



Oceano Community Services District

1655 Front Street, P.O. Box 599, Oceano, CA 93475

PHONE(805) 481-6730 FAX (805) 481-6836

Date: April 24, 2019

To: Board of Directors

From: Carey Casciola, Business and Accounting Manager

Subject: Agenda Item #8(C): Recommendation to Approve Cash Disbursements - REVISED

Recommendation

It is recommended that your board approve the attached cash disbursements:

Discussion

The following is a summary of the attached cash disbursements:

Description	Check Sequence	Amounts
	57645 - 57675	
Disbursements Requiring Board Approval prior to Payment:		
Regular Payable Register - paid 04/24/2019	57649 - 57675	\$ 76,444.93
Removed Warrants - Category Five Professional Services, Inc.	57662 - 57662	\$ (20,766.38)
Revised Subtotal:		\$ 55,678.55
Reoccurring Payments for Board Review (authorized by Resolution 2018-11):		
	N/A	
Payroll Disbursements - PPE 04/13/2019	N/A	\$ 27,167.78
Reoccurring Utility Disbursements - paid 03/27/2019	57645 - 57648	\$ 1,161.16
	-	
Subtotal:		\$ 28,328.94
Revised Grand Total:		\$ 84,007.49

Other Agency Involvement: n/a

Other Financial Considerations: Amounts are within the authorized Fund level budgets.

Results

The Board's review of cash disbursements is an integral component of the District's system of internal controls and promotes a well governed community.

OCEANO DEPOT ASSOCIATION, INC. LEASE AGREEMENT

This Lease made and entered into this 24th day of , April, 2019, by and between the Oceano Community Services District, a political subdivision of the State of California, San Luis Obispo County, hereinafter called "District" and Oceano Depot Association, Inc., a nonprofit corporation herein after referred to as "Tenant" and collectively referred to as "the Parties," is made with reference to the following recitals:

RECITALS

A. The District owns certain real property located within the District described as APNs 62-271-06, 62-271-03, and 62-271-01. The location of said properties is depicted in Exhibit "A" and is herein referred to as the "District Premises," the "Leased Premises," or the "Premises," depending on the context.

B. Tenant owns certain real property located within the District described as APN 62-271-05 and APN 62-271-04. The location of said property is depicted ~~on~~ in Exhibit "A" and is herein referred to as "Tenant's Property."

C. Additionally, Tenant owns a building commonly known as the Oceano Train Depot. The Oceano Train Depot is located on Tenant's property and one parcel of the Leased Premises, as depicted ~~on~~ in Exhibit "A." The Oceano Train Depot, Tenant's Property, and the District's Property referenced in this Recital is collectively referred to herein as the "Project Property."

~~D.~~ D. On or about March 27, 1988, the ~~Parties~~ Tenant and the County of San Luis Obispo ("County") entered into a Lease ~~With Option for the District of the~~ Premises with a ten (10) year term and the option to extend the term for additional periods of ten (10) years each up to a maximum of ninety-nine (99) years. ~~described in Recital A, above.~~ The initial term of the 1988 Lease ~~expires on~~ had an expiration date of March 26, 1998.

~~D.E.~~ D.E. Sometime in the 1990's, the District acquired the Premises from the County and the District assumed the rights and obligations under the Lease. On or about August 25, 1998, the Tenant and the District executed the first renewal of the Lease. In May 2008, the Parties renewed the Lease a second time with a new expiration date of August 24, 2018. Since August 24, 2018, the Lease has continued on a month-to-month basis.

~~E.F.~~ E.F. Tenant is and has been improving the Project Property described in Recital C, above, for the purposes of developing and operating a using and operating the Project Property as a Museum/Public Center for all District residents. The Tenant-installed improvements along with their maintenance are referred to herein as the "Project."

WITNESSETH

In consideration of each and every term, covenant and condition herein contained, District hereby leases to Tenant and Tenant hires from District, the District Premises ~~described in Recital A, above.~~

District agrees to and shall on the commencement date of the term of this Lease as hereinafter set forth, place Tenant in quiet possession of the District Premises and shall secure ~~him~~ Tenant in the quiet possession hereof against all persons lawfully claiming the same during the entire term and any renewals or extensions thereof.

ARTICLE 1. TERM

1.1 This Lease shall be for a period of approximately ten (10) years commencing on _____, ~~August 25, 2018~~, and expiring at midnight on _____, ~~March 27, 2028~~, provided however, as a condition precedent to the Lease becoming effective, Tenant shall place copies of insurance policies required by Article 7 hereof.

