

City of Fortuna and [REDACTED], LLC City of Fortuna

Mill District Specific Plan Cost Reimbursement Agreement

THIS COST-SHARING AGREEMENT (“Agreement”) is made as of [REDACTED], 2023, by and between the City of Fortuna (“City”) and [REDACTED], LLC (“Owner”) with reference to the following facts and circumstances. The City and Owner are referred to individually as “Party” and collectively as “Parties”.

RECITALS

A. The City planning staff is currently working with Planwest Partners, Inc. to develop a specific plan (“Specific Plan”) for the Fortuna General Plan Mill District (the “Mill District”) for later presentation and potential adoption by the City Council.

B. Owner recently acquired a fee interest to most of the parcels within the Fortuna Mill District for future development.

C. As part of the City’s specific plan preparation process for the Mill District, Owner has requested that the City consider certain modifications to the Specific Plan and applicable zoning regulations to (i) remove caps on commercial development and add industrial development without caps within the Mill District, and (ii) allow development within floodplain consistent with City standards (collectively, the “Owner Modifications”).

D. In order to consider Owner’s Modifications, Planwest Partner, Inc. will need to prepare additional studies, analysis, and other materials necessary for the City to consider whether to incorporate the Owner’s Modifications, as more particularly detailed in the Scope of Services attached hereto as **Attachment “A”** and incorporated herein by this reference (the “Scope of Work”).

E. Absent the Owner’s request, the City would not have undertaken the Scope of Work as part of the Specific Plan preparation process.

F. The Parties agree that it would be a more efficient use of resources to consider the Owner’s Modifications as part of the Specific Plan preparation process already underway, instead of waiting for adoption of a Specific plan and considering Owner’s application for post-adoption amendments thereto.

G. Owner agrees to reimburse the City for the Scope of Work as set forth below.

ACCORDINGLY, in consideration of the recitals and the agreements contained in this Agreement, the Parties agree as follows:

1. Reimbursement of Costs to Perform the Scope of Work.

- a. Subject to Owner’s compliance with this Agreement, the City will retain Planwest Partners, Inc. to complete the Scope of Work necessary for the City to consider the Owner Modifications.
- b. By March [REDACTED], 2023, Owner will deposit Sixty-Three Thousand Dollars (\$63,000.00) with the City to be applied to the cost for consultants to perform the Scope of Work. Owner understands that this deposit amount is a deposit of the estimated cost for the

Scope of Work. One or more additional deposits may be required if the initial deposit is not sufficient to cover the costs of the consultants. The City will notify Owner if the deposit amount drops below \$10,000 and City staff determines that additional funds are required. The notice will include an accounting of consultant costs through the month preceding the notice. Owner will provide the additional amount requested by the City to cover the additional costs necessary to complete the Scope of Work.

- c. Any deposit funds not used will be returned to Owner by the City within 60 days of the completion of the Scope of Work. Returned funds will be provided together with an accounting of consultant costs through the end of the process.
2. **Retention of Discretion.** This Agreement regarding the Owner Modifications in no way obligates or limits the City Council's discretion to: (1) determine the level of environmental review (i.e., exemption, negative declaration, mitigated negative declaration, or EIR); (2) adopt, approve, certify or decline to adopt, approve, or certify any environmental document required by the California Environmental Quality Act; and (3) approve, approve with conditions, or disapprove any component of the specific plan; (4) approve, approve with conditions, or disapprove any component of the Fortuna General Plan Mill District; (5) adopt any amendments to the City's zoning regulations; (6) approve, approve with conditions, or disapprove any Owner Modifications; or (7) approve, approve with conditions, or disapprove any development related applications for permits or other entitlements that Owner (or any of Owner's agents, tenants, sub-tenants, licensees, or successor) has filed or may file in the future to develop any real property within the City. The City Council will review and consider any such action in the same manner and to the same extent that the City Council would have such discretion in the absence of this Agreement. Owner retains full discretion to support, protest, or vote against any City Council action if it determines at any time, in its sole and absolute discretion, that the subject action would not be in the best interest of Owner.
 3. **Termination of Agreement.** Either Party may terminate this agreement at any time upon 30 days' notice to the other Party. If Owner chooses to terminate this Agreement in accordance with the foregoing sentence, City shall immediately terminate the Scope of Work with Planwest Partners, Inc., in which case Owner shall be obligated to pay any costs associated with the Scope of Work through the termination thereof.
 4. **General Matters.**
 - a. **Legal Action.** Any Party may, in addition to any other rights or remedies herein provided, institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation hereof, enforce by specific performance the obligations and rights of the Parties or obtain any other remedy consistent with this Agreement. In no event shall any Party be entitled to monetary damages for any action or inaction of another Party, including breach of contract. Nothing in this Section shall be deemed to limit any Party's rights under the Tort Claims Act or the City's right to collect fees allowable and otherwise due and payable or to impose penalties for violations of City Ordinances.
 - b. **Attorney's Fees and Costs.** If legal action by any Party is brought because of a breach of this Agreement, or to enforce a provision of this Agreement, each Party shall bear its own attorney's fees and costs.

