

RESOLUTION NO. 3967-2016

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL AUTHORIZING THE CITY
MANAGER TO EXECUTE THE LEASE AGREEMENT WITH THE FORT BRAGG-
MENDOCINO COAST HISTORICAL SOCIETY**

WHEREAS, the City of Fort Bragg is the owner of that certain building commonly known as the Guest House Museum located at 343 North Main Street, Fort Bragg California; and

WHEREAS, the Fort Bragg-Mendocino Coast Historical Society (Historical Society) was incorporated in September 1999 and is organized under the nonprofit public benefit corporation law for charitable purposes; and

WHEREAS, the City entered into a lease agreement with the Historical Society for the operation and management of the Museum in 1999 and has renewed said agreement in 2001, 2007 and 2012; and

WHEREAS, the City completed a review of the lease agreement with the Historical Society currently set to expire on December 31, 2016; and

WHEREAS, the City desires to continue the lease agreement with the Historical Society for the operation and management of the Museum for an additional five years; and

WHEREAS, the Historical Society desires to continue the lease agreement with the City for the operation and management of the Museum for an additional five years.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby authorize the City Manager to execute a 5-year lease agreement with the Fort Bragg-Mendocino Coast Historical Society as presented in "Exhibit A."

The above and foregoing Resolution was introduced by Councilmember Cimolino, seconded by Councilmember Norvell, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 12th day of December, 2016, by the following vote:

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



**Lindy Peters
Mayor**

ATTEST:

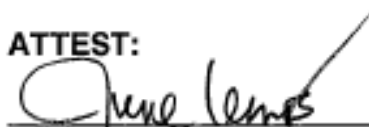

**June Lemos
City Clerk**

EXHIBIT A

LEASE AGREEMENT

It is agreed by and between the City of Fort Bragg, a Municipal Corporation in the County of Mendocino, State of California (hereinafter "CITY") and the Fort Bragg-Mendocino Coast Historical Society, Inc., A California public benefit corporation, (hereinafter "HISTORICAL SOCIETY") as follows:

1. CITY shall lease to HISTORICAL SOCIETY the Guest House Museum at 343 N. Main Street, Fort Bragg, California, for a term of five (5) years, commencing January 1, 2017. HISTORICAL SOCIETY shall pay to CITY One Dollar (\$1.00) per year beginning January 1, 2017 for a term of five (5) years.

2. CITY shall pay for water, propane, electricity and sewer service for the building and grounds, at 343 N. Main Street, Fort Bragg, CA 95437. CITY payment for propane for heating of building shall be limited to \$2,000 per year. HISTORICAL SOCIETY shall pay for telephone services except that CITY shall pay for the telephone line for the alarm system. HISTORICAL SOCIETY agrees to expend \$2,000 annually toward archival of historical materials.

3. HISTORICAL SOCIETY, at its own expense, shall keep the interior premises in clean and sanitary condition and maintain electrical and plumbing fixtures in good operating condition. HISTORICAL SOCIETY, at its own expense, shall repair any breakage of glass, (excluding the Antique Stained Glass), and shall maintain windows in good operating condition. HISTORICAL SOCIETY shall be responsible for advertising, and memberships. HISTORICAL SOCIETY shall be responsible for staffing of the museum. HISTORICAL SOCIETY may review any changes to the Guest House Grounds proposed by CITY.

4. CITY shall be responsible for maintenance of grounds on the property, exterior of the building to include the Antique Stained Glass windows, and plumbing and electrical lines in the walls and underneath the building and shall maintain the same at its own expense to the extent necessary to keep the building habitable and usable for the purposes intended by the Lease.

5. CITY shall maintain an inventory of building contents ("COLLECTION"), and continue computer indexing of COLLECTION and any new items added by CITY. Said inventory will clearly articulate those items acquired by and for the CITY and those items acquired by and for the HISTORICAL SOCIETY. It is the responsibility of each party, if they so desire, to insure items in their respective "COLLECTION". CITY shall provide and maintain electronic security systems and alarms.