1.2 HOLDING OVER: Any holding over of tenancy by Tenant beyond the terms of this Lease, with the express or implied consent of District shall be a month to month tenancy only, unless otherwise specifically agreed upon in writing by District and Tenant.

ARTICLE 2. COMPENSATION

2.1 RENT: Tenant agrees to pay District the sum of ten dollars (\$10.00), payable in advance.

2.2 ~~Tenant will make the Project Property, and all facilities contained therein, available to the District at no charge upon reasonable request for the purpose of conducting meetings and other District business. Additionally,~~ Tenant shall make the Project Property, and all facilities contained therein, available to the District at no charge upon reasonable request for the purpose of conducting meetings and other District business, provided that the intended use does not conflict with Tenant's prior scheduled events and that the intended use by the District does not unreasonably conflict with Tenant's use of the premises as a Museum/Community Center.

2.3 PLACE OF PAYMENTS: All payments shall be made to the District at Post Office Box 599, Oceano, CA 93445 or payments may be delivered in person to 1655 Front St., Oceano, CA. Payments may also be made at places agreed to by both parties.

ARTICLE 3. UTILITIES

3.1 Tenant shall pay during the term hereof all charges for all water, gas, electrical, telephone, and all other utilities used by the Tenant on the Leased Premises.

ARTICLE 4. USE OF PREMISES

4.1 The Premises shall be used for the purpose of developing, conducting, and operating therein the Oceano Depot Association, Inc., a museum/public center open to all District residents. The Premises shall not be used for any other purpose without the prior written consent of the District.

ARTICLE 5. INDEMNIFICATION

5.1 The Tenant shall defend, indemnify and save harmless the District, its Board members, officers, agents and employees from any and all claims, demands, damages, costs, expenses, including costs for legal services, or liability occasioned by the performance of the provisions of this Lease, or in any way arising out of this Lease, including, but not limited to, inverse condemnation, equitable relief, or any wrongful act or any negligent act of omission to act on the part of the Tenant, or of agents, employees, or independent contractors directly responsible to the Tenant; providing further that the foregoing shall apply to any wrongful acts, or any actively or passively negligent acts, or omission to act, committed jointly or concurrently by Tenant, Tenant's agents, employees, or independent contractors and the District its agents, employees, or independent contractors.

ARTICLE 6. EMPLOYEES OF TENANT

6.1 All employees, agents, assignees and subleases of Tenant shall be licensed when required by law. All such employees, agents, assignees, and subleases shall be employees, agents, or assignees of Tenant only and shall not in any instance be, or be construed to be, employees, agents or assignees of District. Tenant shall provide and maintain in full force at all times, when required by law, workers' compensation insurance.

ARTICLE 7. INSURANCE

7.1 Tenant agrees to take out and keep in force during the entire life of the Lease, at Tenant's sole cost and expense, public liability and property damage insurance for the Premises in companies authorized to issue such insurance in the State of California and acceptable to District. Tenant further agrees to place copies of said insurances herein required in the hands of the District. Said insurance policies shall consist of the following:

- a. Workers' Compensation and Employer's Liability Insurance: Tenant shall maintain full workers' compensation and employer's liability insurance with limits of at least statutory requirements.

- b. Liability Insurance: Tenant shall maintain bodily injury, personal injury, and property damage insurance in an amount of at least \$ 500,000.00 single limit for bodily injury and property damage. This liability insurance shall include, but shall not be limited to, protection against claims arising for bodily and personal injury and damage to property which results from any act or occurrence in or about the Premises which ~~are~~ subject ~~are subject~~ to this Agreement, or Tenant's operations.
- c. Fire Insurance: Tenant shall provide fire and extended coverage insurance on the leased Premises and on any building on the Leased Premises with such insurance to be primary. Tenant shall procure an appropriate clause in, or an endorsement on, the policy for said insurance pursuant to which the insurance company waives subrogation or consents to a waiver of right of recovery against District.

7.2 ADDITIONAL PROVISIONS: Notwithstanding the forgoing, sSaid insurance policies ~~are~~ policy is to remain consistent with minimum standards as provided by District, as amended from time to time, and contain at a minimum the following provisions: ~~and shall~~:

- a. Be on an occurrence basis rather than accident basis.
- b. Contain an endorsement naming the District and their officers, employees and agents as additional insured.
- c. Contain a cross-liability of severability of interest endorsement.
- d. Require the insurance carrier to give the District, in writing, thirty days' prior notice of any cancellation of such insurance, any reduction in the amount of liability or damage insured, or any other change.
- e. Provide that the insurance will operate as primary insurance and that no other insurance effected by the District will be called upon to contribute to a loss covered by the insurance as defined by the provision herein.
- f. The District holds a lease agreement with The Village Group for the use of District property commonly referred to as "the old firehouse building." The lease provides parking in the lot designated "Leased Premises." The District is to notify The Village Group to furnish the ~~tenant~~ Tenant with a current certificate of liability insurance annually naming the ~~tenant~~ Tenant as additional insured. Address for service of this notice is: Oceano Depot Association, Inc., P.O. Box 535, Oceano, CA 93475. If and when the District's lease with the Village Group terminates, the Section 7.2 (f) shall no longer apply.

