

**AGENDA
REGULAR MEETING OF THE BOARD OF COMMISSIONERS
HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT**

DATE: April 10, 2014

TIME: 6:00 p.m. Executive Closed Session
7:00 p.m. Regular Session

PLACE: Woodley Island Marina Meeting Room

The Meeting Room is wheelchair accessible. Accommodations and access to Harbor District meetings for people with other handicaps must be requested of the Director of Administrative Services at 443-0801 24 hours in advance of the meeting.

1. Call to Order at 6:00 p.m.

- a. Move to Executive Closed Session pursuant to the provisions of the California Government Code Sections 54957.6 (Negotiations with Represented Employees) and 54956.8 (Conference with Real Property Negotiator)
1. Conference with Labor Negotiator
Agency Negotiators: Commissioner Richard Marks Board President, Commissioner Greg Dale, Jack Crider Chief Executive Officer, Paul Brisso District Counsel.
Employee Organization: International Longshore and Warehouse Union, Local 14A.
 2. Conference with Real Property Negotiator
Agency Negotiators: Commissioner Richard Marks Board President, Commissioner Mike Wilson, Jack Crider Chief Executive Officer; Paul Brisso District Counsel
Under Negotiation: Freshwater Tissue Company property, Sale of Boiler at Redwood Terminal 2 Property, and Energistycs Inc. Lease for Real Property

2. Adjourn Executive Closed Session

3. Call to Order Regular Session at 7:00 P.M. and Roll Call

4. Pledge of Allegiance

5. Report on Executive Session

6. Public Comment

Note: This portion of the Agenda allows the public to speak to the Board on the various issues not itemized on this Agenda. A member of the public may also request that a matter appearing on the Consent Calendar be pulled and discussed separately. Pursuant to the Brown Act, the Board may not take action on any item that does not appear on the Agenda. Each speaker is limited to speak for a period of three (3) minutes regarding each item on the Agenda. Each speaker is limited to speak for a period of three (3) minutes during the PUBLIC COMMENT portion of the Agenda regarding items of special interest to the public not appearing on the Agenda that are within the subject matter jurisdiction of the Board of Commissioners. The three (3) minute time limit may not be transferred to other speakers. The three (3) minute time limit for each speaker may be extended by the President of the Board of Commissioners or the Presiding Member of the Board of Commissioners at the regular meeting of the District. The three (3) minute time limit for each speaker may be enforced by the President of the Board of Commissioners or the Presiding Member of the Board of Commissioners at the regular meeting of the District.

7. Consent Calendar

Note: All matters listed under the Consent Calendar are considered to be routine by the Board of Commissioners and will be enacted by one motion. There will be no separate discussion of these items. If discussion is required, that item will be removed from the Consent Calendar and considered separately.

Agenda for April 10, 2014 Regular Board Meeting

8. Communications and Reports

- a. Chief Executive Officers Report
- b. Staff Reports
- c. District Counsel and District Planner Reports
- d. Commissioner and Committee Reports
- e. Other
 - Presentation by Samoa Fire District regarding their tax waiver to the District
 - Report on the Redwood Terminal 2 activity by EPA Representative

9. Non Agenda

10. Unfinished Business

11. New Business

- a. Consideration of approval of contract with MP Environmental Service to transport hazardous material.
- b. Consideration of approval of contract with MM Diving Inc. to inspect the ocean outfall.
- c. Consideration of approval of Exclusive Right To Negotiate Agreement with Energistycs Inc. for facilities lease at Redwood Terminal 2.
- d. Consideration of approval of contract for Commercial Real Estate Broker Services.
- e. Consideration of approval of purchasing float replacement parts from Bellingham Marine Services.
- f. Discussion of Bidding and Leasing Options for the Mariculture Pre-Permitting Project.

12. Administrative and Emergency Permits

13. Adjournment

MM DIVING Inc.

UNDERWATER CONSTRUCTION

CA. Class A-General Engineering License # 817400

325 Sleepy Hollow Road
Crescent City, CA 95531
Telephone: (707) 465-0909
Mmdivinginc.com



2/25/2014

Mr. Jack Crider

Humboldt Bay Harbor District

Scope of work: Inspect and record the overall condition of the LP outfall. Obtain cathodic protection readings of blind flange, Joints 1, 2, 3 & 4 as well as any exposed pipe where the concrete coating is missing and empty anode bracelet locations. Measure internal sediment buildup of the diffuser section and video and inspect all exposed outfall sections 1, 2, 3, 4 and Joints 1, 2, 3 and 4.

