

## **RESOLUTION NO. 3669-2013**

### **RESOLUTION OF THE FORT BRAGG CITY COUNCIL AUTHORIZING CITY MANAGER TO EXECUTE PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS FOR PROPERTY AT CORNER OF HIGHWAY 20 AND SUMMERS LANE**

**WHEREAS**, the Mendocino Coast Recreation and Park District ("MCRPD") is the fee title owner of an approximately 586 acre parcel of real property located at the northwest corner of State Route 20 and Summers Lane in unincorporated Mendocino County, California (APNs 019-070-07; 019-070-10; 019-070-11; 019-080-14; 019-080-16; and 019-080-21; collectively, the "Property"); and

**WHEREAS**, the City of Fort Bragg desires to purchase the Property for the public purpose of protecting and enhancing the City's adjacent Newman Gulch water source; and

**WHEREAS**, the City and the MCRPD desire to enter into an agreement whereby the MCRPD will sell, and the City will purchase, the Property upon satisfaction of certain conditions as provided in a Purchase and Sale Agreement and Joint Escrow Instructions that is attached as Exhibit A ("Agreement"); and

**WHEREAS**, the City and MCRPD desire to enter into this Agreement to set forth their respective rights and obligations with respect to the foregoing matters; and

**WHEREAS**, the Fort Bragg City Council met in closed sessions on several occasions over the past three years and provided direction to its real property negotiators regarding the purchase price, terms and conditions of the acquisition of the Property; and

**WHEREAS**, acquisition of the Property is exempt from the California Environmental Quality Act ("CEQA") pursuant to Title 14, the California Code of Regulations ("CEQA Guidelines"), Section 15325, which is a categorical exemption for "Transfer of Ownership or Interest in Land to Preserve Existing Natural Conditions;" and

**WHEREAS** sufficient revenues are available in the City's Water Enterprise Fund for the purchase of the property.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Fort Bragg does hereby:

1. Approve the Purchase and Sale Agreement and Joint Escrow Instructions for a Property at the corner of Highway 20 and Summers Lane, a copy of which is attached hereto as Exhibit A; and
2. Authorize the City Manager to execute the Purchase and Sale Agreement; and
3. Authorize the City Manager to execute a certificate of acceptance for the purchase of the Property upon satisfaction of all conditions necessary for closing.

**The above and foregoing Resolution was introduced by Councilmember Kraut, seconded by Councilmember Courtney, 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 November, 2013, by the**

following vote:

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

A handwritten signature in black ink, appearing to read 'Dave Turner', is written over a horizontal line.

**DAVE TURNER,**  
Mayor

**ATTEST:**

  
Cynthia M. VanWormer, MMC  
City Clerk

EXHIBIT "A"

**PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS**

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (this "Agreement") is made as of \_\_\_\_\_, 2013 (the "Effective Date"), by and between the MENDOCINO COAST RECREATION & PARK DISTRICT ("Seller") and the CITY OF FORT BRAGG ("Buyer") as follows:

**RECITALS**

A. Seller is the fee title owner of an approximately 586 acre parcel of real property located at the northwest corner of State Route 20 and Summers Lane in unincorporated Mendocino County, California (APNs 019-070-07; 019-070-10; 019-070-11; 019-080-14; 019-080-16; and 019-080-21) as more particularly described on Exhibit "A" attached hereto (collectively, the "**Property**").

B. Buyer desires to purchase the Property for the public purpose of protecting and enhancing the City's adjacent Newman Gulch water source.

C. The Parties desire to enter into an agreement whereby Seller will sell, and Buyer will purchase, the Property upon satisfaction of certain conditions as provided in this Agreement.

D. Buyer and Seller desire to enter into this Agreement to set forth their respective rights and obligations with respect to the foregoing matters.

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Buyer and Seller hereby agree that the above recitals are true and correct and further agree as follows:

1. Purchase and Sale of Property. The purpose of this Agreement is to provide for the purchase and sale of the Property upon satisfaction of certain conditions as herein described.

