

**A G E N D A**  
**RIO DELL CITY COUNCIL**  
**SPECIAL MEETING - 5:30 P.M.**  
**TUESDAY, NOVEMBER 22, 2011**  
**CITY COUNCIL CHAMBERS**  
**675 WILDWOOD AVENUE, RIO DELL**

*WELCOME . . . By your presence in the City Council Chambers, you are participating in the process of representative government. Copies of this agenda, staff reports and other material available to the City Council are available at the City Clerk's office in City Hall, 675 Wildwood Avenue. Your City Government welcomes your interest and hopes you will attend and participate in Rio Dell City Council meetings often.*

*In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Office of the City Clerk at (707) 764-3532. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to this meeting.*

**THE TYPE OF COUNCIL BUSINESS IS IDENTIFIED IMMEDIATELY AFTER EACH TITLE IN BOLD CAPITAL LETTERS**

A.. CALL TO ORDER

B. ROLL CALL

C. PLEDGE OF ALLEGIANCE

D. SPECIAL MEETING MATTERS

- 1) 2011/1122.01 – Approve Legal Services Agreement with Mitchell, Brisso, Delaney and Vrieze **(ACTION)**
  
- 2) 2011/1122.02 - Approve Preliminary Option Agreement with Linda L. Todd **(ACTION)**

E. PUBLIC PRESENTATIONS

*This time is for persons who wish to address the Council on any matter not on this agenda and over which the Council has jurisdiction. Items requiring Council action not listed on this agenda will be placed on the next regular agenda for consideration, unless a finding is made by at least 2/3rds of the Council that the item came up after the agenda was posted and is of an urgency nature requiring immediate action. Please limit comments to a maximum of 5 minutes.*

F. REPORTS/STAFF COMMUNICATIONS

1. City Manager
2. Finance Director
3. Chief of Police
4. Community Development Director

G. COUNCIL REPORTS/COMMUNICATIONS

H. ANNOUNCEMENT IN OPEN SESSION OF ITEMS TO BE DISCUSSED CLOSED SESSION  
AS FOLLOWS:

- 1) 2011/1122.03 - Conference with City Manager – Existing Litigation: 2 cases
  - a. Mercer Fraser Company vs. City of Rio Dell
  - b. Joseph Baratti vs. City of Rio Dell(Pursuant to Government Code Section 54956.9(a))

I. PUBLIC COMMENT REGARDING CLOSED SESSION

J. RECESS INTO CLOSED SESSION

K. RECONVENE INTO OPEN SESSION

L. ORAL ANNOUNCEMENTS

M. ADJOURNMENT

*The next Regular meeting will be on December 6, 2011*

*At 6:30 P.M. in City Hall Council Chambers*

675 Wildwood Avenue  
Rio Dell, CA 95562  
(707) 764-3532



TO: Honorable Rio Dell City Council

FROM: Ron Henrickson, City Manager *RH*

DATE: November 22, 2011

SUBJECT: Approving City Attorney Legal Services Agreement

ATTACHEMENT: Legal Services Agreement

**Council Action:**

By motion move to approve the Legal Services Agreement with Mitchell, Brisso, Delaney & Vrieze.

**Background:**

On September 6, 2011, the City Council directed the City Manager to issue a Request for Proposals for a City Attorney. The City received two proposals from Mitchell, Brisso, Delaney & Vrieze and Bragg, Perlman, Russ, Stunich & Eads. Subsequently, the Council interviewed both candidates and directed the City Manager to prepare an Agreement with Mitchell, Brisso, Delaney & Vrieze for consideration by the Council. Note that the Agreement has been reviewed by Alison Neufeld of Liebert Cassidy Whitmore and her recommendations have been incorporated into the Agreement .

**Financial impact:**

Funding of these costs would be from the general fund budget.

**City Manager Recommendation:**

The City Manager recommends approval of the Legal Services Agreement.

## LEGAL SERVICES AGREEMENT

**MITCHELL, BRISSO, DELANEY & VRIEZE** ('Law Firm') and **CITY OF RIO DELL** ('City') hereby agree that Law Firm will provide legal services to the City on the terms set forth below.

1. **CONDITIONS.** This Agreement will not take effect, and the Law Firm will have no obligation to provide legal services, until City returns a signed copy of this Agreement.

2. **SCOPE OF SERVICES.** Law Firm will provide those legal services reasonably required to represent and advise the City, upon authorization by the City Manager or Mayor, acting on behalf of the City Council. For purposes of providing services under this Agreement, Russell Gans shall be designated as the City Attorney and Paul Brisso shall be designated as Assistant City Attorney. If other attorneys with the Law Firm provide legal services it shall be deemed as in the capacity of Deputy City Attorney. Law Firm will take reasonable steps to keep the City informed of progress and to respond to the City's inquiries. This is a non-exclusive agreement, and the City has the right to retain other counsel for specific legal issues or to resolve potential conflicts.

3. **INDEPENDENT CONTRACTOR.** Law Firm hereby declares it is engaged in an independent business and agrees to perform services provided for in this Agreement as an independent contractor and not as the agent, servant or employee of the City. The Law Firm shall be solely responsible for its own matters relating to payment of employees, including compliance with social security, withholding and all other regulations governing such matter.

4. **DEPOSIT.** There will be no deposit requirement.