- c. **Controlling Law.** This Agreement shall be construed and enforced in accord with the laws of the State of California.
- d. **No Joint Venture or Partnership.** The Parties renounce the existence of any form of joint venture or partnership between any or all of the Parties and agree that nothing contained in this Agreement or in any document executed in connection with it shall be construed as making any or all of the Parties joint ventures or partners. Further, Owner is not an agent of the City.
- e. **Third-Party Challenges.** Each Party shall bear its own attorneys' fees and costs in the defense of any third-party action or proceeding to attack, set aside, void or annul any action by the City on the Specific Plan, or any of the proceedings, acts or determinations taken, done or made prior to or concurrently with the Specific Plan.
- f. **Cooperation in the Event of Legal Challenge.** In the event of any administrative, legal, or equitable action or other proceeding instituted by a third party, governmental agency, or official challenging the validity of any provision of this Agreement or the Specific Plan and related proceedings, the Parties shall cooperate in defending the action or proceeding.
- g. **Notices.** All notices or communications required between the Parties by this Agreement shall be in writing and may be given either personally, electronically, by overnight carrier, or by first class mail, addressed to the Party intended to be notified. The notice shall be deemed to have been given and received on the date delivered in person or electronically, or the date of delivery receipt from the overnight carrier, or five days after deposit with the United States Post Office. Any Party, by giving ten days written notice to the other, may designate any other address as substitution of the address to which the notice or communication shall be given. Notices or communications shall be given to the Parties at the addresses below until duly changed as described above.

City of Fortuna	[INSERT NAME OF LLC]
City Manager City of Fortuna P.O. Box 545 Fortuna, CA 95540 mperry@ci.fortuna.ca.us	Vincent M. Rizzo, CCIM Rizzo & Associates LLC Real Estate Development Phone (707) 799-0170
Copy to: Ryan T. Plotz City Attorney The Mitchell Law Firm, LLP 426 1st Street Eureka, CA 95501 rplotz@mitchelllawfirm.com	

- h. **Successor and Assigns.** The covenants, terms, conditions and restrictions of this Agreement shall apply to, bind, and inure to the benefit of successors in interest of the Parties, including heirs, assigns, representatives, executors, administrators, and all other parties, whether they succeed by operation of law or voluntary acts of the City or Owner . All such heirs, representatives, successors, executors, or assigns shall be bound to every provision in this Agreement, whether or not this Agreement is referred to in the

instrument by which such heirs, representatives, successors, executors, or assigns acquire an interest in Owner's properties or any thereof.