2. Purchase Price. The purchase price for the Property (the "**Purchase Price**") shall be the Appraisal Price as defined in Paragraph 4. Buyer shall pay the Purchase Price to Seller through Escrow (as defined in Section 5 below) at the Closing (as defined in Section 6 below) in cash, via wire transfer or by other immediately available funds.

3. Appraisal. Following approval and execution of this Agreement by the Parties (i) Buyer shall commission an appraiser fully qualified to perform an appraisal of the Property at Buyer's own cost, (ii) Buyer shall contract for the preparation of a Phase 1 environmental report at Buyer's own cost and Seller agrees to reimburse Buyer for the cost of such report in an amount not to exceed five thousand dollars (\$5,000) within thirty (30) days following receipt of an invoice from the Buyer, and (iii) Seller shall cause the Title Company to prepare a Preliminary Title Report for use by the appraiser. Buyer shall provide Seller reasonable notice of the time and date any access to the Property is required for the appraisal and Phase 1 study and Seller shall provide such access. Buyer and Seller shall be permitted to accompany the appraiser during any on-site inspections. The Parties agree to furnish all pertinent information necessary to prepare the appraisal and the Phase 1 report including, but not limited to, parcel numbers, legal descriptions, names of record owners, surveys, and environmental documentation.

4. Appraisal Price. The Parties agree that upon submission of the certified final appraisal report, the fair market present value of the Property as defined in the report shall become the appraisal price ("**Appraisal Price**").

5. Opening of Escrow. Upon the mutual execution of this Agreement, Seller and Buyer shall open an escrow (the "**Escrow**") with Redwood Empire Title Company of Mendocino County ("**Escrow Holder**"), located at P.O. Box 238, 376 East Gobbi Street, Ukiah, CA 95482, by delivering a fully executed copy of this Agreement to Escrow Holder. Escrow Holder will execute copies of this Agreement and return fully executed copies to Buyer and Seller when Escrow has opened. Escrow shall be deemed open upon Escrow Holder's execution of this Agreement. Escrow Holder shall prepare and submit to Seller and Buyer for approval any additional escrow instructions in addition to this Agreement and containing such other standard provisions as may be requested by Escrow Holder and approved by Seller and Buyer in writing. In the event of any discrepancy between this Agreement and such additional instructions the provisions of this Agreement shall prevail.

6. Closing Contingencies. Buyer's obligation to purchase the Property and Seller's obligation to sell the Property are subject to and contingent upon the satisfaction of the following conditions precedent prior to the close of escrow ("**Closing**").

(a) Appraisal Price. Buyer's obligation to purchase the Property shall be contingent upon the Appraisal Price being equal to or less than one million dollars (\$1,000,000). If the Appraisal Price is greater than one million dollars (\$1,000,000), Buyer shall elect, at its sole discretion by written notice to Seller, to (i) terminate this Agreement or (ii) proceed with the purchase of the Property subject to the terms and conditions of this Agreement.

(b) WestAmerica Bank. Seller's obligation to sell the Property shall be contingent upon Seller's negotiation of an agreement with WestAmerica Bank regarding termination of the Site Lease and Sublease/Option Agreement between Seller and WestAmerica Bank and settlement of other matters pertaining to the bankruptcy proceedings. If Seller is unsuccessful in negotiating such an agreement and settling other matters pertaining to the bankruptcy proceedings prior to the Closing Date, Seller shall pay Buyer fifty percent (50%) of the cost of the appraisal for the Property.

(c) Buyer's Acceptance of Phase 1 Report and Condition of Title. Buyer's obligation to purchase the Property is contingent upon Buyer's review and acceptance, in Buyer's sole discretion, of (i) the contents of the Phase 1 Report and (ii) the Preliminary Title Report including any exceptions, easements, encumbrances noted therein.