5. **LEGAL FEES AND BILLING PRACTICES.** City agrees to pay by the hour at Law Firm's prevailing rates for all time spent on City's matter by Law Firm's legal personnel. Current hourly rates for legal personnel are as follows:

Partners      \$145/hour

Associates    \$130/hour

Paralegals    \$70/hour

The rates on this schedule are subject to change on 30 days written notice to City. If City declines to pay any increased rates, Law Firm will have the right to withdraw as Law Firm for City.

Time is charged in minimum units of one tenth (.1) of an hour.

6. **COSTS AND OTHER CHARGES.**

(a) Law Firm may incur various costs and expenses in performing legal services under this

Agreement. City agrees to pay for all costs, disbursements and expenses in addition to the hourly fees. The costs and expenses commonly include, service of process charges, filing fees, court and deposition reporters' fees, jury fees, notary fees, deposition costs, long distance telephone charges, messenger and other delivery fees, postage, photocopying and other reproduction costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, consultants' fees, expert witness, professional, mediator, arbitrator and/or special master fees and other similar items. Except for the items listed below, all costs and expenses will be charged at Law Firm's cost.

Mileage            \$0.58/mile

(b) Out of town travel. City agrees to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel by Law Firm's personnel. City will also be charged the hourly rates for the time legal personnel spend traveling.

(c) Experts, Consultants and Investigators. To aid in the preparation or presentation of City's case, it may become necessary to hire expert witnesses, consultants or investigators. City agrees to pay such fees and charges. Law Firm will select any expert witnesses, consultants or investigators to be hired, and City will be informed of persons chosen and their charges.

Additionally, City understands that if the matter proceeds to court action or arbitration, City may be required to pay fees and/or costs to other parties in the action. Any such payment will be entirely the responsibility of City.

7. BILLING STATEMENTS. Law Firm will send City periodic statements for fees and costs incurred. Each statement will be payable within 30 days of its mailing date. City may request a statement at intervals of no less than 30 days. If City so requests, Law Firm will provide one within 10 days. The statements shall include the amount, rate, basis of calculation or other method of determination of the fees and costs, which costs will be clearly identified by item and amount.

8. INSURANCE. During the term of this Agreement, Law Firm shall maintain the following insurance:

A. General liability and property damage insurance in the minimum amount of \$1,000,000 per occurrence and \$2,000,000 aggregate;

B. Professional errors and omissions insurance in the minimum amount of \$2,000,000 per occurrence and \$4,000,000 aggregate; and

C. Workers compensation and employer's liability insurance in the amount of \$1,000,000 per accident.

Proof of coverage shall be provided to the City.

9. INDEMNIFICATION. Law Firm agrees to indemnify, defend and hold harmless the City, its Council, officers, agents and employees from any and all claims or losses to the extent caused by and arising out of the wrongful or negligent acts or omissions of Law Firm or any person employed by Law Firm in the performance of this Agreement.

10. NONDISCRIMINATION. Law Firm shall not discriminate on the basis of race, religion, color, creed, national origin, gender, sexual orientation, marital status, age, physical or mental disability, legally protected medical condition, veteran status, or any other basis protected by law.

11. CONFLICT OF INTEREST. Law Firm agrees that neither it, nor any member of Law Firm who may work on City matters, has any current conflict of interest with the City's interests. Law Firm agrees that neither it nor any member of Law Firm who may work on City matters, will acquire any interest, direct or indirect, which would conflict in any matter or degree with the performance of Law Firm's performance of its services to the City under this Agreement. Law Firm acknowledges that it and its attorneys are subject to various conflict of interest requirements under California law, local ordinances, policies and regulations.

12. ARBITRATION REGARDING FEES. If a dispute arises between the City and the Law Firm over fees charged for services, the dispute will be submitted to binding arbitration in accordance with the rules of the California State Bar Fee Arbitration Program. Each side will bear its own attorneys fees and costs.

13. DISCHARGE AND WITHDRAWAL. City may discharge Law Firm at any time. Law Firm may withdraw with City's consent or for good cause. Good cause includes City's breach of this Agreement, refusal to cooperate or to follow Law Firm's advice on a material matter or any fact or circumstance that would render Law Firm's continuing representation unlawful or unethical. When Law Firm's services conclude, all unpaid charges will immediately become due and payable. After services conclude, Law Firm will, upon City's request, deliver City's file and property in Law Firm's possession, whether or not City has paid for all services.

14. DISCLAIMER OF GUARANTEE AND ESTIMATES. Nothing in this Agreement and nothing in Law Firm's statements to City will be construed as a promise or guarantee about the outcome of the matter. Law Firm makes no such promises or guarantees. Law Firm's comments about the outcome of the matter are expressions of opinion only. Any estimate of fees given by Law Firm shall not be a guarantee. Actual fees may vary from estimates given.

15. ENTIRE AGREEMENT AND MODIFICATION BY SUBSEQUENT AGREEMENT. This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding of the parties. This Agreement may be modified by subsequent Agreement of the parties only by an instrument in writing signed by both of them or an oral agreement



only to the extent that the parties carry it out.

16. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY. If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

17. EFFECTIVE DATE AND EXECUTION. This Agreement will govern all legal services performed by Law Firm on behalf of City commencing with the date Law Firm first performed services. The date at the beginning of this Agreement is for reference only. Even if this Agreement does not take effect, City will be obligated to pay Law Firm the reasonable value of any services Law Firm may have performed for City. This Agreement may be executed in counterparts, the parts of which shall be taken to constitute one whole. Electronic scan signatures and/or facsimile signatures shall be deemed to constitute originals.

THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM AS OF THE DATE LAW FIRM FIRST PROVIDED SERVICES. IF MORE THAN ONE CITY SIGNS BELOW, EACH AGREES TO BE LIABLE, JOINTLY AND SEVERALLY, FOR ALL OBLGATIONS UNDER THIS AGREEMENT. CITY SHALL RECEIVE A FULLY EXECUTED DUPLICATE OF THIS AGREEMENT.

DATED: \_\_\_\_\_

Mitchell, Brisso, Delaney & Vrieze, LLP

\_\_\_\_\_  
Russell S. Gans

\_\_\_\_\_  
Paul A. Brisso

DATED: \_\_\_\_\_

City of Rio Dell

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

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

Its: \_\_\_\_\_

675 Wildwood Avenue  
Rio Dell, CA 95562  
(707) 764-3532



TO: Honorable Rio Dell City Council  
FROM: Ron Henrickson, City Manager *RH*  
DATE: November 22, 2011  
SUBJECT: Preliminary approval of the Todd Option Agreement  
ATTACHEMENT: Option Agreement

**Council Action:**

Open public hearing. Hear comments and close public hearing.

- A. By motion move to preliminarily approve the Option Agreement with Linda L.Todd.
- B. Take no action.

**Background:**

For nearly a year the staff has been working on the concept of developing a new commercial center adjacent to State Highway 101 at the intersection of Davis Street. The new center, called Rio Dell Plaza, is proposed to be developed on a 20 acre site and serve a broad market area. Recently the property owner requested that the City prepare a formal Option Agreement.

Upon approval of the Council the Option Agreement would be presented to the owner. If accepted by the owner the City would obtain a title opinion and survey prior to final approval of the Agreement by the Council.



**Financial impact:**

Funding of the cost of the Option would be from the general fund budget which would be amended in conjunction with the final approval of the Option Agreement.

**City Manager Recommendation:**

The City Manager recommends preliminary approval of the Option Agreement.

## OPTION AGREEMENT

This **OPTION AGREEMENT** ("this Agreement") is made as of \_\_\_\_\_, 2011 (the "Effective Date"), by and between **Linda L. Todd** (hereinafter called "Optionor") and the **City of Rio Dell**, a municipal corporation (hereinafter called "Optionee").

### Recitals

This Agreement is entered into with reference to the following facts:

A. WHEREAS, Optionor is the owner of all that certain real property and improvements located in the City of Rio Dell, County of Humboldt, State of California, described in detail on attached **Exhibit "A,"** which is hereby incorporated by reference (hereinafter the "Property");

B. WHEREAS, Optionee desires to obtain an option to purchase the Property from Optionor on the terms and conditions set forth herein and Optionor is willing to grant such option to Optionee; and

C. WHEREAS, Optionee desires to subdivide the Property, if acquired, and sell portions of it to facilitate community development and revitalization and, potentially, retain portions of it for civic functions and use.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### Agreement

1. **Grant of Option to Purchase.** Optionor grants to Optionee an option to purchase (this "Option") the Property from Optionor for the term and upon all of the terms, covenants and conditions set forth in this Agreement.

2. **Option Consideration.**

A. **Initial Option Term Consideration.** As consideration for the Initial Option Term of this Option (as defined in Section 4 of this Agreement, below), Optionee shall deliver to Optionor the sum of Six Thousand Dollars (\$6,000.00) payable in monthly payments to Optionor of \$1,000 per month on the first (1<sup>st</sup>) day of each month for six consecutive months, commencing on

\_\_\_\_\_, 2011. Should Optionee fail to make a payment on the date the payment is due, Optionor shall give Optionee written notice of default (the "Default Notice"). Optionee shall have fifteen (15) days from date of the Default Notice to cure said default. Should Optionee fail to cure the default within fifteen (15) days this Option Agreement shall terminate and Optionor and Optionee shall have no further rights or obligations under this Option Agreement. The Option Consideration shall be non-refundable and shall not apply towards the Purchase Price.

**B. Option Term Extension(s) Consideration.** As consideration for the First Option Term Extension of this Option (as defined in Section 4 of this Agreement, below), Optionee shall deliver to Optionor an additional sum of Three Thousand Dollars (\$3,000.00) payable in monthly payments to Optionor of \$1,000 per month for three consecutive months, commencing on \_\_\_\_\_, 2012. As consideration for the Second Option Term Extension of this Option (as defined in Section 4 of this Agreement, below), Optionee shall deliver to Optionor an additional sum of Three Thousand Dollars (\$3,000.00) payable in monthly payments to Optionor of \$1,000 per month for three consecutive months, commencing on \_\_\_\_\_, 2012. All Option Term Extension Consideration paid, if any, shall be non-refundable and shall not apply towards the Purchase Price.

**3. Memorandum of Option to Purchase.** Optionor has duly executed, acknowledged and delivered to Optionee a Memorandum of Option to Purchase in the form attached hereto as **Exhibit "B"**, and agrees that Optionee may cause such Memorandum of Option to Purchase to be recorded. Optionee agrees to execute, acknowledge and deliver to Optionor a Quitclaim Deed to the Property promptly at the request of Optionor if Optionee does not exercise the option hereunder if such is necessary to clear Optionor's title. Optionor shall bear any expense of recording such instrument.

