

Parcel Number: 100-311-027
Project Name: Sale of Surplus –
145 Sussex St., Clyde (FS#18)
Project Number: 7300-WLP139

Optionee: _____
Address: _____

**OPTION AGREEMENT BETWEEN THE CONTRA COSTA COUNTY
FIRE PROTECTION DISTRICT AND THE
OPTIONEE NAMED HEREIN**
(Not to be Recorded)

1. **Recitals.**

- a. CONTRA COSTA COUNTY FIRE PROTECTION DISTRICT, a fire protection district organized under the laws of the State of California, hereinafter referred to as the “District”, is the owner of the certain real property described in Exhibit “A” and “B” attached hereto and made a part hereof, located at 145 Sussex Street and further identified as A.P.N 011-311-027, hereinafter referred to as the “Property.”
- b. District proposes to sell the Property.
- c. _____ (“Optionee”) desires to acquire the exclusive right to purchase the Property at an agreed price and under the specific terms and conditions below.

2. **Effective Date.**

The effective date of this Option shall be the date that this Option is approved by the Contra Costa County Fire Protection District Board of Directors, as governing body of the District (“Effective Date”).

3. **Grant of Option.**

District grants to Optionee the exclusive option to purchase the Property on the terms and conditions in this Option Agreement.

4. **Term of Option.**

The term of this option shall commence on the Effective Date and shall expire or terminate on the earliest of the following dates:

- a. **Option Term.** Sixty (60) days following the Effective Date, unless during said period District agrees in writing to extend the Option Period.
- b. **Extension of Option Period.** District, in its sole discretion, shall have the right, but not the obligation, to extend the term of the Option Term, under such terms and conditions as District believes is reasonable, if District, in its sole discretion, believes such extension is warranted. No such extension shall be effective unless and until it is in writing signed by both parties.
- c. **Breach.** Immediately upon a breach or default by Optionee under this Option Agreement.
- d. **Purchase.** The date that the Optionee acquires the entirety of the Property.

5. **Consideration for Option**

- a. **Payment.** As consideration for the Option granted under this Agreement, Optionee agrees to pay District the sum of Five Thousand Dollars (\$5,000.00) upon the terms and conditions outlined herein, said amount to be credited to the Purchase Price of the Property (“Option Consideration”). The Option Consideration shall be paid before the date this Agreement is approved by the Board of Supervisors. The Option Consideration shall be paid at the Public Works Department, Real Estate Division, 255 Glacier Drive, Martinez, CA 94553, payable to the Contra Costa County Fire Protection District.
- b. **Retention of Option Consideration.** Except as provided in Section 10 below, all Option Consideration paid to or on behalf of District shall belong to District and be retained by District, whether or not Optionee ultimately exercises its right to purchase the Property. District shall have no obligation to account for the Option Consideration to Optionee.

6. **Terms and Purchase Price.**

- a. **Escrow.** If the Optionee exercises its Option, at District’s option the sale may be consummated through an escrow at a title company to be selected by District (“Title Company Name, Address and Escrow No”). In such case, Optionee hereby authorizes District to prepare and file escrow instructions with said Title Company on behalf of Optionee in accordance with this Agreement. If for any reason, the named Title Company is unable to handle this transaction through the Close of Escrow, the County’s Real Property Agent assigned to oversee this Property acquisition will select an alternate title company to handle the transaction, and notify Grantor in writing of the identity and address of the successor title company and the new escrow number. Thereafter, the successor company will be the “Title Company” for purposes of this Agreement. Escrow shall be deemed to be closed and the Property shall be deemed to be conveyed on the date the deed to Optionee is recorded (“Closing Date”). All escrow fees, recording fees, documentary transfer taxes or other real estate transaction taxes or fees, by whatever name known, including broker’s commission, if any, and personal property sales taxes where applicable, will be paid solely by Optionee. If title insurance is desired by the Optionee, Optionee will be solely responsible to pay the premium charged therefor.
- b. **Purchase Price.** The purchase price (“Purchase Price”) for the Property during the Option Term is the sum of (TBD) Dollars (\$TBD). All Option Consideration paid by Optionee shall be credited to the Purchase Price of the Property. The Purchase Price shall be paid at the Public Works Department, Real Estate Division, 255 Glacier Drive, Martinez, CA 94553, payable to the Contra Costa County Fire Protection District.
- c. **Title; Grant Deed.** The right, title and interest in the Property to be conveyed by District pursuant to this Agreement shall not exceed that vested in the District. If the Optionee exercises its option, the Property shall be conveyed to Optionee subject to all title exceptions, restrictions, easements, liens and reservations, whether or not of record. The sale under this Option is subject to the approval of the Contra Costa County Fire Protection District Board of Directors. The Optionee may not take possession of the Property until a deed from the Contra Costa County Fire Protection District has been recorded. If the Optionee exercises its Option, upon approval by the Board of Directors, the District shall convey title to the Property to

the Optionee by Grant Deed. It is understood that Optionee acquires no right, title, interest or equity in or to said property until a grant deed to Optionee is recorded.

7. **Exercise.**

From and after the Effective Date, this Option may be exercised by Optionee's delivering to District before the expiration of the Option Term, written notice of the exercise ("Exercise Notice") and payment of the Purchase Price to the District.

8. **Condition of the Property.**

Neither District, nor its agents or employees have made any warranty, guarantee or representation concerning any matter or thing affecting or relating to the Property nor does it assume any responsibility for the conformance to codes or permit regulations of the city or District within which the Property is located.

If Optionee exercises this Option, Optionee will accept the Property in an "as is" condition. District has not made and does not make any representation as to the physical condition of the Property.