Inspecting the LP outfall requires approximately 4 hrs to set up dive station on the vessel prior to the dive day and a 12 hour day to inspect the outfall and demob the vessel. As the depth exceeds 60 feet, the minimum dive crew to be compliant with Live Boating safety regulations is a diving supervisor, 3 divers and two tenders. In this case as the decompression chamber will remain on the beach, a total of five divers are likely required to complete the inspection.

The inspection will be completed using standard commercial "hose gear" with communications with a helmet mounted color video camera and light. Additionally a CP "cathodic protection probe" will be married into the primary dive hose. The video recording will be included along with the written report in DVD format.

Cost

Mobilization: \$3500

Inspection: \$19,500

Total: \$23,000.

* Vessel to be provided by the Humboldt Bay Harbor District

Delays and Weather:

Any delays outside of the contractors control and or any weather related downtime incurred by the contractor once mobilized will be charged to the customer at a standby rate of \$17,000 per day.

Please do not hesitate to contact me with any questions or if I may be of further service.

Vic Markytan
MM Diving Inc

MM DIVING INC.
A UNDERWATER CONSTRUCTION COMPANY
Member
ADCI
Association of Diving Contractors International

ENERGISTYCS, INC..**EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT**

This EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT ("Agreement") is entered into this ___th day of _____ 2014, by and between the Humboldt Bay Harbor, Recreation and Conservation District, a California governmental entity, hereinafter referred to as "District" and Energistycs, Inc., hereinafter referred to as "Developer". District and Developer agree as follows:

I. NEGOTIATIONS**A. Length of Negotiation Period**

Unless extended by mutual consent of the parties, the Negotiation Period shall be for 120 days, or as otherwise provided in Sections IX.D and IX.E. of this Agreement, commencing on the date of this Agreement; provided, however, that the Negotiation Period may be terminated earlier pursuant to the provisions of Section IX.B of this Agreement.

B. Good Faith Negotiations

The District and the Developer shall negotiate diligently and in good faith during the Negotiation Period towards a Lease Agreement providing for the leasing by the District to the Developer, of all or part of certain real property ("Property") described in the attached Exhibit A to this Agreement that is incorporated into this Agreement by this reference. The Parties contemplate that the Developer will lease a portion of District's Redwood Terminal 2 property known as the Drier Building and Warehouse (Exhibit A) for purposes of a pellet mill operation (Project). Said lease will also include upland areas that may be necessary for activities ancillary to the pellet mill operation including, without limitation, storage and parking. However, nothing in this Agreement shall be construed to require Developer or District to ultimately agree to specific terms for a lease, and both parties have the discretion to decide not to enter a lease if the parties do not reach agreement on details for the lease agreement.

C. Exclusive Negotiations

The District shall not negotiate with any other person or entity regarding long-term

leasing or other long-term use authorization of the Property, as defined in Exhibit A, or any portion of the Property, or solicit or entertain bids or proposals to do so, during the Negotiation Period. Notwithstanding the foregoing, District reserves the right to contract use of the Property to third parties on a temporary basis during the negotiation period, until such time as the parties reach a Lease Agreement, to the extent said use is not inconsistent with Developer's current lease agreement. District shall give notice to Developer of any such temporary use, and the parties will negotiate in good faith to resolve any issues related to accommodation of Developer's site inspection activities contemplated in Section D, below, during any time periods of temporary use.

D. Right of Entry

Developer, its agents, and independent contractors shall have the right to enter on the Property, upon reasonable prior notice to District, to perform, at Developer's expense any and all structural, soil, hydrological, archeological, environmental site assessment, and to conduct any surveys, title work, planning, and any other investigations as Developer deems appropriate in its sole and absolute discretion. Developer shall indemnify and hold District, its elected officials, agents, directors, staff, volunteers and designated representatives, harmless from any lien, loss, claim, liability, damage, or expense, including reasonable attorneys' fees and costs, that District may suffer or incur, arising out of or in connection with Developer's entry upon and inspection of the Property, including, without limitation, any loss, damage, or liability that District may suffer or incur by reason of any injury to any person or property caused by Developer, its agents, employees, independent contractors, consultants or invitees. Developer shall also require that all third parties performing investigation on the site to have and maintain liability insurance with minimum coverage of \$1,000,000 for general commercial liability. Developer shall require written proof of insurance and shall provide copies to District at District's request. Upon the completion by Developer of any and all such investigations of the Property, Developer shall restore the Property to substantially the same condition existing prior to such investigations. Notwithstanding anything to the contrary provided in this

paragraph, Developer shall not be obligated to remediate, restore or indemnify District for incidental or consequential damages with respect to any environmental or physical condition that is merely discovered, as opposed to caused, by Developer. Developer's obligations hereunder shall survive termination of this Agreement or, if applicable, any Lease Agreement.

