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

DATE: January 22, 2015

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 Section 54955.8 (Conference with Real Property Negotiators) and 54955.9 (Threatened Litigation).
      1. Conference with Real Property Negotiator
         Agency Negotiator: Board President, Executive Director and District Counsel
         Under Negotiation:
         Exclusive Right to Negotiate with Sustainable World Solutions, LLC for the Redwood Terminal 2 property.
      2. Conference with Real Property Negotiator
         Agency Negotiator: Board President, Executive Director and District Counsel
         Under Negotiation:
         Freshwater Tissue Company Notice of Retaining Parcel C per the Option Agreement
      3. Conference with Real Property Negotiator
         Agency Negotiator: Board President, Executive Director and District Counsel
         Under Negotiation:
         Timber Heritage Association Purchase Option Agreement
      4. Threatened Litigation
         Nixon Peabody
         Freshwater Tissue Company

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.
Agenda for January 22, 2015 Annual Board Meeting

7. Consent Calendar: None

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.

8. Communications and Reports
   a. Executive Directors Report
      • EPA Update
      • Anchoring Ordinance
      • Humboldt Bay Mariculture Pre-Permitting Project Draft EIR
      • Entrance Channel Shoaling
   b. Staff Reports
   c. District Counsel, District Planner and District Treasurer Reports
   d. Commissioner and Committee Reports
   e. Other

9. Non Agenda

10. Unfinished Business

11. New Business
   a. Consideration of Timber Heritage Association Purchase Option Agreement
   b. Consideration of hiring Bonnie Neely to determine principally permitted uses at Redwood Terminal 2.
   c. Consideration of Memorandum of Agreement Regarding the Humboldt Bay Invasive Spartina Removal Project Funded by the Environmental Enhancement and Mitigation Program.
   d. Consideration of designation of Commissioner to serve on the Redwood Region Economic Development Commission Board.
   e. Election of Officers.

12. Administrative and Emergency Permits

13. Adjournment
OPTION AGREEMENT

THIS OPTION AGREEMENT ("Agreement") is entered into as of December ______, 2014, ("Execution Date") between HUMBOLDT BAY HARBOR, RECREATION and CONSERVATION DISTRICT, a California public entity (hereinafter sometimes "Optionor" or "District") and the TIMBER HERITAGE ASSOCIATION, (hereinafter sometimes "Optionee" or "THA") a California non-profit corporation.

The parties hereto acknowledge that the Optionor and Optionee are currently Lessor and Lessee, respectively, in a Lease Agreement entered into between the parties in December of 2006, in which has been extended to December 31, 2014. It is the intention of the parties hereto to extend said Lease to December 31, 2015.

Recitals

A. Optionor is the owner of certain real property in Humboldt County, California, more particularly described in attached Exhibit A. The Property subject to this Agreement is the property described in Exhibit A.

B. Optionee desires to acquire the exclusive right to purchase the Property at an agreed upon price and under the specific terms and conditions set forth below.

C. The real property parcels that are a part of this Option Agreement, include:

[EXACT PROPERTY SUBJECT TO THE EASEMENT TO BE DETERMINED]

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

Section 1. Option to Purchase

Optionor grants to Optionee an option to purchase the Property on the terms and conditions of this Agreement.

Section 2. Consideration for Option
Concurrently with the execution of this Agreement, Optionee has paid to Optionor as consideration the sum of $5,000 for the Option (which sum shall not be refundable.).

Section 3. Term

This Agreement shall be effective as of the date of this Agreement and shall expire at 5:00 p.m. on ______________, 2015 (one year from the date of this Agreement) ("Option Term"). The Optionee may request a one-year extension of this Agreement and additional extensions as necessary, but any such extension and its terms shall be in the sole and exclusive discretion of the Board of Commissioners of the Optionor holding office as of the time the extension is requested. One of the major factors Optionor will consider in the context of a requested extension will be whether Optionee can demonstrate significant and substantial progress towards meeting the Conditions for Exercise (Section 6). Any such request for an extension shall be made in writing to the Optionor 30 days prior to the expiration of this Agreement or any extension of it.

Section 4. Exercise of Option

Provided Optionee is not in default under this Agreement, this option may be exercised by Optionee delivering to Optionor before the expiration of the Option Term written notice of the exercise ("Exercise Notice"), which shall state that the Option is exercised without condition or qualification. The Exercise Notice must be accompanied by Optionee's check payable to a title company or other mutually-agreed escrow holder in the amount of the balance necessary to be paid for the purchase price and escrow costs.

