

Staff Report

for the Board of Directors Meeting of January 8, 2020

TO: Honorable Board of Directors
FROM: Greg Jones, Assistant General Manager ^{GJ}
DATE: December 30, 2019
SUBJECT: Wolf Creek Community Alliance Occupancy Termination

ADMINISTRATION

RECOMMENDATION:

Approve the non-renewal of a building occupancy agreement with the Wolf Creek Community Alliance (WCCA).

BACKGROUND:

Staffing requirements at the Grass Valley headquarters have continued to outpace the office space available. In 2018, NID's watershed staff moved into a re-purposed conference room in the Purchasing building due to lack of adequate space in the East Annex. Due to organizational needs, staff believes it is necessary to re-purpose the current WCCA-occupied 12' x 14' building for NID's watershed staffing & operational needs. The re-purposed conference room in Purchasing will either remain as office space or be transferred back into a conference space for District purposes.

As a result of the amended 2019 Budget and the adopted 2020 Budget, the Nevada Irrigation District suspended all requests by non-profit/community organizations for contributions, donations and sponsorships until such time that all reserve funds are appropriately funded (Resolution 2019-24).

Since 2005, NID has provided the WCCA Citizen Water Quality Monitoring Program with donated office space at NID's headquarters in Grass Valley. In July 2015, NID entered into a 5-year Occupancy Agreement and collaborated with WCCA on constructing a volunteer meeting location, a 12' x 14' wood-framed building next to the Annex. This climate-controlled building has since been a donation to WCCA with a discounted monthly rent of \$1.00.

The 2015 Occupancy Agreement is due for renewal in July, 2020. Staff requests the building be re-purposed for NID operational needs in order to facilitate greater organizational efficiencies within the watershed division. Staff realizes that moving locations can be a difficult and uncertain task for the WCCA. We recommend allowing WCCA to occupy the building through June, 2020, at which point the watershed staff will then establish occupancy.

This item supports Goal No. 1 of the District's Strategic Plan through proactive management of our physical, financial and human resources.

BUDGETARY IMPACT:

None

ATTACHMENTS:

- 2015 Occupancy Agreement
- Resolution 2019-24

OCCUPANCY AGREEMENT

This Agreement is made and entered into this 22nd day of July, 2015, by and between NEVADA IRRIGATION DISTRICT (“NID”), and the WOLF CREEK COMMUNITY ALLIANCE (“WCCA”), collectively, the “Parties.”

RECITALS:

This Agreement is made with reference to the following facts.

- A. WCCA is a volunteer-based Non-profit California Corporation with a number of volunteers (the “Participants”) that provide scientific sampling and monitoring of water quality in the Wolf Creek Watershed in Nevada County.
- B. Since 2005, NID has provided an office space to WCCA, located in NID’s East Annex Building, as a base for the WCCA Citizen Water Quality Monitoring Program (the “occupancy”).
- C. NID is in need of additional office space, and requires the use of said office space for District purposes, and desires to continue its support for the Wolf Creek Water Quality Monitoring Program.
- D. WCCA wishes to continue the occupancy arrangement, at a different location on NID premises.
- E. NID has adequate space on its property that is suitable for occupancy by WCCA.
- F. The purpose of this Agreement is to set forth the terms and conditions under which WCCA may occupy said property.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions hereinafter set forth, it is agreed by and between NID and WCCA as follows:

1. Term: The term of this Agreement shall be five (5) years, commencing on the date set forth above. WCCA shall have the right to extend this Agreement for additional terms of five (5) years each, provided that WCCA gives written

notice of WCCA's intention to do so at least ninety (90) days prior to the expiration of the then-current term. Notwithstanding the foregoing, NID shall have the right to terminate this Agreement upon ninety (90) days advance written notice to WCCA, if NID's Board of Directors determines that it is necessary to utilize the property for NID's public purposes.