E. Equipment Storage

Developer or its designees may store equipment necessary for site investigation purposes, for the time period such equipment is reasonably necessary for site investigation purposes, on the Property during the Negotiation Period provided the equipment is in operating condition and currently licensed (if appropriate). Developer or its designees shall store equipment only in areas approved by District. District shall not be responsible for any damage or theft of equipment stored on the Property by Developer or its designees. In the event of termination of this Agreement, Developer shall remove stored equipment from the Property within ten (10) days of the date of termination of this Agreement. If not removed within ten (10) days after the date of termination, stored equipment will be removed, sold or destroyed by District at Developer's sole expense.

F. Cooperation of District

District will cooperate and provide reasonable assistance to Developer and its representatives in carrying out its inspection.

II. CONSIDERATION

A. Consideration for Exclusive Right

Within fifteen (15) days of the execution of this Agreement, the Developer shall pay to the District the sum of \$5,000 as consideration for the exclusive right and initial services of staff administration of the District during the Negotiation Period. If a lease agreement is executed arising out of the negotiations pursuant to this Agreement, this amount shall be credited to the initial lease payment or the purchase amount.

B. Payment Upon Entering Into Lease Agreement

The Developer acknowledges and understands that the District will require as a condition to entering into any Lease Agreement that the Developer must provide the negotiated lease payment to District.

III. SCHEDULE OF PERFORMANCE

The Developer shall perform the following activities during the Negotiation Period:

A. Legal Status of Developer

Within (10) days of the date of this Agreement Developer shall provide documentation of its legal existence and its authority to conduct business in the State of California.

B. Project Submissions Within 60 Days

Within one hundred and twenty (60) days of the Commencement Date, the Developer shall provide to the District the following information:

1. Name and identification of the type of legal entity with which the District would contract. Identify all joint venture partners, if any.
2. Name and person (or persons) who will represent the Developer in negotiations with the District.
3. A narrative description of the development proposed, including a description of its physical characteristics, potential leasehold improvements and number of proposed employees.
4. A funding Sources and Uses Table for the Project, which shall show the funding sources and uses for the Project including all anticipated development costs, and public improvement cost (if any). Such sources and uses tables shall indicate the proportions of public assistance anticipated (if any), its sources and its uses.
5. Estimated development and pre-development schedule including time required for all design and permit processing including but not limited to compliance with the

- California Environmental Quality Act (CEQA).
6. A Development Plan including a development timeline and development achievement milestones including, but not limited to property survey; appraisal; compliance with the California Subdivision Map Act; lot-line adjustment process; and zoning change process.
 7. Executed copies of any contracts which the Developer has entered into with its consultants for the Project, pertaining to architectural, engineering, environmental analysis and soil analysis.
 8. Copies of any grant funding applications, correspondence with potential grant sources, or other documents relating to potential financing of the project from outside sources.
 9. Proposed site plans for the Project showing the site layout, legal description of the proposed lease area, proposed leasehold improvements, access points and parking layout areas. The plan should show adjacent land uses to illustrate the projects relationship to the surrounding area.
 10. A business plan reflecting Lessor's timetables and business strategy for development of the premises into a viable and sustainable public attraction or benefit, including how and when restoration of the Lessor's rail equipment will be accomplished; the use and maintenance of proposed leasehold developments; projected anticipated public use and potential revenue generation and factual basis or assumptions for same; etc.

IV. DISTRICT APPROVAL OF DEVELOPER'S SUBMISSIONS

Within thirty (10) days after the District receives any information or documents required to be submitted to it by the Developer pursuant to Section III of this Agreement, the District shall advise the Developer of its acceptance or rejection of the information or documents. If the District rejects any information or documents submitted to it by the Developer, it may in its discretion grant the Developer an opportunity to revise its submission and resubmit it to the District in a time

frame set by the District at the District's sole discretion. The District shall advise the Developer of its acceptance or rejection of any revised submission within thirty (10) days of its receipt of the revised submission from the Developer.

V. PERMITS REQUIRED

The Developer understands and agrees it is solely responsible for obtaining a Permit from District and all other applicable governmental approvals for the Project, at the Developer's sole expense. The District agrees that it will provide any documentation or authorization necessary for Developer to proceed with the process of obtaining any and all required governmental approvals for the Project, including, without limitation, authorization for Developer to act as the District's agent with respect to those governmental approvals. The required governmental approvals referenced in this Section include any review process required by Public Resources Code Section 21000 et seq. (the California Environmental Quality Act ("CEQA")).