7.3 FILING: The Tenant shall file with the District certificates of insurance and policies of insurance covering all the above insurance requirements, and satisfactory to the District, before Tenant does any act under this Lease.

7.4 Approval of the insurance by the District shall not relieve or decrease the extent to which the Tenant may be held responsible for payment of damages resulting from its operations.

7.5 Should the Tenant fail to keep such insurance in full force and effect, the District may cancel the Lease effective immediately.

ARTICLE 8. DESTRUCTION OF DEPOT/PROJECT

8.1 If during the term of this Lease, the Depot or the Project are injured or destroyed by fire or other cause, so as to render the Project, in Tenant's judgment, unfit for occupancy, or so as to substantially prevent or impair, in Tenant's judgment, Tenant's use of the Premises, then the Tenant shall have the following options:

- a. Terminate this Agreement and promptly remove the remains of the Project from the District Premises; or
- b. Continue to pay rent and promptly commence repairs as outlined in Article 10 of this Agreement.

ARTICLE 9. SITE DEVELOPMENT

9.1 The Tenant ~~shall~~may, at its sole cost and expense, continue to develop and operate a Museum/-Community Center as is necessary and appropriate to for the benefit of the community. ~~and Tenant shall have the right to remove from property any and all improvement as required by development plan. Any and all salvage value from the removal of same may be retained by Tenant with the understanding it be used to defray a portion of the site development expense.~~

9.2 Tenant ~~shall~~will be responsible for following all applicable codes and ordinances pertaining to the development site.

ARTICLE 10. REPAIRS, REMODELING, ALTERATIONS AND ADDITIONS

10.1 Upon completion of approved development, all buildings and common areas shall be under the control of Tenant. Tenant shall hereafter repair all subsequent dilapidations thereof which may render them untenable.

10.2 Tenant shall, at its expense, maintain and keep the ~~leased~~Premises and every structural portion thereof in a good state of repair during the lease term and any extensions or renewals thereof. If Tenant fails or neglects to repair as set forth above, within a reasonable time after District submits notice to Tenant of the need for repairs, District may repair the same and

submit the bill to Tenant for payment or exercise its ~~d~~-efault remedies under Article 14 of this Agreement.

10.3 Tenant shall have the right, upon completion of development, to remodel the ~~leased~~-Premises and to make alterations and additions to the interior of the ~~Leased~~-Premises at its ~~ole-own~~ cost and expense, except that no remodeling or alterations affecting building structure shall be made until written consent of the District has been obtained.

ARTICLE 11. ADDITIONAL OBLIGATIONS OF TENANT

11.1 Tenant, at its sole cost, shall operate and maintain the Premises in a manner satisfactory to the authorized representative of the State of California and the United States. All maintenance shall be performed at regular intervals by well-trained staff as required for efficient operation of the Project.

11.2 Tenant shall keep accurate records of its operations and shall permit access to the District or its designee to all books, records and accounts, or other sources of information, as may be determined by the District or its designee to be pertinent to ascertain compliance with all notifications and directives.

11.3 Tenant shall at all times and in all respects comply with all federal, state and local laws, ordinances and regulations ("Hazardous Materials Laws") relating to industrial hygiene, environmental protection, or the use, analysis, generation, manufacture, storage, disposal or transportation of any oil, flammable explosives, asbestos, urea formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitation, any "hazardous substances," "hazardous wastes," "hazardous materials" or "toxic substances" under such laws, ordinance or regulations (collectively, Hazardous Materials").

ARTICLE 12. NON-DISCRIMINATION ASSURANCES

12.1 The Tenant for ~~himself~~itself, ~~his~~its heirs, personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree, as covenant running with the land, that in the event facilities are constructed, maintained, otherwise operated on the said property described in this lease for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provisions of similar services or benefits, the Tenant shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That in the event of breach of any of the above nondiscrimination covenants, District shall have the right to terminate the Lease and re-enter and repossess said land, Premises, and facilities thereon, and hold the same as if said Lease had never been made or issued.

