

RESOLUTION NO. 3679-2013
RESOLUTION OF THE FORT BRAGG CITY COUNCIL

and

RESOLUTION NO. ID 360-2013

**RESOLUTION OF THE FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT BOARD
APPROVING A WASTEWATER DISCHARGE AGREEMENT BY AND BETWEEN THE CITY
OF FORT BRAGG, THE FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT NO.1, AND
THE NORTH COAST BREWING CO., INC. AND AUTHORIZING CITY MANAGER/DISTRICT
MANAGER TO SIGN SAME**

WHEREAS, the Fort Bragg Municipal Improvement District owns the City's wastewater facilities including a wastewater treatment plant that is subject to national Pollution Discharge Elimination System Permit No. R1-2009-0030 which is administered by the Regional Water Quality Control Board, North Coast Region; and

WHEREAS, the North Coast Brewing Company (NCBC) operates a brewery in the City of Fort Bragg that periodically discharges high strength wastewater into the City's wastewater facilities; and

WHEREAS, in the past the NCBC has undertaken efforts to minimize the discharge of Biochemical Oxygen Demand ("BOD") and Total Suspended Solids ("TSS") and continues to do so; and

WHEREAS, on August 8, 2012, the Fort Bragg Planning Commission approved a coastal development permit, use permit and design review for expansion of brewery operations (CDP 1-09/12A, UP 1-09/12A; DR 1-09/12A); and

WHEREAS, the permits included a special condition requiring NCBC to enter into a regulatory agreement with the City and the Fort Bragg Municipal Improvement District which establishes thresholds for BOD and TSS, monitoring requirements, and charges for violations; and

WHEREAS, City staff and NCBC representatives, with the assistance of legal counsel and technical consultants, have prepared a "Wastewater Discharge Agreement" which is attached to this resolution as "Exhibit A" and incorporated herein; and

WHEREAS, the City Council of the City of Fort Bragg/District Board of the Fort Bragg Municipal Improvement District No. 1 find that the attached Wastewater Discharge Agreement adequately addresses the increased discharge of high-strength wastewater by NCBC by establishing compliance thresholds for BOD and TSS discharges, monitoring requirements, and charges for violations.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg/District Board of the Fort Bragg Municipal Improvement District No. 1 does hereby approve the Wastewater Discharge Agreement by and among the City of Fort Bragg, the Fort Bragg Municipal Improvement District, No. 1, and the North Coast Brewing Company, Inc. and authorizes the City Manager/District Manager to sign the same.

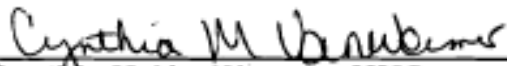
The above and foregoing Resolution was introduced by Council/Board Member Hammerstrom, seconded by Council/Board Member Courtney, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg/District Board of the Fort Bragg Municipal Improvement District No. 1 held on the 9th day of December, 2013, by the following vote:

AYES: Councilmembers Courtney, Deitz, Hammerstrom, Kraut, and Mayor Turner.
NOES: None.
ABSENT: None.
ABSTAIN: None.



DAVE TURNER,
Mayor/Chair

ATTEST:


Cynthia M. VanWormer, MMC
City/District Clerk

"Exhibit A"

WASTEWATER DISCHARGE AGREEMENT BY AND AMONG THE CITY OF FORT BRAGG, THE FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT, NUMBER 1 AND THE NORTH COAST BREWING CO., INC.

This Wastewater Discharge Agreement ("**Agreement**") is made this ____ day of _____, 2013 by and among the City of Fort Bragg ("**City**"), the Fort Bragg Municipal Improvement District, Number 1 ("**FBMID**") and North Coast Brewing Co., Inc. ("**NCBC**"), collectively the "**Parties**".

RECITALS

1. NCBC operates a brewery in the City of Fort Bragg at 455 North Main Street, APN 008-053-24 ("**Property**") that periodically discharges high strength wastewater into the City's wastewater facilities.
2. NCBC has undertaken efforts to minimize the discharge of Biochemical Oxygen Demand ("**BOD**") and Total Suspended Solids ("**TSS**") in the past and intends to continue doing so.
3. FBMID owns the City's wastewater facilities which consist of a sewer system, pump stations, a wastewater treatment plant ("**WWTP**"), and an outfall pipe (collectively, "**FBMID Facilities**").
4. NCBC submitted a development application to the City to allow for the installation of three new 550-barrel fermentation tanks at the Property to expand production capacity from 40,000 barrels of beer per year to 90,000 barrels per year ("**Project**").
5. NCBC and the City agreed that the Project is not expected to increase the periodic daily discharge of high-strength wastewater into FBMID Facilities but that the cumulative annual amount of discharge will increase due to the expansion of the facility's production capacity.
6. The Project required issuance of a coastal development permit, use permit and design review by the City.
7. On August 8, 2012, the City's Planning Commission approved coastal development permit (CDP 1-09/12A), use permit (UP 1-09/12A), and design review (DR 1-09/12A) subject to certain special and standard conditions.
8. To address the increased discharge of high-strength wastewater into the FBMID Facilities, Special Condition #2 requires that prior to the final inspection for the building permit for the Project, NCBC shall enter into a regulatory agreement with the City and FBMID which establishes compliance thresholds for BOD and TSS discharges, monitoring requirements, and charges for violations.
9. The WWTP is subject to National Pollution Discharge Elimination System Permit No. R1-2009-0030 ("**NPDES Permit**") administered by the Regional Water Quality Control Board, North Coast Region ("**Regional Board**").