6. HISTORICAL SOCIETY shall not make, or cause to be made, any structural alterations of said premises, or any part thereof, without the prior written consent of CITY. Any additions to, or alterations of, said premises, except movable furniture and trade fixtures, shall become at once a part of the realty and belong to CITY. HISTORICAL SOCIETY shall keep the leased premises free from any liens arising out of any work performed, material furnished or obligations incurred by HISTORICAL SOCIETY. Before making any repairs on the premises of defective conditions that it is CITY's duty to repair, HISTORICAL SOCIETY must first notify CITY of the need for such repairs and allow a reasonable time not to exceed thirty (30) days, for CITY to arrange for the necessary repairs. If CITY does not act within thirty (30) days,

HISTORICAL SOCIETY may have the repairs made and present the receipt to CITY for reimbursement. HISTORICAL SOCIETY may not make such repairs and be reimbursed for any cost exceeding Two Hundred Dollars (\$200.00). This shall not be considered a liquidated damages clause by the parties to this Lease.

7. Notwithstanding paragraph 6 above, HISTORICAL SOCIETY may make interior alterations and additions to the premises which do not involve the alteration of any structural members of the building, and of a kind which may be removed at the expiration of the term at little or no expense. HISTORICAL SOCIETY shall be responsible for removing the same at termination of Lease at the sole discretion of the CITY.

8. HISTORICAL SOCIETY shall comply with all state, federal and all applicable laws, ordinances, rules and orders of the CITY, County of Mendocino, State of California, or other authorities, including but not limited to the licensing, cleanliness, occupancy and maintenance of the leased premises

9. If the premises are damaged or destroyed by any cause whatsoever, CITY may:

- A. at CITY's sole discretion, terminate the Lease; or
- B. rebuild the premises so destroyed or damaged similar to the building or portion thereof so damaged and destroyed; or
- C. negotiate with the HISTORICAL SOCIETY how to promptly repair and restore the same to a building substantially similar or better than the building or portion thereof damaged or destroyed. It is agreed that the proceeds of any insurance covering the damage or destruction shall be made available to HISTORICAL SOCIETY for such repair or replacement. However, in the case of destruction of the building, or damage thereto from any cause so as to make it untenable during the term thereof, HISTORICAL SOCIETY, if not then in default thereunder, may elect to terminate this Lease by written notice served on CITY within thirty (30) days after the occurrence of such damage or destruction. In the event of such termination, there shall be no obligation on the part of HISTORICAL SOCIETY to repair or restore the building and improvements, but CITY in such event, shall be entitled to all of the insurance collected under any insurance policies maintained by HISTORICAL SOCIETY covering said building or any part thereof.

Should this lease be terminated for any reason, CITY shall not be responsible to pay HISTORICAL SOCIETY any costs for being displaced from the tenancy either temporarily or permanently.

10. At the expiration of this lease term, and in the event that no extension of the lease is successfully negotiated, HISTORICAL SOCIETY shall quit and surrender the premises, including CITY's entire "COLLECTION" thereby leased in as good state and condition as they were at the commencement of the term, reasonable use and wear thereof and damage by the elements excepted.

11. In the event the HISTORICAL SOCIETY shall cease to operate in accordance with their

Articles of Incorporation filed on September 22, 1999 with the Secretary of State, State of California, a copy of which is attached hereto as Exhibit "B" it is the intent of the HISTORICAL SOCIETY and their legal obligation to transfer all historical artifacts and collections that they have obtained to another appropriate, publicly accessible repositories qualified to receive such donation per Section 501(c)(3) of the Internal Revenue Code. CITY shall receive any and all artifacts or other items in HISTORICAL SOCIETY'S collection at the time of such dissolution originating with or otherwise relating to the Guest House Museum to CITY for permanent preservation and display. Other holdings by HISTORICAL SOCIETY pertaining to the history of Fort Bragg and immediate environs will, in such an event, be donated to the nearest appropriate repository(ies); which could include CITY itself. CITY shall have the right to review the remaining items from the HISTORICAL SOCIETY collection that may be of interest to the CITY prior to their donation to another repository. All contributions of the HISTORICAL SOCIETY's collection will be subject to approval by the register of charitable trusts at the California Attorney General's Office.