VI. NEGOTIATION OF LEASE AGREEMENT

If the Developer has performed all of the requirements of Section II and III of this Agreement in a timely manner, the District shall deliver to the Developer a draft of a Lease Agreement within sixty (30) days after the Developer's completion of performance. The Developer and District shall negotiate diligently and in good faith until a lease is agreed upon, the 120 day Negotiation Period pursuant to Section I.A., above has expired, or the Parties terminate this Agreement.

VII. DISTRICT RESPONSIBILITIES

The Developer understands and acknowledges that any Lease Agreement resulting from the negotiations arising from this Agreement shall become effective only if and only after such Agreement has been considered and approved by the District's Board of Commissioners at a regular Board Meeting. The Commission is the only entity for the District with the power and authority to enter into any agreement on behalf of the District. District staff, including but not limited to the Chief Executive Officer and District Counsel, may negotiate on behalf of the District

for proposed terms they believe will be acceptable to the Commission, but approval by the Commission is not guaranteed.

XIII. FAILURE TO PERFORM UNDER THIS AGREEMENT

A. Time is of the Essence

The District and the Developer hereby acknowledge that time is of the essence to this Agreement, such that the Developer's failure to fully perform according to the terms and conditions of this Agreement shall be considered a material breach of this Agreement.

B. Early Termination

On or before the date which is 120 days following the Commencement Date, either party may terminate this Agreement if it determines that development of the Property in the manner contemplated by this Agreement is not feasible.

C. Notice to Developer of Breach

In the event that the Developer fails to perform pursuant to the terms and conditions of this Agreement, the District may declare the Developer in default and terminate this Agreement upon fifteen (15) days written notice to Developer.

D. District Discretion to Extend Time for Performance

Notwithstanding the above, if the District determines that it is in the best interests of the District, the District may extend the time for Developer's performance of any of the terms and conditions of this Agreement. The District shall have sole discretion to grant an extension to the Developer and in no event shall this provision be construed so as to convey any right or entitlement to an extension for performance to the Developer.

E. Extension of Time to Complete Legal Requirements

In the event that the Developer has fully performed under the terms and conditions of this Agreement in a timely manner, and in the event that the Parties have negotiated a preliminary Lease Agreement over which the Parties have reached agreement about its terms, the District shall extend the Negotiating Period by the amount of time necessary to complete the legal

review.

IX. HOLD HARMLESS

The Developer hereby covenants, on behalf of itself, its successors and assigns, to indemnify, save and hold harmless and defend the District, its elected officials, agents, directors, staff, volunteers and designated representatives, from all claims, demands or actions arising from the District's actions with respect to this Agreement, including but not limited to the District's actions or lack of actions with respect to proposals submitted to it by the Developer both prior and subsequent to this Agreement, the District's negotiation and execution of this Agreement, any prior negotiations and agreements by and between the Parties, and negotiation and execution of a Lease Agreement for the Project.

X. LIMITATIONS

By its execution of this Agreement, the District is not committing itself to or agreeing to undertake (a) commitment or reservation of public funds, revenues or reserves to the Project; (b) approval of the Project by the District; (c) any other acts or activities requiring the subsequent independent exercise of discretion by the District.

Execution of this Agreement by the District is merely an agreement to enter into a period of exclusive negotiations according to the terms of this Agreement, and the District's Board of Commissioners reserves final discretion and approval by the District as to any Lease Agreement and all proceedings and decisions in connection with any Lease Agreement.

This Agreement also shall not prevent the District from providing any person or entity with any information regarding the Property that is contained in the public records, as that term is defined by the California Government Code.

XI. NOTICES

Notices for District shall be addressed to:

Jack Crider
Chief Executive Officer
Humboldt Bay Harbor, Recreation and Conservation District
601 Startare Drive
Eureka, CA 95501

Notices for Developer shall be addressed to:

Kevin Leary
Energistycs, Inc.
4801 West End Road
Arcata, CA 95521

IN WITNESS WHEREOF, this Agreement has been executed by the parties on the date first written above.

DISTRICT:

**HUMBOLDT BAY HARBOR,
RECREATION AND CONSERVATION**

DEVELOPER:

ENERGYSTICS, INC.

**Richard Marks, President
Board of Commissioners**

Kevin Leary

ATTEST:

Greg Dale, Secretary

EXHIBIT A
DESCRIPTION OF PROPERTY

DRAFT

PELLET MILL LAYOUT