NOW THEREFORE, for good and valuable consideration, the amount and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The parties agree that the recitals are a correct depiction of the factual basis upon which this Agreement is made and shall be considered a part of the terms of this Agreement.
2. Term. This Agreement shall be effective upon execution by all parties and shall remain in effect for the life of the approved coastal development permit (CDP 1-09/12A) and use permit (UP 1-09/12A) and is a condition to the continued effectiveness of each permit. Except as otherwise provided, revocation of either permit by the City shall terminate the Agreement as of the date of revocation.

3. Discharge Limitations. Except as otherwise provided in Section 6 of this Agreement, the following discharge limitations shall apply to the direct or indirect discharge of wastewater from the Property into FB MID Facilities:

- a. NCBC shall not discharge into the FB MID Facilities more than a daily maximum BOD of 8,000 mg/L.
- b. NCBC shall not discharge into the FB MID Facilities more than a daily maximum TSS of 2,000 mg/L.
- c. NCBC shall not discharge into the FB MID Facilities more than a 30-day average BOD of 5,000 mg/L.
- d. NCBC shall not discharge into the FB MID Facilities more than a 30-day average TSS of 1,000 mg/L.
- e. At no time shall effluent discharged into the FB MID Facilities have a pH of less than 6.0 s.u. or greater than 9.0 s.u.

4. Monitoring Requirements. NCBC shall be responsible for monitoring wastewater discharged from the Property and shall notify the City's Public Works Department within 24 hours of receiving a test result indicating an occurrence of discharge(s) in violation of Section 3. Within five days of receiving a test result indicating a violation, NCBC shall submit a written report to the City's Public Works Department at City Hall identifying:

- a. The date and time of the discharge,
- b. The duration of the discharge,
- c. The specific Discharge Limitation(s) exceeded in Section 3,
- d. The reason(s) for the discharge violation(s), and
- e. The steps taken to stop the discharge and any corrective action taken to prevent a reoccurrence of the violation.

5. Testing Requirements and Conditions.

- a. BOD and TSS Testing. NCBC shall be responsible for periodic sampling and analysis of NCBC discharges. At a minimum, NCBC shall collect one 24-hour composite sample per week consisting of at least one 100 ml sample per hour. NCBC shall coordinate with the City's Public Works Department on a testing schedule agreeable to all parties and shall notify the City's Public Works Department prior to undertaking sampling on a nonscheduled date. The composite sample shall be delivered by NCBC to an unrelated third-party wastewater testing laboratory certified by the California Department of Health Services for analysis and documentation of its findings ("Approved Laboratory"). Within 5 days of receiving the laboratory results and documentation from the laboratory, NCBC shall forward a copy of such information to the City's Public Works Department at City Hall.
- b. pH Testing. NCBC shall be responsible for obtaining grab samples for pH measurements. The samples shall be analyzed according to Standard Methods 4500-H+, including method required quality controls with the results forwarded to the City's Public Works Department. Sample frequency will be daily until a baseline is established. Once a baseline has been established, frequency of analyses may be modified at the sole discretion of the City's Public Works Director.
- c. At the sole discretion of the City's Public Works Director, NCBC may be permitted to satisfy the sampling and analysis requirements described in Section 5.a. of this Agreement through the use

of NCBC employees. Approval shall be given by the City Public Works Director in writing and may contain such conditions as the City Public Works Director determines is necessary to ensure that the accuracy and reliability of sampling and analysis is maintained.

- d. The FB MID reserves the right to conduct its own sampling and analysis of NCBC discharges and NCBC agrees to provide access to the Property during normal business hours for the purpose of conducting such work. If requested by the City's Public Works Director, NCBC shall install a manhole at its own cost on City property to permit sampling and analysis to be undertaken on City property.
- e. When duplicate samples are taken and there is a discrepancy of greater than 10% of the results, both samples will be discarded and not included in analysis.

6. Discharge Limitation Modifications. As FB MID Facilities are improved over time, the City's Public Works Director, in his or her sole discretion, may modify the Discharge Limitations described in Section 3 (i) to make them less restrictive while ensuring effective operation of the WWTP or (ii) to ensure that the City and FB MID are in compliance with the NPDES Permit and Regional Board requirements. NCBC agrees to abide by such modifications which shall be in writing and shall be incorporated into this Agreement as if stated herein.