12. HISTORICAL SOCIETY shall indemnify and defend CITY and hold CITY harmless of and from any and all loss, cost, damage, injury or expense arising out of or related to claims of injury to or death of persons or to claims of damage to the premises occurring or resulting directly or indirectly from HISTORICAL SOCIETY's use or occupancy of the premises or from HISTORICAL SOCIETY's activities on or about the premises; provided that such indemnity shall not extend to any loss arising from CITY's negligence. In addition, HISTORICAL SOCIETY shall hold and save CITY harmless and indemnify CITY of and from any and all loss, cost, damage, injury or expense arising out of or in any way related to claims for work or labor performed or to claims for materials or supplies furnished to or at the request of HISTORICAL SOCIETY or in connection with performance of any work done for the account of HISTORICAL SOCIETY on the premises.

CITY shall indemnify HISTORICAL SOCIETY and hold HISTORICAL SOCIETY harmless of and from any and all loss, cost, damage, injury or expense arising out of or related to claims of injury to or death of persons or to claims of damage to the premises occurring or resulting directly or indirectly from CITY's use of the Guest House grounds or from CITY's activities on or about the Guest House grounds; provided that such indemnity shall not extend to any loss arising from HISTORICAL SOCIETY's negligence. In addition, CITY shall hold and save HISTORICAL SOCIETY harmless and indemnify HISTORICAL SOCIETY of and from any and all loss, cost, damage, injury or expense arising out of or in any way related to claims for work or labor performed or to claims for materials or supplies furnished to or at the request of CITY or in connection with performance of any work done for the account of CITY on the Guest House grounds.

13. HISTORICAL SOCIETY assumes the risk of loss or damage to its collection and personal property used or stored on the premises, except loss or damage caused by act or negligence of agents or employees of the CITY and for which the CITY is legally liable.

14. HISTORICAL SOCIETY shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with HISTORICAL SOCIETY's operation and use of the leased premises. The cost of such insurance shall be borne by the HISTORICAL SOCIETY. Requirements for

Insurance to be maintained by HISTORICAL SOCIETY are attached hereto as Attachment 1, and made a part hereof

15. CITY shall maintain in effect throughout the term of the Lease, at the cost of the CITY, a policy or policies of insurance on the building which is part of the leased premises, providing protection against any peril of property damage, exclusive of trade fixtures and equipment of HISTORICAL SOCIETY, but inclusive of contents, exhibits, and artifacts comprising the "Collection."

16. CITY and HISTORICAL SOCIETY agree that every condition, covenant and provision of this Lease is material and reasonable. Any breach by HISTORICAL SOCIETY of a condition, covenant or provision of this Lease will constitute a material breach. For any material breach by HISTORICAL SOCIETY, CITY may provide HISTORICAL SOCIETY with a written notice that describes the breach and demands that HISTORICAL SOCIETY cure the default (if a cure is possible). If HISTORICAL SOCIETY does not cure the default within thirty (30) days, or if a cure is not possible, this Lease will be terminated. Termination of this Lease for a breach by HISTORICAL SOCIETY will not occur unless the foregoing events occur.

Specifically, the following shall constitute a default by the HISTORICAL SOCIETY.

- A. Failure to pay rent when due;
- B. Use of the premises for any unlawful purpose that is in violation of any City, State or Federal law as regulation;
- C. Abandonment of the premises;
- D. Assigning or subleasing the leased premises without the prior written consent of CITY;
- E. Committing waste on the leased premises;
- F. Maintaining, committing or permitting the maintenance or commission of a nuisance on the leased premises;
- G. Any material failure to keep the premises in a sanitary condition or to dispose of all trash and garbage;
- H. Altering the premises in any manner, except as provided in this Lease Agreement, or by written CITY approval;
- I. Failure to perform any other provision, covenant or condition of this Lease.