- i. **Parties in Interest.** This Agreement is entered only for the benefit of the Parties executing this Agreement and not for the benefit of any other individual, entity or person.
- j. **Amendment of Agreement.** This Agreement may be amended in writing by mutual agreement of the original Parties or their successors in interest.
- k. **Severability.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect, unless the provision held invalid forms a material consideration of this Agreement.
- l. **Change in Law.** If a subsequent change occurs in federal or state laws or the regulations of a federal or state agency which prevents or precludes compliance with a provision of this Agreement, that provision shall be modified or suspended only to the extent necessary to comply with the federal or state law or regulation.
- m. **Entire Agreement.** This Agreement constitute the entire understanding and agreement of the Parties and supersede all negotiations or previous agreement of the Parties with respect to all or part of the subject matter of the Agreement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment to this Agreement.
- n. **Captions.** The captions in this Agreement have been inserted solely for convenience or reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

SIGNATURE PAGE FOLLOWS THIS PAGE

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective representatives, as follows.

CITY OF FORTUNA, a Municipal Corporation

By: _____ Merritt Perry, City Manager

Approved as to Form:

Ryan T. Plotz, City Attorney

_____, LLC

By: _____
Vincent M. Rizzo, CCIM, its authorized Member

Attachment “A”

SCOPE OF SERVICES

Planwest Partner’s is under contract with the City of Fortuna to complete the “City of Fortuna Mill District Specific Plan.” The City of Fortuna (City) is working with the new purchaser of the former mill site located east of Highway 101, south of Newburg Road, and west of Fortuna Boulevard, a property that comprises the majority of the Fortuna General Plan Mill District.

The new property owner seeks to modify the Fortuna General Plan relating to the Mill District to

- Remove the caps on commercial and add industrial development without caps that can occur within the Mill District.
- Allow development within floodplain consistent with City standards.

In order to carry out the above, the consulting team proposes the following additional tasks:

Task 1 – Floodplain Encroachment Analysis

The Federal Emergency Management Agency (FEMA) requires communities participating in the National Flood Insurance Program (NFIP) to adopt FEMA floodplain maps and limit flooding caused by new development. The goal of performing the floodplain encroachment analysis is to identify the limits of allowable encroachment within the Mill District on Strongs Creek, consistent with the City’s participation in the NFIP and City standards. GHD will complete a floodplain encroachment analysis using the City’s existing HEC-RAS model that was developed based on FEMA’s HEC2 model files for the Flood Insurance Rate Study and updated using the most recent topographic information. GHD will identify the extents of floodplain encroachment that results in a 1-foot rise (the maximum allowable for conformance with NFIP) within the Mill District and associated rise upstream of Fortuna Boulevard, downstream of Highway 101 and south of Kenmar Road. GHD will also identify the extents of floodplain encroachments that results in no rise to developed areas upstream of Fortuna Boulevard, downstream of Highway 101, or south of Kenmar Road. GHD will conduct one (1) site visit to verify current topography supports the modeled water surface elevations and extents within the floodplain.

Deliverables:

- Draft electronic copies in MS Word format of the Floodplain Encroachment Analysis Technical Memorandum and accompanying figures
- Final electronic copies in pdf format of the Floodplain Encroachment Analysis Technical Memorandum and accompanying figures

Task 2 – Drainage Infrastructure Analysis

The City of Fortuna requires that all development comply with the requirements of the City’s MS4 NPDES permit as outlined in the Humboldt County Low Impact Development (LID) Stormwater Manual. Projects other than Single-Family Homes that create or replace greater than or equal to 5,000 square feet of impervious surface are considered to be Regulated Projects. The post-

project runoff rate(s) shall not exceed the pre-project runoff rate(s) for the 25-year 24-hour storm event. GHD will provide preliminary sizing and siting of stormwater LID facilities to achieve the post-project runoff rate(s) requirements for development within the floodplain, based on proposed land use and the encroachment footprints developed in Task 1. GHD will also summarize the additional requirements of the Humboldt County LID Stormwater Manual, MS4 NPDES permit, and other relevant City requirements.

Deliverables:

- Draft electronic copies in MS Word format of the Drainage Infrastructure Analysis Technical Memorandum and accompanying figures
- Final electronic copies in pdf format of the Drainage Infrastructure Analysis Technical Memorandum and accompanying figures

Task 3 – Economic Analysis

The City and developer seek to remove the caps on commercial and add industrial development without caps that can occur within the Mill District. The Fortuna General Plan EIR relied upon the caps in its finding that development within the Mill District would not result in urban decay within the City or region. Amendments to General Plan policy that removes square footage caps would trigger the need for the following additional CEQA analysis.