12.2 The Tenant, for ~~himself~~, ~~his~~ ~~its~~ personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

- a. No person on the ground of race, color, sex, national origin, religion, age, ~~or~~ disability, pregnancy, marital status, sexual orientation, or gender identity, will be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the use of said facilities;
- b. That in the construction of any improvements on, over, or under such Land and the furnishing of service thereon, no person on the ground of race, color, sex, national origin, religion, age, pregnancy, marital status, sexual orientation, or gender identity, ~~or~~ disability, or gender identity, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and
- c. That the Tenant shall use the Premises in compliance with the Regulations.

That in the event of the breach of any of the above nondiscrimination covenants, District shall have the right to terminate the Lease and to re-enter and repossess said land, Premises and the facilities thereon, and hold the same as if said Lease had never been made or issued.

ARTICLE 13. ASSIGNMENT

13.1 Tenant shall not assign this Lease, nor sublet the whole or any part of the Premises, without the prior written consent of District. Any attempt to do so shall be void, shall confer no rights on any party, and shall be good cause for cancellation of this lease by District at its option. This Lease shall not be assignable by operation of the law.

ARTICLE 14. DEFAULTS

- 14.1 MATERIAL DEFAULT: Tenant shall be in material default under this Lease if:
- a. Tenant abandons the Premises;
 - b. Tenant fails to pay rent or any other charge required to be paid by Tenant, and when due, subject to the provisions contained herein;
 - c. Tenant fails to perform any of Tenant's non-monetary obligations under this Lease for a period of ten days after written notice from District; provided that if more

than ten days are required to complete such performance, Tenant shall not be in default if Tenant commences such performance within the ten-day period and thereafter diligently pursues its completion. However, District shall not be required to give such notice if Tenant's failure to perform constitute an incurable breach of this Lease. The notice required by this subsection is intended to satisfy any and all notice requirements imposed by law on District and is not in addition to any such requirements.

- d. Tenant makes a general assignment or general arrangement for the benefit creditors.
- e. A petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by or against Tenant and is not dismissed within thirty (30) days.
- f. A trustee or receiver is appointed to take possession of substantially all of Tenant's interest in this Lease and possession is not restored to Tenant within thirty (30) days.
- g. Substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease is subjected to attachment, execution or other judicial seizure which is not discharged within (30) days.
- h. A court of competent jurisdiction determines that any of the acts describe in this Article is not a default under this Lease, and a trustee is appointed to take possession (or if Tenant remains a debtor in possession) and such trustee or Tenant transfers Tenant's interest hereunder, then District shall receive, as additional rent, the difference between the rent (or any other consideration) paid in connection with such assignment or sublease and the rent payable by Tenant hereunder.
- i. Tenant is found to be in default with this Lease or any provision contained herein, and District, at its discretion, desires to repossess the Premises, District must give Tenant thirty (30) days written notice to quit the Premises.
- j. Fails to maintain insurance as required under Article 7 of this Lease.

ARTICLE 15. REMEDIES

15.1 Should Tenant violate any of the terms or conditions of this Agreement, District may, thirty (30) days after written notice to Tenant, terminate this Lease and re-enter the Premises and remove all persons therefrom.

15.2 If Tenant shall have abandoned the Premises, the District shall have the following options:

- a. Retaking possession of the Premises and recovering from Tenant the amount specified in the above section.
- b. Maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Premises. In such event, District shall be entitled to enforce all of District's rights and remedies under this Lease, including the right to recover the rent as it becomes due hereunder.
- c. Pursue any other remedy now or hereafter available to District under the laws or judicial decisions of the State of California.

15.3 CUMULATIVE REMEDIES: Districts exercise of any right or remedy shall not prevent it from exercising any other right or remedy.

15.4 In the event of beach of any covenant or condition by District herein set forth or implied, Tenant ~~s~~ shall have the option of terminating the Lease and surrendering the Premises after thirty (30) days' written notice to District.

ARTICLE 16. COVENANTS AND CONDITIONS

16.1 Tenant's performance of each of Tenant's obligations under this Lease is a condition as well as a covenant. Tenant's right to continue in possession of the Premises is conditioned upon such performance. Time is of the essence in the performance of all covenants and conditions.

16.2 The parties hereto agree that all of the provisions hereof are to be construed as covenants and conditions as though the words importing such covenants and conditions were used in each instance, and that all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

ARTICLE 17. RIGHT TO TERMINATE

17.1 This site has been evaluated and found acceptable for a Museum/ Community Center. Should any change occur wherein the site would no longer ~~be usable~~ be usable for the purposes intended, either party shall have the right to terminate the lease upon ninety (90) day advance written notice to either party. Upon termination of this agreement, for whatever reason, all real and personal property, used for the operation, use or maintenance of the Museum/ Community Center, ancillary facilities or any subsequently approved use shall become the property of District unless excepted by amendment to this Lease.