17. In the event that either party thereto shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any Term, covenant or condition of this Lease required by it to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover, in addition to its court costs, reasonable attorneys' fees to be fixed by the court, and such

recovery shall include court costs and attorneys' fees on appeal, if any.

18. Waiver by either party of a breach of any covenant of this Lease Agreement will not be construed to be a continuing waiver of any subsequent breach. No waiver by either party of a provision of this Lease Agreement will be considered to have been made unless expressed in writing and signed by all parties.

19. Time is of the essence of each provision of this Lease Agreement.

20. CITY and HISTORICAL SOCIETY agree that this instrument contains the entire, sole and only agreement between them concerning the leased premises and correctly sets forth their rights and obligations to each other concerning the leased premises as of its date. Any agreement or representations with respect to the leased premises or the duties of either CITY or HISTORICAL SOCIETY in relation thereto not expressly set forth in this instrument is null and void.

21. For the purpose of service of process and service of notices and demands, HISTORICAL SOCIETY's address is:

P.O. Box 71
Fort Bragg, CA 95437

Notices, demands and service of process for the CITY may be served on the City Manager at the following address:

City of Fort Bragg
Attn: City Clerk
416 N. Franklin Street
Fort Bragg, CA 95437

Executed on _____, 2016, in the City of Fort Bragg, County of Mendocino, California.

CITY OF FORT BRAGG

HISTORICAL SOCIETY

By: _____
Linda Ruffing, City Manager

By: Mark F. Fiedel
Its: PRESIDENT

Attest:

By: _____
June Lemos
City Clerk

Approved as to form:

By: Samantha W. Zutler
Samantha W. Zutler
City Attorney

ATTACHMENT 1

Insurance Requirements for Lessees

(Not For Daily or Short Term Rentals)

Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than **\$1,000,000** per accident for bodily injury or disease (for lessees with employees).
3. **Property insurance** against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

If the Lessee maintains broader coverage and/or higher limits than the minimums shown above, the City of Fort Bragg requires and shall be entitled to the broader coverage and/or higher limits maintained. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Fort Bragg.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City of Fort Bragg, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Lessee including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Lessee's insurance (at least as broad as ISO Form CG 20 10).

Primacy Coverage

For any claims related to this contract, the Lessee's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City of Fort Bragg, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Fort Bragg, its

officers, officials, employees, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City of Fort Bragg.

Waiver of Subrogation

Lessee hereby grants to City of Fort Bragg a waiver of any right to subrogation which any insurer of said Lessee may acquire against the City of Fort Bragg by virtue of the payment of any loss under such insurance. Lessee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Fort Bragg has received a waiver of subrogation endorsement from the insurer.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City of Fort Bragg.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City of Fort Bragg. At the option of the City of Fort Bragg, either: the Lessee shall obtain coverage to reduce or eliminate such self-insured retentions as respects the City of Fort Bragg, its officers, officials, employees, and volunteers; or the Lessee shall provide a financial guarantee satisfactory to the City of Fort Bragg guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the City of Fort Bragg.

Verification of Coverage

Lessee shall furnish the City of Fort Bragg with original certificates and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required above. All certificates and endorsements are to be received and approved by the City of Fort Bragg before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Lessee's obligation to provide them. The City of Fort Bragg reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time. We strongly recommend obtaining a copy of the policy declarations and endorsement page (make this a requirement in your Contract) to facilitate verification of coverages and spot any undesirable policy limitations or exclusions.

Waiver of Subrogation

Lessee hereby grants to the City of Fort Bragg a waiver of any right to subrogation which any insurer of said Lessee may acquire against the City of Fort Bragg by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not the City of Fort Bragg has received a waiver of subrogation endorsement from the insurer.

Special Risks or Circumstances

The City of Fort Bragg reserves the right to modify these requirements at any time, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.