7. Violations of Discharge Limitations.

- a. NCBC acknowledges that operation of the FB MID Facilities (i) is subject to local, state and federal law including, but not limited to, the NPDES Permit and Regional Board requirements and (ii) in violation of local, state and federal laws may result in the imposition of fines, penalties and other legal and equitable enforcement actions against the City and/or FB MID. NCBC also acknowledges that violations of the Discharge Limitations described in Section 3 may contribute to the City and/or FB MID's exposure to liability for the aforementioned enforcement actions. NCBC agrees to accept input from City regarding "best management practices" to minimize the risk of violations of Discharge Limitations.
- b. In the event a laboratory result indicates a violation of a Discharge Limitation in Sections 3.a., 3.b., or 3.e. ("Daily Violation"), NCBC agrees to pay the FB MID a fine of \$1,000. However, the fine shall not be applied until at least three Daily Violations have occurred in the previous 6 months.
- c. In the event the average of five consecutive weekly laboratory results indicates a violation of either of the Discharge Limitations in Sections 3.c. or d. has occurred ("Monthly Violation"), NCBC agrees to pay the FB MID a fine of \$1,000. However, the fine shall not be applied until at least one Monthly Violation has occurred in the previous six months.

8. Indemnity. To the greatest extent allowed by law, NCBC will, at its sole cost and expense, indemnify, protect, hold harmless and defend the City and FB MID, with counsel approved by the City and FB MID, from any and all claims, causes of action, administrative orders, directives, expenses, damages (both actual and consequential), fees, response costs, disposal costs, treatment costs, storage costs, sampling or monitoring costs, attorneys' fees and consultant costs, penalties or fines (including without limitation, any administrative civil liability claims brought by the Regional Board or any Clean Water Act action brought by any person or entity), arising out of a violation of the Discharge Limitations or from any breach of this Agreement.

9. Release. NCBC waives, releases, remises, acquits and forever discharges the City and FB MID, their council members, board members, managers, employees, volunteers, agents and any other person acting on behalf of the City or FB MID, from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses and compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which NCBC now has or which may arise in the future on account of or in any way growing out of or connected with NCBC's violation of the Discharge Limitations or from any breach of this Agreement by NCBC including, without limitation, any federal, state or local law, ordinance, or regulation pertaining to hazardous substances or water quality. This waiver and release does not apply to any NCBC claim, action, causes of action, demands, rights, damages, costs, expenses or compensation related to any breach of this Agreement by the City or the negligent or

willful acts or omissions of the City or FB MID, their council members, board members, managers, employees, volunteers, agents or any other person acting on behalf of the City or FB MID.

10. Miscellaneous Provisions.

10.1 Waiver. No failure by any party to insist upon strict performance of any term or condition of this Agreement will constitute a waiver of such term or condition or of a breach thereof. Any such waiver must be in writing and signed by the waiving party.

10.2 Modification. This Agreement may not be modified except in writing signed by each of the parties. The Agreement will be reevaluated, as needed, when NCBC modifies its processes.

10.3 Interpretation. This Agreement will be construed in accordance with the laws of the State of California and any action to enforce the terms of this Agreement must be brought in the County of Mendocino, State of California. No party will be deemed to have drafted this Agreement; instead, the parties recognize that this Agreement is the product of negotiations between the parties.

10.4 Notice. Any notice required to be provided under this Agreement shall be deemed sufficiently given when delivered personally or upon deposit in the United States mail, with first-class postage affixed, or when sent by established courier, addressed to the parties as follows or upon sending a facsimile with confirmation of receipt sent to the following telephone numbers:

NCBC: North Coast Brewing Company, Inc.
Attn: Mark E. Ruedrich, President
455 North Main Street
Fort Bragg, CA 95437

City and FB MID: City of Fort Bragg
Attn: Linda Ruffing, City Manager
416 North Franklin Street
Fort Bragg, CA 95437

With a copy to: David Warner, City Attorney
401 Mendocino Avenue, Suite 100
Santa Rosa, CA 95401

10.5 Attorneys' Fees. In the event any proceeding or action is brought in connection with the enforcement of this Agreement, the prevailing party shall be entitled to recover attorneys' fees and costs, including those on appeal.

10.6 Capitalized Terms. All capitalized terms in this Agreement shall have the meaning given to them in this Agreement.

10.7 Authorized Representative of the Parties. The person signing on behalf of each party represents and warrants that he/she is the authorized representative of that party and has been expressly authorized by the governing body of the party to bind that party to this Agreement.

10.8 Successors and Assigns. The rights and obligations of this Agreement shall bind and benefit any successors or assigns of the Parties.

10.9 Time is of the Essence. Time is of the essence in performance of this Agreement.

10.10 Counterparts. This Agreement may be executed in counterparts, all of which taken together shall be deemed one and the same Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first shown above.

City of Fort Bragg

Signed: _____

By: Linda Ruffing

Its: City Manager

Fort Bragg Municipal Improvement District Number 1:

Signed: _____

By: Linda Ruffing

Its: District Manager

APPROVED AS TO FORM

David Warner, City Attorney
and District General Counsel

North Coast Brewing Co., Inc.

Signed: _____

By: Mark E. Ruedrich

Its: President and Brewmaster

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