ARTICLE 18. CONDEMNATION

18.1 If the whole of the Premises shall be taken or condemned by any competent authority under power of eminent domain for a public or a quasi-public use or purpose, then the leasehold estate hereby created shall cease and terminate as of the date actual physical possession of the leased Premises is taken by the condemner. All compensation and damages awarded for such taking shall belong to and be the sole property of District, provided, however, that Tenant shall be entitled to receive any award for the taking of or damage to Tenant's equipment, fixtures, or any improvements, made by Tenant to the leased Premises which Tenant would have had, but for the condemnation, the right to remove at expiration or sooner termination of this lease. On termination of the Lease by a total taking, all rental and other charges payable by Tenant to or on behalf of District under the provisions of this lease shall be paid up to the date on which actual physical possession of the leased Premises shall be taken by the condemner, and the parties hereto shall thereafter be released from all further liability in relation thereto.

ARTICLE 19. OPTION TO EXTEND TERM AND AT TERMINATION

19.1 From the date of the expiration of the term of this lease, Tenant shall have the option to extend the term of this Lease for an additional periods of ten (10) years each, to the maximum extent allowed by law which is currently ninety-nine years, on the same terms, covenants, and conditions provided in this lease, upon written notice given District by Tenant, at least sixty (60) days prior to the expiration of the term of this lease. Option to extend will be contingent upon Tenant's satisfactory performance and/or compliance with terms, conditions and covenants during the term of this lease.

ARTICLE 20. HOLDING OVER

20.1 In the event that Tenant shall hold over after expiration of the lease term or any extension or renewal thereof, with the consent, express or implied, of District, such holding over shall be deemed merely a tenancy from month-to-month on the terms, covenants and conditions, so far as applicable, and subject to the same exceptions and reservations as herein contained, until such tenancy is terminated in manner prescribed by law.

ARTICLE 21. NOTICES

21.1 Any notices, demands, or communication, under, or in connection with this lease, may be served by District by personal service, or by mailing the same by certified mail in the United States Post Office, postage prepaid, and directed to District at 1655 Front Street, P.O. Box 599, Oceano, CA 93445 and may likewise be served on Tenant by personal service or mailing the same addressed to Tenant at PO Box 535, Oceano CA 93475. Either District or Tenant may change such address by notifying the ~~other party in~~ other party in writing as to such new address as Tenant or District may desire used which address shall continue as the address until further written notice.

ARTICLE 22. ENTRY

22.1 District and its authorized agents shall have the right to enter the Premises or the Project at all reasonable times for the purpose of inspection of same and at any time in case of an emergency. District and the utility companies shall have the right to enter the Premises or the Project for purposes of inspection, installation, and repair of utility facilities. District will give Tenant at least 24 hours prior notice, except in case of an emergency, in the event District desires to inspect the Premises or the Project. District personnel may also enter the Premises or the Project during business hours and request an inspection of Premises or the Project. If such an occasion is inconvenient to Tenant a time may be set within 24 hours that is convenient to both parties.

ARTICLE 23. SUCCESSORS

23.1 The agreements herein made shall apply to, bind, and inure to the benefit of the successors and assigns of District, and the successors and permitted assigns of Tenant.

ARTICLE 24. SURRENDER OF POSSESSION

24.1 TENANT'S DUTY: At the expiration or earlier termination of the term of this Lease, Tenant shall surrender to District the possession of the Premises and improvements thereon, provided surrender or removal of improvements shall be as directed in the ownership of improvements provisions of this Lease. Tenant shall leave the surrendered Premises and any other property in good and clean condition, except for damage or destruction by the elements, earthquake, act of God or acts of war. All property that Tenant is required to surrender but that Tenant does abandon shall, at ~~the District'~~District's election, become ~~District's~~District's property at termination. If Tenant fails to surrender the Premises and improvements at the expiration or sooner termination of this Lease, Tenant shall defend and indemnify District from all liability and expense resulting from the delay or failure to surrender, including, without limitation, claims made by any succeeding tenant founded on or resulting from Tenant's failure to surrender.

ARTICLE 25. MISCELLANEOUS

25.1 All the terms and conditions herein shall be binding upon and shall inure to the benefit of the successors, assigns, transferees and trustees of the respective parties of this Lease.

25.2 Time is hereby declared to be of the essence.

25.3 Any waiver by District by any failure by Tenant to comply with any terms or conditions herein shall not be construed to be a waiver by District or any similar or other failure by Tenant to comply with any term or condition herein.

