Each guided tour shall be limited to nine people or fewer.
- b. Concessionaire shall provide a tour leader for each tour.
- c. Safety equipment including helmets shall be required for all tour participants.
- d. Concessionaire shall comply will all rules of use and conduct in City parks.

## EXHIBIT A

### 2. TERM

This Agreement shall commence on June 12, 2017 and expire on June 12, 2020, unless the Agreement term is amended or the Agreement is terminated in accordance with its terms.

### 3. INDEPENDENT CONTRACTOR

Concessionaire and City agree that Concessionaire will perform the Services as an independent contractor and not as an employee or agent of the City. Persons employed or utilized by Concessionaire in the performance of the Services will not be employees or agents of the City. Concessionaire is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

### 4. SUBCONTRACTING

Concessionaire shall not subcontract or assign any the Services provided by this Agreement without the express, written, permission of the City. If so authorized, Concessionaire remains legally responsible for the performance of all contract terms, including work performed by third parties under subcontracts. Any subcontracting will be subject to all applicable provisions of this Agreement. Concessionaire shall be held responsible by City for the performance of any subcontractor whether approved by City or not.

### 5. INDEMNIFICATION

The City and its employees, officers and volunteers ("City Representatives") are not responsible for and shall be held harmless and fully indemnified by Concessionaire from any claims arising out of accidents, personal injury, damage to or loss of personal property, or wrongful death that occur during or result partially or entirely from the use of City facilities by Concessionaire or by the agents, servants, employees, or invitees of Concessionaire. The indemnification provided by this paragraph shall cover all acts whether negligent, grossly negligent or intentional. Concessionaire hereby waives all claims and causes of action against City and the City Representatives. The City shall be allowed to select legal counsel and be reimbursed for legal costs for any matter covered by this paragraph

### 6. INSURANCE

a. Concessionaire shall procure and maintain, at its sole costs and expense, comprehensive general liability insurance in the single limit amount of One Million Dollars (\$1,000,000) per occurrence and an aggregate in the amount of Two Million Dollars (\$2,000,000).

b. Concessionaire shall procure and maintain, at its sole cost and expense, Worker's Compensation insurance in the amounts required by law.

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c. Concessionaire shall procure and maintain, at its sole cost and expense, Errors & Omissions/Professional Liability Insurance in the single limit amount of One Million Dollars (\$1,000,000) per occurrence and an aggregate in the amount of Two Million Dollars (\$2,000,000).

d. Concessionaire shall obtain endorsements naming the City and City Representatives as additional insureds on all insurance other than Worker's Compensation insurance.

e. Proof of insurance and endorsements must be submitted to the City prior to the commencement of any Services covered by this Agreement.

### 7. LICENSES & PERMITS

#### a. BUSINESS LICENSE

Before the City will issue a notice to proceed with the Services, Concessionaire and any subcontractors must acquire, at their expense, a business license from City in accordance with Chapter 5.04 of the Fort Bragg Municipal Code. Such licenses must be kept valid throughout the Agreement term.

#### b. OTHER LICENSES AND PERMITS

Concessionaire represents and warrants to City that Concessionaire and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions.

### 8. NO ASSIGNMENT

Concessionaire shall not assign this Agreement or any interest created hereby, nor any rights or privileges herein, to a third party without the prior written consent of the City.

### 9. ATTORNEYS FEES

If either party brings any action or proceeding to enforce, protect or establish any right or remedy in this Agreement, then the prevailing party shall be entitled to recover reasonable attorney's fees.

### 10. TERMINATION

a. City or Concessionaire may terminate this Agreement without cause upon thirty (30) days written notice to the other party. Notice shall be deemed served on the date of mailing.

b. City may terminate this Agreement for cause immediately upon giving written notice to Concessionaire should Concessionaire fail to perform any of the

## EXHIBIT A

covenants contained in this Agreement in the time and/or manner specified. If notice of termination for cause is given by City to Concessionaire and it is later determined that Concessionaire was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to paragraph (a) above.

### 8. REPRESENTATIVES

a. City representative for purposes of this Agreement will be Jennifer Owen, Special Projects Manager. Concessionaire representative for purposes of this Agreement will be Lynne Baumgartner. The parties' designated representatives will be the primary contact persons regarding the performance of the Services. The parties intend that their designated representatives will cooperate in all matters regarding this Agreement and in such manner so as to achieve performance of the Services in a timely and expeditious fashion.

b. Notices:

Any written notice to Concessionaire shall be sent to:

Lynne Baumgartner  
North Coast Segway Tours aka North Coast Ninebot Tours  
PO Box 2235  
Fort Bragg, CA 95437

Any written notice to City shall be sent to:

Jennifer Owen, Special Projects Manager  
City of Fort Bragg  
416 N. Franklin Street  
Fort Bragg, California 95437

IN WITNESS WHEREOF, the parties have caused their authorized representative to execute this Agreement on the date first written above.

CITY

CONSULTANT

By: \_\_\_\_\_  
Linda Ruffing  
Its: City Manager

By:   
Lynne Baumgartner  
Its: Owner


[Attach Notary Acknowledgment Page]

**EXHIBIT A**

ATTEST:

By: \_\_\_\_\_  
June Lemos  
City Clerk

APPROVED AS TO FORM:

By:  \_\_\_\_\_  
Samantha W. Zutler, City Attorney