As partial consideration for this Option, Optionee hereby releases and discharges District and its employees, agents, attorneys, officers, divisions, related agencies and entities, affiliates, successors, and assigns from any and all claims, demands, causes of action, obligations, damages, and liabilities, which Optionee now has or could assert in any manner related to or arising from the condition of the Property, the presence of any hazardous substance in or around the Property, and the Optionee's present or future use of the Property. Optionee knowingly waives the right to make any claim against the District for such damages and expressly waives all rights provided by section 1542 of the California Civil Code, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR"

9. **Right of Entry.**

During the term of this Option and prior to the Closing Date, Optionee, its agents, contractors and employees, shall have the right to enter the Property at all reasonable times for the purpose of performing reasonable tests, engineering studies, surveys, soil and environmental tests and other tests, surveys, studies, and investigations of the Property as Optionee determines necessary or desirable. Optionee will defend, indemnify and hold District harmless from any claim, loss or liability in connection with any entry by Optionee, its contractors, agents and employees and Optionee will be solely responsible for all costs incurred in connection with these activities or Optionee's investigation of the Property.

10. **Informalities; Cancellation of Sale.**

District reserves the right to waive any informality or irregularity on any offer or cancel the sale at any time prior to recording of a deed. In the event of cancellation of sale by District, through no fault, action or inaction of Optionee, all monies deposited shall be refunded without payment of interest.

11. **Notices.**

All notices (including requests, demands, approvals or other communications) under this Agreement shall be in writing.

a. Notice shall be sufficiently given for all purposes as follows:

- (1) When delivered by first class mail, postage prepaid, notice shall be deemed delivered three (3) business days after deposit in the United States Mail.
- (2) When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt.
- (3) When delivered by overnight delivery by a nationally recognized overnight courier, notice shall be deemed delivered one (1) business day after deposit with that courier.
- (4) When personally delivered to the recipient, notice shall be deemed delivered on the date personally delivered.

b. The place for delivery of all notices given under this Agreement shall be as follows:

District: Real Estate Division
Public Works Department
255 Glacier Drive
Martinez, CA 94553
Telephone: 925-957-2467
Fax: (925) 646-0288

Optionee: _____ (Name)
 _____ (Address)
 _____ (Telephone)

or to such other addresses as Optionee and District may respectively designate by written notice to the other.

12. **Assignment, Successors and Third-Party Rights.**

This Option and all rights under this Agreement shall be freely assignable. This agreement shall be binding on and inure to the benefit of the parties, and their respective heirs, personal representatives, successors and assigns. Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.

13. **Construction.**

The section headings and captions of this Agreement are, and the arrangement of this instrument is, for the sole convenience of the parties to this Agreement, The section headings, captions and arrangement of this instrument do not in any way affect, limit, amplify or modify the terms and provisions of this Agreement. 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. The parties to this Agreement and their counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to

be resolved against the drafting party shall not apply to the interpretation of this Agreement.

14. **Further Assurances.**

Whenever requested to do so by the other party, each party shall execute, acknowledge and deliver all further conveyances, assignments, 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 in order to complete all conveyances, transfers, sales, and assignments under this Agreement, and do all other acts and to execute, acknowledge, and deliver all documents as requested in order to carry out the intent and purpose of this Agreement.

15. **Governing Law.**

This Agreement shall be governed and construed in accordance with California Law. The venue for any legal action pertaining to this Agreement shall be Contra Costa County, California.

16. **Severability.**

Should any term, portion or provision of this Agreement be finally decided to be in conflict with any law of the United States or of the State of California, or otherwise to be unenforceable or ineffectual, the validity of the remaining parts, terms, portions or provisions of this Agreement shall be deemed severable and shall not be affected thereby, provided that such remaining parts, terms, portions or provisions can be construed in substance to constitute the Agreement that the parties intended to enter into in the first instance.

17. **Indemnification.**

As partial consideration for this Agreement, Optionee shall defend, indemnify, protect, save and hold harmless District, its officers, agents, and employees, from any and all claims, costs and liability for any damages, sickness, death or injury to persons or property, including without limitation all consequential damages, from any cause whatsoever, including the sole or joint negligence of District, its agents, officers or employees, arising directly or indirectly from or connected with the repairs or any present or future condition of the Property or use of the Property which is the subject of this Agreement, or any representations, misrepresentations or non-representations regarding its condition or use, and will make good to and reimburse District for any expenditures, including reasonable attorneys' fees that District may make by reason of such matters and, if requested by District, will defend any such suits at the Optionee's sole expense.

18. **Survival.**

All of the terms, provisions, representations, warranties and covenants of the parties under this Agreement shall survive the close of escrow of the Property, shall be fully enforceable after the Closing Date in accordance with their terms and shall not merge in the deed or other documents following the delivery and recordation of said deed or other documents.

19. **Negation of Optionee or Partnership.**

No provision of this Agreement shall be construed as making either party an agent or partner of the other party.

20. **Time of Essence.**

Time is of the essence for the Option Agreement. If the Option is not exercised in the manner provided in Section 7 before the expiration of the applicable 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.

21. **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.

22. **Amendment.**

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

23. **Entire Agreement.**

This Agreement contains the entire agreement between the parties respecting the matters set forth, and expressly supersedes all previous or contemporaneous agreements, understandings, representations or statements between the parties respecting this matter.

CONTRA COSTA COUNTY
FIRE PROTECTION DISTRICT

OPTIONEE

By _____

By

Karen Mitchoff
Chair, Board of Directors

Date _____

ATTEST: DAVID TWA, Authority
Administrator and Clerk of the Board
of Supervisors

By _____

Deputy

APPROVED AS TO FORM
Sharon L. Anderson, County Counsel

By _____
Deputy County Counsel

NO OTHER OBLIGATION OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED

Exhibit A - Legal Description

DRAFT