25.4 Tenant understands and recognizes that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to payment of property taxes levied on such interest.

25.5 This writing contains the entire Lease between the parties, and no agent, representative, ~~salesman~~ or officer of District has the authority to make or has made any statement, agreement, or representation either oral or written, in connection herewith, ~~to modify,~~ ~~modify ng,~~ ~~adding~~ or ~~changing change~~ the terms and conditions as herein set forth.

25.6 Any modification to be effective must be in writing and signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

25.7 If any provision of this Lease shall be declared invalid or unenforceable, the remainder of the lease shall continue in full force and effect.

25.8 This Lease shall be governed by, construed and enforced in accordance with the law of the State of California.

25.9 The captions in this Lease are for convenience only, and are not part of the Lease, and do not in any way limit or amplify the terms or provisions hereof.

25.10 All provisions, whether covenants or conditions, on the part of Tenant shall be deemed to be both covenants and conditions.

~~25.11 Recitals A-H, above, are incorporated into this Agreement as though fully set forth herein.~~

~~25.12 ATTORNEY'S FEES: In the event that either party hereto shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any term, covenant, or condition of this Lease by the party to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover, in addition to court costs, a reasonable attorney's fee to be fixed by the court, and such recovery shall include court costs and attorney's fee on appeal, if any. As used herein, "the party prevailing" means the party in whose favor final judgement is rendered.~~

IN WITNESS WHEREOF, the parties hereto set their hands the day and year first above written.

**OCEANO COMMUNITY
SERVICES DISTRICT**

**OCEANO DEPOT
ASSOCIATION, INC.**

OCSD General Manager

Tenant

ATTEST:

APPROVED AS TO FORM:

Board Secretary

District Counsel

INSURANCE REQUIREMENTS

INDEMNIFICATION

To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend and hold harmless the District and its officers, agents, employees, and volunteers from and against all claims, demands, damages, liabilities, loss, costs, and expense (including attorney's fees and costs of litigation) of every nature arising out of or in connection with Contractor's performance or attempted performance of work hereunder or its failure to comply with any of its obligations contained in the agreement, except such loss or damage which was caused by sole negligence or willful misconduct of the District.

INSURANCE COVERAGE

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL); Insurance Services Office (ISO) Form CG 0001 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed, operations, personal injury and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: ISO Form Number CA 0001 covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damages.
3. Worker Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. If Contractor will provide leased employees, or is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage shall also include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 O1 A) naming the District as the Alternate Employer, and the endorsement form shall be modified to provide that District will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision. If applicable to Contractor's operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.
(Not required if Contractor provides written verification it has no employees)

If the contractor maintains higher limits than the minimums shown above, the District requires and shall be entitled to coverage for the higher limits maintained by the contractor.

OTHER INSURANCE PROVISIONS

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status:

The District, its officers, officials, employees, and volunteers are to be covered as insureds on the auto policy with respect to liability arising out of automobiles owned, leased, hired or borrowed by, or on behalf of the Contractor; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall state that coverage shall not be canceled, except after thirty (30) days prior written notice (10 days for non-payment) has been given to the District.

Failure to Maintain Insurance

Contractor's failure to maintain or to provide acceptable evidence that it maintains the required insurance shall constitute a material breach of the Contract upon which the District immediately may withhold payments due to Contractor, and/or suspend or terminate this Contract. The District, at its sole discretion, may obtain damages from Contractor resulting from said breach.

Waiver of Subrogation

Contractor hereby grants to District a waiver of any right to subrogation which any insurer of said Contractor may acquire against the District by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the District. The District may require the Contractor to provide proof of ability to pay losses and related investigation, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.A. Best's rating of no less than A:VII, unless otherwise acceptable to the District.

Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work;
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work;
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years.

Separation of Insured's

All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separate of insured's provision with no insured versus insured exclusions or limitation.

Verification of Coverage

Contractor shall furnish the District with original certificates and mandatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the District before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The District reserves the right to required complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Certificates and copies of any required endorsements shall be sent to:

Oceano Community Services District
P.O. Box 599
Oceano, CA 93475-0599

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

Special Risks or Circumstances

District reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Oceano Community Services District



Divestiture of a Power
LOCAL AGENCY FORMATION COMMISSION



LAFCo's Purpose: Legislative

- Set up in 1963 in every County
- State Law guides LAFCO decisions:
 - Discourage urban sprawl
 - Preserve agriculture and open space
 - Promote efficient public services
 - Encourage orderly boundaries

LAFCO Actions

- **Incorporations:** Nipomo and Cambria studied incorporation
- **District Formations:** Most recent California Water Districts
- **Dissolution:** On Occasion – CSA 17, Creston Hills Ranch CSD, Cayucos Fire Dept.
- **Disincorporation:** very rare – Maybe one or two state wide
- **Annexations:** Several annexations on radar; Fiero Ln. & Froom Ranch in SLO, MB Wastewater Site, Furlotti in Paso Robles
- **Detachments:** On occasion-but not very often
- **Outside User Agreements** to serve a property or area outside the service area of a jurisdiction.
- **Updating Spheres of Influence-Municipal Service Reviews** all jurisdictions
- **Activate/Divest Powers** of a District





Who is on the Commission?