**4. Term of Option and Exercise.** The initial term of this Option shall commence upon the Effective Date of this Agreement and shall expire at midnight on \_\_\_\_\_, 2012 [*Insert date which is 6 months after Effective Date*] (the "Initial Option Term") unless terminated earlier pursuant to Section 2.A., above. Optionee shall have the right, but not the obligation, to extend the term of this Option for an additional three (3) month period (the "First Option Term Extension") by providing written notice of its election to extend the Option to Optionor prior to expiration of the Initial Option Term. Thereafter, Optionee shall have the right, but not the obligation, to extend the term of this Option for a second, additional three (3) month period (the "Second Option Term Extension") by providing written notice of its election to extend the Option to Optionor prior to expiration of the First Option Term Extension. Once all

Conditions Precedent (as defined in Section 11, below) have been met, Optionee may exercise this Option at any time during the Initial Option Term, the First Option Term Extension (if exercised) or the Second Option Term Extension (if exercised) by giving Optionor written notice of its intention to exercise the Option. Unless otherwise noted the "term" of this Option, as used in this Agreement, shall include the Initial Option Term and the First and Second Option Term Extensions. If not exercised during the Initial Option Term or the First or Second Option Term Extensions, as noted above, this Option shall automatically and without further notice, act or documentation by any party expire on the date aforesaid. In the event that Optionee does not exercise this Option, the consideration paid by Optionee for this Option may be retained by Optionor without deduction or offset. As soon as reasonably practicable after exercise of this Option, the parties shall execute and cause to be recorded a Notice of Exercise of Option, in the form of **Exhibit "C"** attached hereto.

5. **Existing Leases.** Optionee acknowledges that the following leases (hereinafter called the "Leases"), have been entered into between Optionor with the following named tenants. This Option and Optionee's purchase of the Property shall be subject to the rights of the tenants thereunder:

Name Tenant	Property Affected	Date Expiration Lease
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1.

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2.

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Optionee acknowledges receipt from Optionor of a copy of each of the Leases and that Optionee has read the same. Optionor agrees not to enter into or permit any extension of the term of any of the Leases or any modification of any terms thereof, or waive or otherwise relinquish any optional right of termination thereof during the term of this Option, or after exercise thereof, without the prior written consent of Optionee.

6. **Purchase Price.** The purchase price which Optionee agrees to pay for the Property upon the exercise of this Option is the sum of Nine Hundred and Seventy-Five Thousand Dollars (\$975,000.00) (the "Purchase Price"), payable as follows:

**A. Down Payment:** Optionee shall pay Optionor Two Hundred Thousand Dollars (\$200,000.00) (the "Down Payment") within five (5) days after delivering the Notice of Exercise of Option to Optionor.

**B. Seller Carry Back Financing:** The remainder of the Purchase Price, less the amount of the Down Payment, shall be reduced to an unsecured Promissory Note (the "Note") with a principal balance of Seven Hundred and Seventy-Five Thousand Dollars (\$775,000.00), in the form appended hereto as **Exhibit D**. The Note shall bear no interest, and shall be payable as follows:

1. During the Term of the Note, Optionee shall pay Optionor the sum of One Thousand Five Hundred Dollars (\$1,500.00) per month on the first (1<sup>st</sup>) day of each month, with payments commencing after such time as the number of months passed after exercise of the Option exceeds the total amount of Option Consideration paid to Optionor under Section 2 of this Agreement, divided by the sum of \$1,500.00. For purposes of example only, if a total of \$12,000.00 is paid in Option Consideration to Optionor, the \$1,500.00 monthly payments on the Note shall commence 8 months after the Option is exercised by Optionee (i.e.,  $\$12,000 \div \$1,500 = 8$  months). As soon as the first payment is made to Optionor pursuant to paragraph 6.B.2, below, all further monthly Note payments pursuant to this paragraph shall cease.

2. In addition to the payments made on the Note under Section 6.B.1., above, the Note shall be paid in incremental payments from proceeds from the sale(s) of the Property (and/or portions thereof) as follows: 10% of the purchase price of all sales of portion(s) of the Property shall be paid to Optionor (or Note holder assign) out of the first \$2,000,000.00 in sales proceeds realized from sales by Optionee to third parties (i.e., 10% of the first \$2,000,000.00 of sales proceeds); 40% of the purchase price of all sales of portion(s) of the Property shall be paid to Optionor (or Note holder assign) out of the next \$1,000,000.00 in sales proceeds realized from sales by Optionee to third parties (i.e., 40% of the next \$1,000,000.00 of sales proceeds); and, 80% of all sales proceeds realized from sales of portions of the Property to third parties in excess of \$3,000,000.00 shall be paid to Optionor (or Note holder assign) (i.e., 80% of sales proceeds in excess of \$3,000,000.00), until the Note principal (and accrued interest) is paid in full. Once the Note principal (i.e. \$775,000.00) and accrued interest is paid in full, whether by one sale of a portion of the Property or as a result of multiple sales of portions of the Property or by balloon payment at maturity, Optionor's rights to share in property sales proceeds shall immediately and automatically terminate.

3. Any amounts still owing under the Note five (5) years following the Closing Date, if any, shall be paid in the form of a single balloon payment to Optionor (or Note holder assign). Optionee shall have the right, but not the obligation (except in the event portions of the Property are sold), to prepay all or any portion of the Note at any time during its term, with all prepayments applied first to accrued interest and the remainder to principal.

7. **Escrow.** Within ten (10) calendar days after exercise of this Option, Optionee and Optionor shall open an escrow for this transaction at Humboldt Land Title Company, Eureka, California Branch Office, attention Sue Bosch ("Escrow" and "Escrow Officer", respectively). The purchase and sale shall be consummated at the aforesaid escrow within ninety (90) days after the exercise of this Option by Optionee (the "Closing Date").