7. Closing.

(a) Time and Place. Closing shall occur on a date (the "Closing Date") designated in writing by the Buyer which is on or before sixty (60) days following completion of the appraisal. Notice from Buyer shall trigger each Party's obligations for Closing, as further described herein and subject to all other terms and conditions of this Agreement. The term "Closing" shall also mean that the Grant Deed shall have been recorded in the Official Records of Mendocino County, the Purchase Price (subject to adjustment for closing costs and prorations set forth in this Agreement) shall have been delivered to Seller, and all other actions described in this Section 7 below shall have been taken.

(b) Title Policy. As a condition to the Closing for Buyer's benefit and at Buyer's sole cost, Seller shall cause the Title Company to prepare or commit to deliver to Buyer a CLTA Owner's Policy of Title Insurance insuring the Property with a policy limit in the amount of the Purchase Price with regional exceptions ("**CLTA Owner's Policy of Title Insurance**"). If Buyer requires an extended coverage ALTA Owner's Policy of Title Insurance or endorsements for either policy, Buyer shall notify Escrow Holder of such requirement and deliver to Escrow Holder, at Buyer's sole cost and expense and in a timely manner so as to not delay the Closing, an ALTA survey adequate for the issuance of such ALTA extended coverage policy. Buyer shall bear any additional costs required for the ALTA upgrade and for endorsements requested by Buyer. The title policy for the Property shall show title vested in Buyer subject only to:

- (i) The usual printed Title Company exceptions;
- (ii) All other exceptions approved in writing by Buyer or caused by

Buyer; and

(iii) Any easements, rights-of-way, servitudes, permits, licenses, surface leases, covenants and other restrictions, encroachments, defects, claims or other matters of record or which would be ascertainable by a thorough physical inspection of the Property or an accurate ALTA/ACSM survey(s).

(c) Seller's Obligations. At or prior to the Closing, Seller shall deliver, or cause to be delivered, to Buyer through Escrow:

- (i) A duly executed and notarized grant deed in the form attached hereto as Exhibit "B" conveying the Property to Buyer ("**Grant Deed**"); and
- (ii) Seller's share of closing costs; and
- (iii) Such additional documents and instruments as may be reasonably and customarily required to consummate the transaction contemplated by this Agreement.

(d) Buyer's Obligations. At or prior to the Closing, Buyer shall deliver to Seller through Escrow:

(i) The Purchase Price;

(ii) Executed certificate of acceptance for the Property;

(iii) Buyer's share of closing costs;

(iv) Such additional documents and instruments as may be reasonably and customarily required to consummate the transaction contemplated by this Agreement.

(e) Order of Recording at Closing. At the Closing, Escrow Holder is instructed to record the Grant Deed.

8. Costs and Prorations. At the Closing, (i) Buyer and Seller shall each pay one-half all of Escrow fees, (ii) Seller shall pay the cost of any documentary transfer taxes and recording the Deed, and (iii) Buyer shall pay the premium required for the CLTA Owner's Policy of Title Insurance. Buyer shall also bear the cost of any increased premium attributable to endorsements requested by Buyer and any increased premium attributable to the delivery of an extended coverage ALTA Owner's Policy of Title Insurance.

9. Termination/Failure to Close.

(a) Termination of Agreement. If the Closing has not occurred on or before July 31, 2014, either Party may terminate this Agreement by written notice to the other party and Escrow Holder; provided, however, that a Party that is in default under the Agreement or has otherwise breached any provision of this Agreement shall not have the right to terminate this Agreement under this Section 9(a).

(b) Indemnity. Each Party hereby agrees to defend (with counsel reasonably acceptable to Buyer), protect, indemnify and hold harmless the other Party and its affiliates, successors, predecessors, officers, directors, managers, members, employees, contractors, shareholders and agents, from and against any and all fees, losses, costs and expenses, including reasonable attorneys' fees and court costs, and all claims, damages, causes of actions, remedial actions, demands, liabilities, payments, suits, recoveries and judgments of every nature and description, made, filed, asserted, brought or recovered against or incurred by any of the aforementioned parties, arising out of, in connection with or in any way due to the Party's breach of the terms, covenants or conditions of this Agreement or any other document or agreement executed or accepted in accordance with this Agreement. This indemnity shall expressly survive the termination of this Agreement or delivery of any deed.