- **Cross-section of local jurisdictions**
 - Two County Board of Supervisors
Debbie A. – Lynn C. – John P. Alt.
 - Two City Council Members
Roberta F.- Ed W. – Steve G. Alt
 - Two Special District Members
Marshall O.- Robert E. - Ed Eby, Alt.
 - One Public Member
Tom M. - Heather J. Alt



Divestiture of a Power

- LAFCO approval to activate or divest a power
- CSD's are required to get LAFCO approval to divest a power that is active (GC 56824.10)
- Apply to LAFCO, review and analyze, LAFCO hearing, Protest Process
- Key pieces; Plan for Services and Property Tax Exchange with the County
- Powers: Water, sewer, parks & recreation, fire protection, solid waste, street lighting



Divestiture of a Power

- GC 56037.2. "Divestiture of power" means the termination of the power and authority to provide particular functions or classes of services within all or part of the jurisdictional boundaries of a special district.



Divestiture of a Power

➤ Process

- Board of Directors consider a Resolution of Application, a Plan for Services and Budget
- Must provide a 21 day hearing notice
- File the adopted Resolution, Plan for services, budget, and fees (\$3,000) with LAFCO
- Reviewed by LAFCO Staff, Referrals, Staff Report, Noticing, LAFCO Public Hearing
- If approved, protest hearing process begins



Divestiture of a Power

➤ Plan for Services

- Important document that tells the CSDs story
- Describes the service-level and how the service will be provided in the future
- With fire service, work with the County to develop a Plan for Service
- Timing of the service transfer, assets to be transferred, equipment, taxes, etc.
- Plan for financing; cost, revenues, initial budget
- County review of the Plan for Services



Divestiture of a Power

- Property Tax Exchange Agreement
 - Agreement by District and County to exchange Property Tax
 - County and District negotiate the agreement
 - Agreement is approved by both the District and County
 - Amount based on prior use of Property Tax for fire services
 - Agreement must be approved before divestiture is approved



Divestiture of a Power

Summary

- Process should take 6-months to a year
- Make sure this is the direction District wants to go-Activating the power will be difficult
- Key is working with the County

Ballot Measure Advocacy

What may individual public officials do to
support or oppose ballot measures?

General Rule

On your own time. On your own dime.

Public officials may participate as (1) private citizens; (2) using personal funds; and (3) on their own personal time.

Money: You can make a campaign contribution to a ballot measure campaign committee using personal funds.

Time: You can work on the campaign or attend fundraisers during their personal time:

- lunch hours
- coffee breaks
- vacation days, etc.

Board members and District officials may, in their private capacities, do the following:

- Attend rallies, meetings, and other political or campaign-related events that expressly advocate a position for or against a particular measure.
- Urge community members, family, and friends to vote “yes” or “no” on a particular initiative.
- Solicit or receive political contributions to promote the passage of a ballot measure.

Caution

Board members and District officials should make it known that their views are **not intended to be representative of the District**. Rather, it should clear that they are speaking and acting on their own behalf and are doing so **on their own time and at their own private expense**.

- Avoid using District titles or positions.
- Make it clear that any communications made are in their individual capacity and are not attributable to the District.

May I use agency letterhead, my title, or my District e-mail when communicating my support for a ballot measure?

NO.

Public agency letterhead is a public resource bought and paid for with taxpayer funds. As a result, it should not be used for ballot measure advocacy activities.

California law makes it a misdemeanor to use city seals with the intention of creating an impression that a document is authorized by a public official.

Any advocacy should be from a personal email address and sent from a nonpublic agency computer system.

May we ask staff to support the ballot measure, for example, by asking them to endorse the measure, make campaign contributions, or volunteer their time?

NO.

California law has a strong tradition of separating the electoral process from decisions relating to public employment.

- State law forbids elected officials and employees from soliciting campaign funds from employees.
- The exception is if the solicitation is made to a significant segment of the public that happens to include agency officers or employees.

May I ask fellow elected and appointed officials to contribute time, endorsements, and/or money to the campaign?