This transaction shall be consummated and the escrow closed in the following manner:

a. Optionor shall deposit (1) a duly executed and acknowledged Grant Deed conveying the Property to Optionee in the form attached hereto as **Exhibit "E,"** and (2) a duly executed and acknowledged Assignment of Lessor's Interest in Leases in the form attached hereto as **Exhibit "F."**

b. Optionee shall deposit the Note for the balance of the Purchase Price bearing the principal terms recited in Section 6.B. of this Agreement, above.

c. Escrow shall close when the Escrow Officer is in a position to issue the title insurance policy described in Section 8, below, showing title to the Property vested of record in Optionee (or its assignee or nominee). Closing shall be deemed to have occurred when the Grant Deed is recorded.

d. Real estate taxes and any cash rentals accruing from the Property shall be prorated between the parties as of the Closing Date.

8. **Condition of Title Upon Closing Date.** Optionor shall deliver marketable title to Optionee on the Closing Date subject only to (i) the then current real estate taxes and assessments constituting liens not then due or payable; and (ii) those exception nos. \_\_\_\_\_-\_\_\_\_\_, as shown on that certain preliminary title report issued by \_\_\_\_\_, dated \_\_\_\_\_, attached hereto as **Exhibit "G"**. Optionee's title shall be insured by a ALTA policy of title insurance insuring that as of the Closing Date the Property is vested of record in Optionee (or its assignee or nominee).



9. **Possession.** Possession of the Property shall be delivered to Optionee upon the Closing Date, subject to the rights of any tenants under the Leases.

10. **Optionee's Right to Negotiate Subdivided Parcel Sales.** Optionor acknowledges that Optionee, should it proceed to purchase the Property, intends to subdivide and sell portions of the Property to third parties (the "Project"). During the term of this Option, Optionee shall have the right to enter negotiations with third parties regarding potential sales of all, or any subdivided portion(s) of, the Property, so long as such third party sales are contingent upon the prior Closing of this Agreement and Optionee's acquisition of the Property and execution of the Note, and payment of the percentages of the proceeds from parcel sales set forth in Section 6.B.2, above, from any such subsequent sales to Optionor. The remaining revenue the Optionee receives from any sales of portions of the Property after payment to the Optionor of the percentages set forth in Section 6.B.2, above, and all Project loan funds shall be restricted for use for only Project expenses and segregated in a separate account. Optionee will provide Optionor a quarterly detailed statement of all transactions of said account until the Note has been paid in full.

11. **Conditions Precedent to Exercise of Option.** Each of the following conditions must be met prior to Exercise of the Option by Optionee ("Conditions Precedent"):

A. Optionee shall obtain firm commitments from a financially viable third party (or parties) to purchase some portion(s) of the Property in an amount (or amounts totaling) not less than two million dollars (\$2,000,000.00) in sales, as evidenced by executed written development agreements with the third party (or third parties) containing binding commitments to purchase some portion(s) of the Property in connection with the Project.

B. Optionee shall execute an assignment of interest to the Optionor in the development agreements equal to the amount of payment payable under the Note set forth in Section 6.B.2, so that said portion of the sales price paid by third parties is paid directly to Optionor (or Note holder) directly out of any escrow opened for said sale(s); and

C. Optionee shall obtain a written commitment from third parties (or third party public entities) to fund at least two million dollars (\$2,000,000.00), less any cash and/or capital contributed to the Project by the Optionee, for the sole purpose of infrastructure development on the Property.

12. **Damage or Destruction.** Except for any damage or destruction attributable to the activities of Optionee or Optionee's agents, employees or contractors, in the event that prior to Closing Date the Property or any improvements thereon are destroyed or materially damaged, Optionor shall bear the risk of loss therefor, and Optionee may elect to cancel this Agreement and receive back from Optionor all consideration previously paid to Optionor for this Option or may purchase the Property at the purchase price set forth herein less the amount by which such damage or destruction has decreased the fair market value of the Property.

13. **Hazardous Substances.** Optionor hereby certifies that Optionor has no personal knowledge of and has not been served (by means of formal, legal service of process as required by law) or notified in writing by any governmental or quasi-governmental authority (i) that the Property or any adjoining property, contains or may contain any "Hazardous Materials" in violation of any "Environmental Regulations" (as those terms are defined in Section 13.A and 13.B, below); or (ii) that the Optionor has stored, used or maintained Hazardous Materials or suffered, permitted, allowed or acquiesced in any storage, use or maintenance of Hazardous Materials on, in or under the Property in violation of any Environmental Regulations. As used in this Agreement, the terms "Environmental Regulations" and "Hazardous Materials" shall have the following meanings:

A. "Environmental Regulations" shall mean all applicable statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, and similar items, of all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof and all applicable judicial and administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation: (i) all requirements, including but not limited to those pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of Hazardous Materials, whether solid, liquid or gaseous in nature, into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, whether solid, liquid or gaseous in nature; and (ii) all requirements pertaining to the protection of the health and safety of employees or the public.

B. "Hazardous Materials" shall mean (i) any flammables, explosive or radioactive materials, hazardous wastes, toxic substances or related materials including, without limitation, substances defined as "hazardous substances," "hazardous materials", "toxic substances" or "solid waste" in the Comprehensive

Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Toxic Substances Control Act, 15 U.S.C., Section 2601 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq.; and in the regulations adopted and publications promulgated pursuant to said laws; (ii) those substances listed in the United States Department of Transportation Table (49 C.F.R. 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 C.F.R. Part 302 and amendments thereto); (iii) those substances defined as "hazardous wastes," "hazardous substances" or "toxic substances" in any similar federal, state or local laws or in the regulations adopted and publications promulgated pursuant to any of the foregoing laws or which otherwise are regulated by any governmental authority, agency, department, commission, board or instrumentality of the United States of America, the State of California or any political subdivision thereof, (iv) any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials, or substances within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, all as amended; (v) petroleum or any by-products thereof; (vi) any radioactive material, including any source, special nuclear or by-product material as defined at 42 U.S.C. Sections 2011 et seq., as amended, and in the regulations adopted and publications promulgated pursuant to said law; (vii) asbestos in any form or condition; and (viii) polychlorinated biphenyls.