(c) Default. A Party's failure to comply with the provisions of this Agreement shall constitute a default. In the event a Party is in default for cause under the terms of this Agreement, the non-defaulting Party shall provide the defaulting party notice of default and reasonable time to cure such default. If the defaulting Party shall not cure such default within thirty (30) days, or such time as may be reasonably necessary to cure, the nondefaulting Party may terminate this Agreement by delivering written notice to the defaulting Party and shall be entitled to recover from the defaulting Party all actual and reasonably documented costs incurred by the nondefaulting Party under this Agreement including, without limitation, any and all appraisal costs, Phase I environmental costs, and the costs and proration described in Section 8. Recovery of such costs shall not limit the nondefaulting Party from pursuing any other legal or equitable claim against the defaulting Party as permitted by law.

(d) Waiver of Special Damages. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR AT LAW OR IN EQUITY, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR PUNITIVE, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, LOSS OF DATA, LOSS OF USE, DIMINUTION IN VALUE, AND BUSINESS INTERRUPTION) HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY, ARISING FROM OR RELATING TO ANY CLAIM MADE UNDER THIS AGREEMENT. THE FOREGOING WILL NOT, OF ITSELF, LIMIT EITHER PARTY'S OBLIGATIONS WITH RESPECT TO PAYMENT OF DAMAGES OF ANY KIND INCLUDED IN AN AWARD OR SETTLEMENT OF A THIRD-PARTY CLAIM UNDER ANY INDEMNITY IN THIS AGREEMENT.**

10. Buyer's Acceptance of Property Condition. Buyer is acquiring the Property "AS IS, WHERE IS" without any representation or warranty by Seller. Seller will provide Buyer with information reasonably available to Seller relating to the investigation and remediation of hazardous materials at the Property to accommodate Buyer's effort to minimize Buyer's potential liability as an owner of property impacted by hazardous materials and qualify as a "bona fide purchaser" or a "bona fide prospective purchaser" under state or federal law, respectively.

11. Confidentiality. Buyer and Seller acknowledge that all negotiations and related documentation of or relating to the purchase and sale of the Property and this Agreement shall remain confidential, to the extent permitted by law, prior to the full execution and delivery of the Agreement except for disclosures to WestAmerica Bank and the bankruptcy court.

12. Miscellaneous.

(a) Notices. Any notices or other communications to be given or other documents to be delivered by any party hereto may be delivered in person to such party, or may be deposited in the United States mail, duly certified or registered, return receipt requested, with postage prepaid or delivered by Express Mail of the U.S. Postal Service or Federal Express or any other courier guaranteeing overnight delivery, charges prepaid. Notices and other communications may also be transmitted by facsimile. All notices, communications and/or payments should be addressed to the party for whom intended, as follows:

Buyer: City of Fort Bragg  
416 North Franklin Street  
Fort Bragg, CA 95437  
Facsimile: (707) 961-2802  
Attention: Linda Ruffing

Seller: Mendocino Coast Recreation & Park District  
300 South Lincoln Street  
Fort Bragg, CA 95437  
Facsimile: (707) 964-1813  
Attention: Elizabeth Pine

Escrow Holder: Redwood Empire Title Company of Mendocino County  
P.O. Box 238  
376 East Gobbi Street  
Ukiah, California 95482  
Facsimile: (707) 462-5010  
Attention: Rosanne Burliesci

(b) Entire Agreement. This Agreement, including the exhibits hereto, contains the entire agreement between the parties hereto pertaining to the subject matter hereof and fully supersedes all prior written or oral agreements and understandings between the parties pertaining to such subject matter.

(c) Further Assurances. Each party agrees that it will execute and deliver such other documents and take such other action, whether prior or subsequent to the Closing, as applicable, as may be reasonably requested by the other party to consummate the transactions contemplated by this Agreement. The provisions of this subsection shall survive Closing.

(d) Captions. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

(e) Governing Law. This Agreement and the exhibits attached hereto have been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. The venue for any litigation concerning this Agreement shall be in Mendocino County.