- a. Review the assumptions contained in the Fortuna General Plan Economic Analysis and Environmental Impact Report to determine if there is substantial evidence that the removal of the cap on commercial/industrial square footage in the Mill district will result in local and regional urban decay or blight and evaluate General Plan policies and programs relating to commercial district preservation/revitalization and commercial / industrial use levels and caps.
- b. Evaluate the effectiveness/need for Fortuna General Plan policies and programs relating to commercial and industrial use levels and caps, including:
 - a. potential modifications to policies and programs, to include objective criteria for the monitoring of Main Street, to allow the removal of use caps,
 - b. modifications to policies to better address the urban decay/blight conditions that the caps are indirectly intended to reduce.
- c. Evaluate other local or similarly situated city General Plans to determine if they contain similar conclusions regarding urban decay or include commercial/industrial square footage policy caps to reduce urban decay. Prepare a memo summarizing the analysis and findings.
- d. Seek the review of this analysis and its conclusions by a land use economist with experience in CEQA-related urban decay and blight analysis.
- e. Prepare draft revisions to the Fortuna General Plan, as necessary, and revisions to Fortuna General Plan EIR Section 3.3 for environmental compliance.

Task 4 – CEQA Compliance

The existing agreement assumed that the existing General Plan Programmatic Environmental Impact Report evaluating the Mill District Specific Plan was adequate for the approval of a Mill

District Specific Plan that did not trigger General Plan policy changes without modification or circulation. The City and developer seek to modify Fortuna General Plan and Mill District policy, triggering the need for additional CEQA analysis.

- a) Prepare a supplement to the Fortuna General Plan Programmatic Environmental Impact Report evaluating the Mill District Specific Plan, including the modifications to the Specific Plan described in the tasks above, and that contains the following:
 - i) Revised project description.
 - ii) Summary of the effects found not to be significant to allow the CEQA review to concentrate on potentially significant environmental effects. The determination of which impacts would be potentially significant and evaluated in detail in the supplement to the Fortuna General Plan PEIR will be made based on an Initial Study or the review of applicable planning documents, analysis/fieldwork, feedback from public and agency consultation, comments received on the NOP, research, and analysis of relevant project data.
 - iii) Analysis of the potentially significant effects, most likely relating to Biological Resources; Energy; Greenhouse Gas Emissions; Land Use and Planning; Economic Impacts; Transportation and Circulation; Hydrology and Water Resources; Parks, Recreation and Open Space; Public Facilities and Services; and Flooding.
 - iv) Cumulative and other CEQA considerations.
- b) Prepare and circulate Notice of Availability (NOA) of Supplemental EIR. Assist City with SCH submittal, agency, and public noticing and review.
- c) Respond to comments and prepare final CEQA document.
- d) Assist City with staff report and resolution for adoption.

Task 5 – General Plan Amendment Support

Planwest will assist the City with staff reports, resolutions, support at Planning Commission and/or City Council meetings and other required information to prepare and present the proposed General Plan Amendments to City decision-makers.

Task 6 – Project Management, Coordination, and Outreach

Planwest will continue to collaborate with the City and property owner representatives to attend and schedule meetings on a regular basis throughout the project. This may include additional meetings with agency representatives, property owners, stakeholders, and the public. The cost estimate below includes biweekly meetings with the City, up to two agency/stakeholder meetings, and one public meeting.

Cost Estimates

Task	Cost
Task 1 – Floodplain Encroachment Analysis	\$15,000
Task 2 – Drainage Infrastructure Analysis	\$13,500
Task 3 – Economic Analysis	\$12,000
Task 4 – CEQA Compliance	\$ 9,000

Task 5 – General Plan Amendment Support	\$ 4,500
Task 6 – Project Management & Outreach	\$ 9,000
TOTAL	\$63,000

The cost for the above work will be on a time and materials basis at current charge rates.