2. The "property": The "property" which is the subject matter of this Agreement is a plot approximately 20' x 30' adjacent to NID's present East Annex, as more particularly depicted on Exhibit "A" attached hereto and incorporated by reference herein.
3. Right of Occupancy: WCCA shall have the right to occupy the property for the term of this Agreement, for the purposes, and on the terms and conditions set forth herein.
4. Purpose of Occupancy: WCCA and NID will develop the property with a small wood-framed building (12' x 14'), suitable as an office for the WCCA Citizen Water Quality Monitoring Program, to store equipment, and serve as a gathering place for 2-person volunteer monitoring teams twice per month. The property shall be open to participants in the WCCA Monitoring Program during District business hours. It is understood and agreed that the WCCA program will operate on a non-profit, non-discriminatory basis, and that no commercial sales will occur on the property. No admission will be charged for the privilege of entering the property.
5. Rent: As consideration for use and occupancy, WCCA shall pay rent in the amount of \$1.00 per month. Rent shall be due on the first day of the month following the date of this agreement and continue thereafter until completion of the term.
6. Signage: Subject to the approval of NID, WCCA may post appropriate signs on the property providing public information for the Monitoring Program.
7. Structures: Equipment: Supplies: Removal: NID shall provide the Building Permit, foundation, and materials for the building, and WCCA shall provide the labor to construct the building. Subject to the approval of NID, WCCA shall have the right to construct a 12' x 14' wood-framed building on the

- property, and to keep appropriate equipment, materials and supplies therein. Upon termination of this Agreement, WCCA shall remove all signs, equipment, supplies, materials and debris from the property, and shall leave the property in a neat and orderly condition. The 12' x 14' building shall be vacated in good condition for use by NID, or others at the discretion of NID.
8. Water and Electrical Supply: WCCA will construct, at its expense, a water pipeline and hose-bib to serve the property. Any on-site water facilities shall be the responsibility of WCCA. NID will supply water and electricity to the property without charge. WCCA will use water conservation practices in WCCA's program.
 9. Maintenance: WCCA will maintain the property in a clean, safe and orderly condition. Any chemicals or flammables shall be used, stored and disposed of in accordance with manufacturer's recommendations and applicable laws and regulations. WCCA acknowledges that the property is adjacent to a residential area, and agrees to control noise and protect nearby residents from any annoyance originating on the property. Trash and other debris will be periodically removed from the property by WCCA at WCCA's expense.
 10. Limitations on Use: Participants in WCCA's program shall enter the property only through NID's main gate, and only during hours which NID approves from time-to-time. Participants may use NID's parking lot on a not-to-interfere basis. Participants may use NID's restrooms at the Annex Office, subject to restrictions for access and hours of use as may be determined by the NID's General Manager from time to time. On occasion, and subject to advance written approval by NID's General Manager, Participants may use other NID facilities, provided such use does not interfere with NID's business. No utilities other than water, sewer, and electricity will be supplied to the property.
 11. Insurance: Indemnification: Throughout the term of this Agreement, WCCA shall provide and maintain, at WCCA's expense, a policy of liability insurance covering risks of death, personal injury and property damage arising from WCCA's activities on the property, with policy limits of not less than

\$1,000,000. Said policy shall name NID as an additional insured and shall be evidenced by a Certificate of Insurance delivered to NID providing for at least ten (10) days advance written notice to NID in the event of cancellation or non-renewal. WCCA shall defend, indemnify and hold NID, its officers, employees and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of WCCA, its officers, agents, or employees.

12. Ownership: Nothing in this agreement shall be deemed to convey title or ownership of the 12'x14' building, or any appurtenances, to WCCA; and conversely, nothing in this agreement shall be deemed to convey title or ownership of the signs, equipment, supplies, materials and incidentals to NID.

13. Possessory Interest Tax: In compliance with Revenue and Taxation Code Section 107.6, NID hereby gives notice to WCCA that the right of occupancy under this Agreement may create a possessory interest subject to property taxation. If such an interest is created, the resulting taxes shall be the responsibility of WCCA and not NID. WCCA acknowledges such notice, but does not concede that this Agreement creates a taxable possessory interest in WCCA.