**14. Right to Enter.** During the term of this Option and prior to the Closing Date, Optionee and its designated agents and independent contractors shall have the right to enter upon the Property to the extent necessary for the purpose of conducting soils tests and engineering studies and planning Optionee's development, subdivision and sale of the Property (or portions thereof). Optionee agrees to repair any damage it or its agents or independent contractors cause to the Property and further agrees to indemnify and hold Optionor harmless from any and all costs, expenses, losses, attorney's fees, and liabilities, including, but not limited to, claims of mechanic's liens, incurred or sustained by Optionor as a result of any acts of Optionee, its agents or independent contractors pursuant to this Section. Optionee further agrees that in the event Optionee fails to exercise this Option, any and all soils tests, engineering studies, environmental reports, and any other documentation developed, prepared or submitted for the purpose of obtaining rezoning or development of the Property, tentative subdivision maps, tentative parcel maps or other development approvals, shall be delivered to Optionor at no expense to Optionor and shall become Optionor's property. During the term of the Option, Optionor agrees to assist Optionee in any reasonable manner to obtain any necessary

rezoning, maps, or other necessary permits for Optionee's proposed development as long as such assistance is in no way at any cost or expense to Optionor and in no way commits or binds the Property to a change in the use or zoning of the Property should Optionee fail to exercise its option rights and proceed to Closing.

**15. Time of Essence; Failure To Exercise Option.** Time is of the essence of this Option agreement. If this Option is not exercised in the manner provided in Section 4, above, before expiration of the Option Term (as extended), Optionee shall have no interest whatever in the Property and this Option may not be revived by any subsequent payment or further action by Optionee.

**16. Attorneys Fees.** If either party named herein brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action (or proceeding), on trial or appeal, shall be entitled to its reasonable attorneys' fees to be paid by the losing party as fixed by the Court (or if applicable, the arbitrator).

**17. Assignment.** This Agreement may be fully and freely assigned by Optionor. Conversely, Optionee is expressly prohibited from assigning any and all interests the Optionee may have in this Agreement, prior to Closing. Said restriction on assignment, however, shall not prohibit Optionee from exploring potential subdivision and parcel sales in accord with Section 10 of this Agreement, above.

**18. Integration (Entire Agreement) Provision.** This Agreement, and the Exhibits attached hereto, represent the entire Agreement between the parties in connection with the transactions contemplated hereby and the subject matter hereof and this Agreement supersedes and replaces any and all prior and contemporaneous agreements, understandings and communications between the parties, whether oral or written, with regard to the subject matter hereof. There are no oral or written agreements, representations or inducements of any kind existing between the parties relating to this transaction which are not expressly set forth herein, or attached hereto. This Agreement may not be modified except by a written agreement signed by both Optionor and Optionee. Without limiting the foregoing, Optionor and Optionee expressly acknowledge and agree that they have not relied on any written or oral statements made by the other party's broker, agent, attorney, or representative in entering into this Agreement.

**19. Notice Provision.** All notices to be given pursuant to this Agreement shall be either (i) personally delivered; (ii) sent via certified or registered mail, postage prepaid; (iii) overnight courier (such as Federal Express, DHL, etc.); or (iv) by telecopy transmittal. If sent via certified or registered mail, receipt shall be deemed effective forty-eight (48) hours after being deposited in the United States mail. If sent via telecopy transmission, a confirming copy shall be sent to the sender, and receipt of the telecopy

transmittal shall be deemed made twenty-four (24) hours after the sending thereof. If sent via overnight courier, receipt shall be deemed effective twenty-four (24) hours after the sending thereof. All notices to be given pursuant to this Agreement shall be given to the parties at the following respective address.

To Optionee: Linda Todd  
8866 Rocky Canyon Road  
Atascadero, CA 93422

To Optionor: City of Rio Dell  
675 Wildwood Avenue  
Rio Dell, CA 95562

**20. Governing Law and Venue.** This Agreement has been prepared, negotiated and executed in, and shall be construed in accordance with, the laws of the State of California. Any action or proceeding relating to or arising out of this Agreement shall be filed in the Superior Court of the State of California for the County of Humboldt, California.

**21. Further Acts.** To the extent consistent with this Agreement, the parties agree to take such further acts which are necessary to effectuate this Agreement, such as the execution of Deeds and other documents.

**22. Broker Provision.** Both Optionee and Optionor warrant and represent that neither has engaged nor dealt with any broker or finder in connection with the sale contemplated by this Agreement. Optionee agrees to pay, and hold the Optionor harmless, from and against any commission or finder's fee payable to a broker or any other party who represents Optionee; likewise, Optionor agrees to pay, and hold the Optionee harmless, from and against any commission or finder's fee payable to a broker or any other party who represents Optionor.