(f) Broker. Neither Buyer nor Seller has engaged or dealt with a broker, finder, or intermediary in connection with this transaction. Each Party agrees to indemnify the other against all claims for fees, commissions, or other compensation claimed to be due to any broker, finder, or intermediary with whom the indemnifying party may have dealt in connection with this transaction.



(g) Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect; provided that the invalidity or unenforceability of such provision does not materially adversely affect the benefits accruing to any party hereunder.

(h) Amendments. No addition to or modification of any provision contained in this Agreement shall be effective unless fully set forth in writing by both Buyer and Seller.

(i) Counterparts; Facsimile or E-Mail Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument. In order to expedite the transaction contemplated herein, telecopied signatures or signatures transmitted as a PDF attachment to an e-mail may be used in place of original signatures on this Agreement or any document delivered pursuant hereto, and Seller and Buyer intend to be bound by the signatures on the telecopied or e-mailed document.

(j) Covenant Not to Record. Buyer shall not record this Agreement or any memorandum hereof in any public records of any jurisdiction prior to Closing, and any violation of this covenant shall be deemed to be an immediate default of Buyer hereunder.

(k) Binding Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

(l) No Assignment. Buyer shall not, without Seller's prior written consent, assign or transfer Buyer's rights or obligations hereunder to any person, firm, partnership, corporation or other entity, whether by operation of law or otherwise.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written and such date shall be deemed the date of this Agreement.

BUYER:

**CITY OF FORT BRAGG**

By: \_\_\_\_\_  
Name: Linda Ruffing, City Manager

Attest:

\_\_\_\_\_  
Cynthia VanWormer, City Clerk

Approved as to Form:

\_\_\_\_\_  
David S. Warner, City Attorney

SELLER:

**MENDOCINO COAST PARK &  
RECREATION DISTRICT**

By: \_\_\_\_\_  
Name: Elizabeth Pine, Executive Director

Attest:

\_\_\_\_\_  
\_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
James Jackson, MCRPD Legal Counsel

Escrow Holder hereby certifies that Escrow opened as of the \_\_\_\_ day of \_\_\_\_\_, 201\_ as Escrow Number \_\_\_\_\_.

Redwood Empire Title Company of Mendocino County

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT "A"**

**PROPERTY LEGAL DESCRIPTION**

**EXHIBIT "B"**

**GRANT DEED**

**RECORDING REQUESTED BY**

**AND WHEN RECORDED MAIL TO:**

Mendocino Coast Park & Recreation District

\_\_\_\_\_

Attention: \_\_\_\_\_

\_\_\_\_\_  
(Space Above Line for Recorder's Use Only)

**GRANT DEED**

FOR A VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, MENDOCINO COAST PARK & RECREATION DISTRICT ("**Grantor**"), hereby GRANTS to CITY OF FORT BRAGG ("**Grantee**"), the real property in the County of Mendocino, State of California legally described on Exhibit "B-1" hereto, APN Nos. 019-070-07; 019-070-10; 019-070-11; 019-080-14; 019-080-16; and 019-080-21 (the "**Property**"), subject to, among other matters, (a) all existing and future laws, rules, regulations, restrictions, controls, decisions and/or orders of any local, state, county, regional or federal governmental agency or body relating to the Property, (b) all easements, rights-of-way, servitudes, permits, licenses, surface leases, covenants and other restrictions, encroachments, defects, claims or other matters of record or which would be ascertainable by a thorough physical inspection of the Property or an accurate ALTA/ACSM survey.

IN WITNESS WHEREOF, the undersigned has executed this document as of the day and year indicated.

Dated: \_\_\_\_\_, 201\_

**GRANTOR:**

MENDOCINO COAST PARK & RECREATION  
DISTRICT

By: \_\_\_\_\_

Name: Elizabeth Pine

Title: Executive Director

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 201\_ before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

EXHIBIT "B-1"

**LEGAL DESCRIPTION**

Real property in the unincorporated County of Mendocino, State of California, described as follows:

2194093.1