14. Miscellaneous: This Agreement constitutes the entire agreement of the parties hereto and shall be binding upon their successors and assigns. Notwithstanding the foregoing, WCCA shall not assign this Agreement without the advance written consent of NID. This Agreement may be amended only by a written instrument executed by both parties hereto. A waiver of a breach of any term or condition of this Agreement shall not be deemed a waiver of any other or subsequent breach. Time is of the essence hereof. If either party commences an action to enforce the terms of this Agreement, the prevailing party in such action shall be entitled to an award

of reasonable attorneys fees in addition to any other judgment that may be entered.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

NEVADA IRRIGATION DISTRICT:

By: 
General Manager

Attest: 
Board Secretary

WOLF CREEK COMMUNITY ALLIANCE:

By: 
President

By: 
Secretary



RESOLUTION No. 2019-24
OF THE BOARD OF DIRECTORS OF THE NEVADA IRRIGATION DISTRICT
2019 AMENDED BUDGET

WHEREAS, Nevada Irrigation District (NID) is an irrigation district formed and existing under the provisions of Division 11 of the Water Code of the State of California; and

WHEREAS, NID owns and maintains a system of reservoirs, canals, pipelines, treatment facilities, storage tanks, and related facilities to deliver treated and untreated (raw) water to NID customers in Nevada, Placer and Yuba Counties; and

WHEREAS, on December 12, 2018, the Board of Directors adopted the 2019 Budget which included the preliminary 2019 Cost of Service Rates; and

WHEREAS, on April 24, 2019, the Board of Directors adopted and approved a 5.72 percent rate increase over the next three years, which was less than the final 2019 Cost of Service recommended rates; and

WHEREAS, the Board waived Policy 3040.4.1 – Operating Reserves, which established the minimum level operating reserves to be maintained at six months of annual budgeted operating costs; and

WHEREAS, the Board requested the 2019 operating expense budget to be reduced by five percent along with a reciprocal reduction in revenues; and

WHEREAS, the acquisition of the Deer Creek Powerhouse is anticipated in 2020; additional costs not previously accounted for in the 2019 budget have been included.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of Nevada Irrigation District as follows:

1. The Board of Directors hereby approves the 2019 Amended Budget.
2. District Policy Number 1070: Contributions/Donations – Requests by Non-Profit/Community Organizations for contributions, donations and sponsorships, is suspended until which time all reserve funds are appropriately funded.

3. District Policy Number 2174: Education, is suspended until which time all reserve funds are appropriately funded.
4. District Policy Number 3040.4.1: Operating Reserves, is to be modified to reflect the temporary waiver of the minimum reserve level of six months of annual budgeted operating costs; until which time all reserves are appropriately funded.
5. District Policy Number 3040.4.3: Community Investment Stabilization Reserve, is to be suspended until which time all reserves are appropriately funded.
6. District Policy Number 3040.4.4: Capital Improvement / Replacement Reserve, establish the following minimum reserve levels for the District's three Capital Improvement/Replacement funds:
 - a. Water: \$22,000,000
 - b. Recreation \$500,000
 - c. Hydroelectric \$15,000,000
 - d. FERC License \$35,000,000
7. District Policy Number 3040.4.6: Watershed Stewardship Reserve, as amended.
8. This Resolution shall take immediate effect upon its adoption.

* * * *

PASSED AND ADOPTED by the Board of Directors of Nevada Irrigation District at a special meeting duly called and held within the District on the 24th day of June 2019 by the following roll call vote:

AYES: Directors: Heck, Peters; Miller *and Wilcox*
NOES: Directors: Bierwagen
ABSENT: Directors: None
ABSTAINS: Directors: Wilcox



President of the Board of Directors

Attest: 

Secretary to the Board of Directors