Section 5. Purchase Price

Purchase price shall be $5 (five dollars) plus the remediation of any environmental hazards or contamination per the State of California and Federal standards prior to the transfer, or provision of a performance bond or other financial assurance for such remediation pursuant to Subsection 6(e) below.

Section 6. Conditions for Exercise

Prior to exercise of this Option, Optionee, at its sole responsibility and expense, shall do the following:

a. Obtain approval from the County of Humboldt for a parcel subdivision and/or Lot Line Adjustments in compliance with the Subdivision Map Act, acceptable to Optionor, to create separate and legal parcels for the property described in Exhibit A. Optionee shall also seek
and obtain such approval for any necessary zoning change to permit Optionee the intended use of the property for a Timber Heritage Museum and related uses. Optionor shall sign any applications or documents required as the property owner and otherwise reasonably cooperate with Optionee’s efforts to obtain such approvals.

b. The Optionee shall, within 45 days of this date, select and retain a Project Manager to oversee THA’s efforts to satisfy the conditions of the exercise of this Option and shall inform the District within 45 days in writing of the name and contact information of said Project Manager.

c. Prepare an Environmental Phase 2 Evaluation and a Remediation Plan for remediation of any hazardous materials or environmental contamination of the property;

d. Optionee will secure and pay for full regulatory and permit compliance for use of the property with the purpose of preserving as a priority the unique historic significance of the property and its structures to the Redwood Regions’ timber heritage; and obtain necessary approvals from the California Coastal Commission and all other regulatory bodies necessary for the creation of a separate parcel and for approval of Optionee’s intended use;

e. The Optionee will finance the remediation of any environmental hazards or contamination of the property. Remediation will be per the State of California and Federal standards and determination and clearance. Said remediation will be either (a) completed or (b) secured by a performance bond or other financial assurance acceptable to the Optionor. The Optionee shall pay to the Optionor all costs incurred by Optionor for California Environmental Quality Act (CEQA) review and compliance and for any other applications and submittals that require direct participation by Optionor (and which are to this Option and purchase of the subject property). Such costs shall include but not be limited to reasonable reimbursement for Optionor’s staff time and expenses. Staff time shall be invoiced at the hourly rate of District staff plus a pro rata amount for fringe benefits. Said costs shall be invoiced to Optionee monthly as incurred and shall be paid in full within 30 days of invoice. All of Optionor’s estimated anticipated reimbursable costs, which are to be mutually preapproved, shall be based on a good faith estimate which shall be provided ______ days in advance of the work to be performed, if practicable;

f. Failure to pay Optionor’s reimbursable costs as required in Subsection 6e shall be a breach of this Agreement for which Optionor may, in its discretion, rescind this Agreement;
g. Provide to Optionor a performance bond or other financial assurance acceptable to Optionor for any environmental remediation of the property that may be reasonably required to meet State of California and Federal standards after the exercise of the Option and transfer of ownership; and

h. Provide to Optionor at not less than 90 day intervals, beginning with 90 days intervals, beginning with 90 days following the execution of this Agreement, detailed report concerning Optionee’s efforts to obtain grant funding or other financial assistance and fundraising activities, including but not limited to, providing copies of correspondence to and from potential grant or funding sources, grant applications, and other documentations. Failure to provide such reports, and documentation shall be a breach of this Agreement and Optionor may, in its discretion, rescind this Agreement.

Any documented actual cash expenditure of funds by Optionee in meeting these shall be credited to Optionee’s rental obligations under its existing Lease of the property with Optionor, in addition to serving as consideration for receiving this Option.

Section 7. Testing and Inspections

During the Option term Optionee shall have the right, with reasonable prior notice to Optionor, to conduct any site inspections and testing it deems necessary. If invasive testing is performed, the premises shall be restored to its pre-inspection and testing condition. Copies of all reports and test results shall be provided to Optionor immediately upon receipt of same by Optionee or its consultants.