**23. No Waivers.** No waiver by any party at any time of any breach of any provision of this Agreement shall be deemed a waiver or a breach of any other provision herein or a consent to any subsequent breach of the same or another provision. If any action by any party shall require the consent or approval of another party, such consent or approval of such action on any one occasion shall not be deemed a consent to or approval of such action on any subsequent occasion or a consent to or approval of any other action.

**24. Captions and Headings.** The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience and do not define, limit, construe, or describe the scope or intent of this Agreement.



25. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be considered an original and all of which taken together shall constitute one and the same instrument.

26. **Severability.** If any provision (or any portion of any provision) of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, the legality, validity, and enforceability of the remaining provisions (or the balance of such provision) shall not be affected thereby.

27. **Drafting of Agreement.** Optionee and Optionor acknowledge that this Agreement has been negotiated at arm's length, that each party has been represented by independent counsel, or has had the opportunity to retain and consult independent counsel, and that this Agreement has been drafted via a cooperative effort by both parties and no one party shall be construed as the draftsman. The parties have freely and voluntarily entered this Agreement, in their own interests and of their own volition.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

"OPTIONOR": Linda L. Todd

Date: \_\_\_\_\_, 2011

\_\_\_\_\_  
Linda L. Todd

"OPTIONEE": City of Rio Dell

Date: \_\_\_\_\_, 2011

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

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

Its: \_\_\_\_\_

**LIST OF EXHIBITS:**

- Exhibit A: Property Description
- Exhibit B: Memorandum of Option to Purchase
- Exhibit C: Notice of Exercise of Option
- Exhibit D: Form of Promissory Note
- Exhibit E: Form of Grant Deed



Exhibit F: Assignment of Lessor's Interest in Leases  
Exhibit G: Preliminary Title Report dated \_\_\_\_\_, 2011

EXHIBIT B

MEMORANDUM OF OPTION AGREEMENT

Recording requested by: City  
of Rio Dell

And When Recorded Return  
to:

City of Rio Dell  
675 Wildwood Ave.  
Rio Dell, CA 95562

APN:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**Memorandum of Option to Purchase**

This Memorandum of Option (this "Memorandum") is made this \_\_\_\_ day of \_\_\_\_\_, 2011 by and between Linda L. Todd ("Optionor") and City of Rio Dell ("Optionee").

1. Optionor hereby grants to Optionee an option to purchase all of that certain real property and improvements located in the City of Rio Dell, County of Humboldt, State of California, more particularly described on Exhibit "A" attached hereto and incorporated herein (the "Property").

2. The specific terms and conditions of Optionee's option to purchase are set forth in that certain Option Agreement dated \_\_\_\_\_, 2011. All of the terms and conditions of the said Option Agreement are incorporated herein by this reference.

3. The term of the option expires on \_\_\_\_\_, 20\_\_.

4. Any party who is interested in acquiring an interest in the Property should contact the Optionor and Optionee. The Optionor's address is 8866 Rocky Canyon Road, Atascadero, CA 93422; and the Optionee's address is 675 Wildwood Ave., Rio Dell, CA 95562.

IN WITNESS WHEREOF, this Memorandum has been executed this \_\_\_\_ day of \_\_\_\_\_, 2011.

**"OPTIONOR":** Linda L. Todd

Date: \_\_\_\_\_, 2011

\_\_\_\_\_  
Linda L. Todd

**"OPTIONEE":** City of Rio Dell

Date: \_\_\_\_\_, 2011

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

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

Its: \_\_\_\_\_

[Attach Notary Acknowledgement]

**EXHIBIT C  
NOTICE OF EXERCISE OF OPTION**

Recording requested by: City  
of Rio Dell

And When Recorded Return  
to:

City of Rio Dell  
675 Wildwood Ave.  
Rio Dell, CA 95562

APN: \_\_\_\_\_

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**NOTICE OF EXERCISE OF OPTION**

City of Rio Dell ("Optionee") hereby exercises its right to purchase the "Property" identified in that certain written Option Agreement dated \_\_\_\_\_, ("Option Agreement") entered by and between Optionee and Linda L. Todd ("Optioner").

This Exercise Notice is issued and the option is exercised pursuant to Section 4 of the Option Agreement, without condition or qualification, in accord with all terms and provisions thereof.

Signed and executed as of \_\_\_\_\_, \_\_\_\_\_.

**OPTIONEE:**

City of Rio Dell

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

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

Its: \_\_\_\_\_

EXHIBIT D

PROMISSORY NOTE

Principal Amount: \$775,000.00  
Place of Creation: Rio Dell, California  
Date of Creation:

---

For value received, CITY OF RIO DELL ("Borrower"), promises to pay to LINDA L. TODD ("Holder"), or order, at 8866 Rocky Canyon Road, Atascadero, CA 93422, the sum of Seven Hundred and Seventy-Five Thousand Dollars (\$775,000.00), which shall bear no interest, payable as follows:

1. During the Term of the Note, Optionee shall pay Optionor the sum of One Thousand Five Hundred Dollars (\$1,500.00) per month on the first (1<sup>st</sup>) day of each month, with payments commencing at the date set forth in that certain written Option Agreement dated \_\_\_\_\_, 2011 (the "Option Agreement") and executed by and between Holder (as "Optionor") and Borrower (as "Optionee"). All payments shall be applied first to principal and then to interest. As soon as the first payment is made from the sale of the Property (and/or portions of the Property) under paragraph 2, below, all further monthly Note payment obligations recited in this paragraph 1 shall cease.
2. In addition to the payments made on the Note pursuant to paragraph 1, above, the Note shall be paid in incremental payments from proceeds from the sale(s) of the Property (and/or portions of the Property) (as said term is defined in the Option Agreement) as follows: 10% of the purchase price of all sales of portion(s) of the Property shall be paid to Holder out of the first \$2,000,000.00 in sales proceeds realized from sales by Borrower to third parties (i.e., 10% of the first \$2,000,000.00 of sales proceeds); 40% of the purchase price of all sales of portion(s) of the Property shall be paid to Holder out of the next \$1,000,000.00 in sales proceeds realized from sales by Borrower to third parties (i.e., 40% of the next \$1,000,000.00 of sales proceeds); and, 80% of all sales proceeds realized from sales of portions of the Property to third parties in excess of \$3,000,000.00 shall be paid to Holder (i.e., 80% of sales proceeds in excess of \$3,000,000.00), until the Note balance is paid in full. Once the Note principal (i.e. \$775,000.00) and accrued interest is paid in full, whether by one sale of a portion of the Property or as a result of multiple sales of portions of the Property or

**EXHIBIT D**

by balloon payment at maturity, Holder's rights to share in property sales proceeds shall immediately and automatically terminate.

The maturity date of this Promissory Note shall be five (5) years from the Date of Creation ("Maturity Date"). On the Maturity Date any and all unpaid principal, accrued and unpaid interest and any other sums due under this Promissory Note shall become immediately due and payable in one (1) final balloon payment.

Payments more than fifteen (15) days late shall bear a late payment penalty charge in the amount of One Hundred Dollars (\$100.00), in addition to the outstanding payment(s). This Note shall be in default if more than thirty (30) days in arrears, and shall thereafter bear interest at the default rate of ten percent (10%). In the event of default, the whole sum of principal and interest, as well as accrued penalties, shall become immediately due at the option of the Holder of this Note. Principal and interest shall be payable in lawful money of the United States. If this Note is not paid when due, Borrower promises to pay in addition all costs of collection and reasonable attorneys' fees incurred by the Holder hereof on account of such collection, whether or not suit is filed hereon. Each individual executing this Promissory Note in the capacity of Borrower shall be jointly and severally liable to Holder for all obligations stated herein.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in Rio Dell, California:

**BORROWER:** City of Rio Dell

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

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

Its: \_\_\_\_\_



**EXHIBIT E**

**RECORDING REQUESTED BY:**

Mitchell, Brisso, Delaney & Vrieze, LLP

**When Recorded Mail Document  
and Tax Statement To:**

City of Rio Dell  
675 Wildwood Ave.  
Rio Dell, CA 95562

APN:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**GRANT DEED**

**The undersigned grantor(s) declare(s)**

**Documentary transfer tax is \$ -0- (R & T Code § 11922)**

- computed on full value of property conveyed, or
- computed on full value less value of liens or encumbrances remaining at time of sale
- City of Rio Dell
- Exempt from transfer tax; Reason: Transfer to Public Entity

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

**Linda L. Todd**

hereby grant(s) to: **City of Rio Dell, a Municipal Corporation**

the following described real property in the City of Rio Dell, County of Humboldt, State of California:

See Exhibit "A" attached hereto and made a part hereof.

DATED:

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_ 20\_\_\_\_, before me,  
\_\_\_\_\_, Notary Public, personally appeared

\_\_\_\_\_  
Linda L. Todd

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.

Signature \_\_\_\_\_

## EXHIBIT F

### ASSIGNMENT OF LEASES

This ASSIGNMENT OF LEASES (this "Assignment") is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Linda L. Todd ("Assignor"), and City of Rio Dell, a municipal corporation ("Assignee"), with reference to the following facts:

#### RECITALS

A. WHEREAS, Assignor is the owner of that certain real property and improvements thereon located in the City of Rio Dell, County of Humboldt, State of California, commonly known as \_\_\_\_\_, and legally described on **Exhibit "A,"** attached hereto and incorporated herein (the "Property").

B. WHEREAS, on or about the date hereof, Assignor has sold all of its right, title and interest in and to the Property to Assignee, including but not limited to all of Assignor's right, title and interest in and to each and all of those leases of portions of the Property, more particularly listed and described on **Exhibit "B,"** attached hereto and incorporated herein (the "Leases").

C. Assignor and Assignee desire to enter into this Assignment to confirm the assignment by Assignor to Assignee of all of Assignor's right, title and interest in and to the Leases and to confirm Assignee's assumption of Assignor's obligations under the Leases as of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date").

NOW, THEREFORE, in consideration of the mutual covenants of the parties herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

#### AGREEMENT

1. Assignment by Assignor. Assignor hereby sells, transfers and assigns to Assignee all of Assignor's right, title and interest in and to each and all of the Leases, effective the Effective Date.

2. Acceptance and Assumption by Assignee. Assignee hereby accepts the foregoing assignment and transfer and specifically assumes and agrees to perform and observe each and every covenant, agreement and condition to be performed or observed by the "Landlord" or "Lessor" under each and all of the Leases.

3. Governing Law. This Assignment is made and entered into in the State of California and shall be interpreted, construed and enforced in accordance with the laws of the State of California.

4. Binding Effect. This Assignment shall apply to, bind, and inure to benefit of Assignor and Assignee, and their respective heirs, legal representatives, successors and assigns.

5. Counterparts. This Assignment may be executed in one or more counterparts, each of which shall be an original, but all of which shall together constitute one instrument.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the date first above written.

**“ASSIGNOR”:**

By: \_\_\_\_\_  
Linda L. Todd

**“ASSIGNEE”:**

City of Rio Dell

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

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

Its: \_\_\_\_\_