NO.

The same state law that prohibits solicitations of campaign contributions from one's employees prohibits solicitations of one's fellow officials in the same jurisdiction.

Will I be reimbursed by the District if I attend a fundraiser for the ballot measure?

NO.

This squarely violates the proscription against using public funds for ballot measure advocacy.

Can the board pass a resolution regarding the ballot measure?

YES.

The board may adopt a resolution regarding a tax initiative or other ballot measure, provided that no extraordinary public funds are spent in connection with the board's action, and the resolution states the effect of the measure on District services without emphasizing that members of the public cast a "yes" or "no" vote.

Can the board pass a resolution in support of or opposition to a ballot measure?

- The language must be “simple, measured, and informative.” It should not be inflammatory, persuasive, or urge community members to adopt a position in support of or in opposition to the initiative.
- The adoption of the resolution should occur during a regularly-scheduled open meeting and the public should be afforded the opportunity to express its views and address the board prior to any action being taken.

Remember

Courts have recognized that public agencies will inevitably “take sides” on a ballot measure. However, the mere fact that a public agency has an opinion or position regarding the merits of a ballot measure is not, by itself, improper.

What is improper is the public agency using public funds to mount a campaign on the measure or initiative.

Are there restrictions on how the District may communicate its adoption of a resolution related to a ballot measure?

Yes. Informational only.

The District may report the board's position in a District publication so long as it is part of a regular summary of actions taken at a board meeting (e.g., posting board meeting minutes).

- Any publication should be informational in nature and communicated consistent with the District's regular practice (i.e. email, website, etc.).
- No special publication efforts or press conferences. May appear as an attempt to influence the electorate.

What types of District resources may not be used to advocate for the support or defeat of a ballot measure?

All of them.

District phone	District vehicle
Fax	Printers
Email	Copiers
Paper	Scanners
Pens	Staff time
Posters	
District-owned and assigned cell phone or radio	

If the District wants to provide information to the public about the tax measure on the ballot, what type of information may it disseminate?

A fair and balanced presentation of the facts.

The District may supply informational materials to the public regarding a ballot measure or initiative as long as it is fair, balanced, and informative.

What does “fair and balanced” mean?

- Full disclosure of all relevant facts needed to aid the public in making an informed judgment regarding the initiative or measure.
- The materials should identify the consequences, both good and bad, of the initiative.

Example: The anticipated improvement in fire services if the measure were to pass, *as well as* the increased tax rate and other less desirable consequences that may occur.

Take Note

The District must take extra care to ensure that the language used to convey this information is NOT inflammatory, argumentative, persuasive, and does not give the impression that the District is trying to influence or urge the electorate to cast a “yes” or “no” vote.

- Materials should be neutral in tone, balanced, and provide objective facts to inform the public about the initiative or ballot measure.
- Providing the “pros” and “cons” of a ballot measure on a “fact sheet” or similar document that fairly and adequately describes both sides of the matter.
- Distributing materials to announce public forums in which all sides of an issue are invited to appear.
- Making sure literature from both sides of a ballot measure are equally available and displayed at any event.
- Ensuring the presence of an opposition speaker at any forum or discussion of an issue or measure.

There are no hard and fast rules on “informational materials.”

- Style, tenor, and timing of publication matters
- Does the information sway the reader to take a side?
- Distributed consistent with other material of a “special edition?”

TIP

Avoid using words such as:

“Vote for,” “Vote against,” “Cast your ballot,” “Support,”
“Reject,” “Sign petitions for,” or “Defeat.”

Do's and Don'ts
Board Members and Employees
In Official Capacity

DO

Provide an accurate, fair, and impartial presentation of relevant facts to aid the voters in reaching an informed decision regarding the ballot measure.

Do's and Don'ts
Board Members and Employees
In Official Capacity

DON'T

- Spend District monies in support or opposition.
- Use your title or position to advocate or oppose the measure in person, in writing, video, online, etc.
- Wear buttons or shirts in support or opposition of measure at OCSD general, special, or committee meetings.

Do's and Don'ts
Board Members and Employees
In Official Capacity

DON'T

- Tell constituents how to vote.
- Ask staff or other directors to support, oppose, or contribute to the measure, unless part of a solicitation made to a significant segment of the public which may include employees or directors.
- Use your District email address to send out your opinion of the ballot measure.

Do's and Don'ts
Board Members and Employees
As Private Citizens

DO

Communicate that your views are your own, and you are not representing the District.

DON'T

Use your official title or refer to your work on the board, except for identification purposes, to advocate or oppose.

Don't wear an "official" nametag while expressing your views on the measure.

On your own time. On your own dime.