Section 8. Representations and Warranties

Optionor warrants that Optionor is the owner of the Property and has marketable and insurable fee simple title to the Property clear of restrictions, leases, liens, and other encumbrances, other than those that may be disclosed by a Title Report. If this option is exercised by Optionee, Optionor will convey title to the Property by grant deed. Optionor shall have the obligation to discharge all liens on the property. Except as otherwise permitted by this Agreement, during the Option Term and until the Property is conveyed to Optionee, if this option is exercised, Optionor will not encumber the Property in any way nor grant any property or contract right relating to the Property without the prior written consent of Optionee. Optionor shall further maintain fire insurance on any improvements current during the term of the Agreement, except as to the obligations for such expenses the Optionee may have under its current lease agreement with Optionor.
Optionor makes no representations or warranties concerning the condition of the property or its suitability for Optionee's intended use. Optionee expressly assumes the risk that the conditions required by Section 6 may not be feasible or possible for reasons outside the control of Optionor. If Optionee ultimately exercises the option and ownership is transferred, Option shall take the property "AS IS, WHERE IS" with no warranty of any nature by Optionor.

Section 9. Time of Essence

Time is of the essence for this Option Agreement. If the option is not exercised in the manner provided in Section 4 hereof before the expiration of the Option Term, Optionee shall have no interest in the Property and the option may not be revived by any subsequent payment or further action by Optionee, unless agreed to in writing by both parties hereto.

Section 10. Quitclaim Deed

If this Agreement is terminated, Optionee agrees, if requested by Optionor, to execute, acknowledge, and deliver a quitclaim deed to Optionor within ten (10) days after termination and to execute, acknowledge, and deliver any other documents required by any title company to remove the cloud of this Option from the Property.
Section 11. Notices

All notices, demands, requests, exercises, and other communications under this Agreement by either party shall be in writing and:

a. Sent by United States Certified Mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States mail, or

b. Sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, or

To Optionor:

Humboldt Bay Harbor, Recreation and Conservation District
Attn: Jack Crider, CEO
601 Startare Drive
Eureka, CA 95501
FAX: 707-443-0800

With copy to:

Paul A. Brisso
Mitchell, Brisso, Delaney & Vrieze LLP
814 Seventh Street
Eureka, CA 95501
FAX: 707-444-9586

To Optionee:


These addresses may be changed by written notice to the other party, provided that no notice of a change of address shall be effective until actual receipt of that notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.
Section 12. Transfer

Optionee may not assign or transfer this Agreement and the rights under it without Optionor's prior written consent. Optionee recognizes that this Agreement is entered into by Optionor based upon Optionee's representations of its plans for intended use of the property, and an attempted assignment of the rights by Optionee is unlikely to be approved.

Section 13. Litigation Costs

If any legal action or any other proceeding, including arbitration or action for declaratory relief, is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default, or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and other costs, in addition to any other relief to which the party may be entitled. "Prevailing party" shall include without limitation:

a. A party who dismisses an action in exchange for sums allegedly due;

b. The party who receives performance from the other party of an alleged breach of covenant or a desired remedy where that is substantially equal to the relief sought in an action; or

c. The party determined to be the prevailing party by a court of law.

Section 14. Survival

The terms of this Agreement shall survive the close of escrow of the Property unless there is a contradiction between any Real Estate Purchase and Sale Agreement and this Agreement, in which event the Real Estate Purchase and Sale Agreement shall control.

Section 15. Successors

This Agreement shall bind and inure to the benefit of the respective successors and approved assignees of the parties to this Agreement.

Section 16. Waivers

No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any other covenant or provision in this Agreement, and no waiver shall be valid unless in writing and executed by the waiving party.
Section 17. Construction

Section headings are solely for the convenience of the parties and are not a part of and shall not be used to interpret this Agreement. The singular form shall include the plural and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. Unless otherwise indicated, all references to sections are to this Agreement.

Section 18. Further Assurances

Whenever requested by the other party, each party shall execute, acknowledge, and deliver all further conveyances, agreements, confirmations, satisfactions, releases, powers of attorney, instruments of further assurance, approvals, consents, and all further instruments and documents as may be necessary, expedient, or proper to complete any conveyances, transfers, sales, and agreements covered by this Agreement, and to do all other acts and to execute, acknowledge, and deliver all requested documents to carry out the intent and purpose of this Agreement.

Section 19. Third-Party Rights

Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties to this Agreement and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.

Section 20. Integration

This Agreement contains the entire agreement between the parties, and expressly supersedes all previous or contemporaneous agreements, understandings, representations, or statements between the parties respecting the option for the Property. However, except as expressly set forth in this Agreement, this Agreement does not modify or amend the existing lease between the parties related to the Property. Optionee shall comply with all terms of the existing lease during the term of this Agreement. Any termination of the lease between the parties resulting from a breach of the lease by Optionee shall also constitute a termination of this Option Agreement.

Section 21. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.
Section 22. Amendment

This Agreement may not be amended or altered except by a written instrument executed by Optionor and Optionee.

Section 23. Partial Invalidity

Any provision of this Agreement that is unenforceable or invalid or the inclusion of which would adversely affect the validity, legality, or enforceability of this Agreement shall be of no effect, but all the remaining provisions of this Agreement shall remain in full force.

Section 24. Exhibits

All attached exhibits are incorporated in this Agreement by this reference.

Section 25. Authority of Parties

All persons executing this Agreement on behalf of any party to this Agreement warrant that they have the authority to execute this Agreement on behalf of that party. Optionee warrants that the Humboldt Bay Harbor, Recreation and Conservation District Commission has approved this Agreement.

Section 26. Governing Law

The validity, meaning, and effect of this Agreement shall be determined in accordance with California laws. Optionee has its principal place of business in Humboldt County California, Optionor is a local governmental entity that County, and the property is located in that County.

Any legal action or proceeding related to this Agreement shall be venued in the Superior Court of the State of California in the County of Humboldt.
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

HUMBOLDT BAY HARBOR, RECREATION and CONSERVATION DISTRICT,
a California public entity
("Optionor")

Dated: _____________, 2014    By:______________________________

Name: ______________________

Title: ______________________

TIMBER HERITAGE ASSOCIATION,
a California non-profit corporation
("Optionee");

Dated: _____________, 2014    By:______________________________

Name: ______________________

Title: ______________________

THA Option Agreement
MEMORANDUM OF AGREEMENT
REGARDING THE HUMBOLDT BAY INVASIVE SPARTINA REMOVAL PROJECT
FUNDED BY THE ENVIRONMENTAL ENHANCEMENT AND MITIGATION PROGRAM

This Memorandum of Agreement regarding the responsibilities for the Humboldt Bay Invasive Spartina Removal Project funded by the Environmental Enhancement and Mitigation Program (EEMP) is entered into by the Humboldt Bay Harbor, Recreation, and Conservation District (Harbor District), the United States Fish and Wildlife Service (USFWS), and the City of Arcata (City).

Introduction
A. A grant application has been submitted to, and a grant awarded by, the State of California Resources Agency, EEMP (see grant agreement and application) to the Harbor District.

B. The grant funded project will carry out invasive Spartina eradication and facilitate re-vegetation.

C. The project will be located on City and FWS property which is dedicated for open space, habitat, and public access purposes.

The City and FWS stipulate and/or agree to the following:

A. The City and FWS own properties, has public trust jurisdiction over properties, or has easements through properties where grant activities will occur, with no grant funds to be used to buy or encumber property, and hereby grant permission to the Harbor District or its contractors to access City and FWS property to plan, carry out, and monitor invasives removal work in support of the project, and grant permission to the Harbor District and its contractors to maintain the project for 3 years, after which the City and FWS will assume responsibility for project maintenance on their respective properties.

B. The City and FWS will assist with the invasives removal project, including the following activities: managing removal activities, and coordinating with the Harbor District. The project will not exceed costs or timelines established in the grant agreement between Harbor District and the Resources Agency.

The City and FWS agree to the following: (element #1)
A. Maintain the project, once completed for the requisite 25 years.

Harbor District agrees to the following: (element #2)
B. Manage the grant and take overall responsibility for the development of the project in a timely and effective manner.
C. Complete all aspects of the invasive Spartina removal project.
D. Harbor District will assume responsibility for the ongoing maintenance and operations of the project for the required 25 years if the City and/or FWS were to cease to exist as a governmental entity. (element #4)

Agreement length:
A. This agreement, in accordance with the criteria established by the EEMP, is in effect for a minimum of 25 years. (element #1)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and date first
written above: (element #3)

City of Arcata, a municipal corporation
By: ____________________________

(NAME, TITLE)

Humboldt Bay Harbor, Conservation, and Recreation District, a specially created District of the State of California:
By: ____________________________

(NAME, TITLE)

United States Fish and Wildlife Service, a division of the federal government
By: Eud Yel, Refuge Manager 1/14/15

(NAME, TITLE)