



November 24, 2014

TO: LOCSD Board of Directors

FROM: Kathy A. Kivley, General Manager *Kathy A Kivley*

SUBJECT: **Agenda Item 11E – 12/04/2014 Board Meeting**
Adopt Resolution Establishing a Reserve Fund for Monies Currently Invested with the San Luis Obispo County Community Foundation

President
Craig V. Baltimore

Vice President
R. Michael Wright

Directors
Leonard A. Moothart
Marshall E. Ochylski
Jon-Erik G. Storm

General Manager
Kathy A. Kivley

District Accountant
Michael L. Doyel

Fire Chief
Robert Lewin

Battalion Chief
Phill Veneris

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DESCRIPTION

Adopt a resolution to establish a Reserve Fund for dollars currently invested with the San Luis Obispo County Community Foundation (SLOCCF).

SUMMARY OF STAFF RECOMMENDATION

This item will be approved along with the Consent Calendar unless it is pulled by a Director for separate consideration. If so, Staff recommends that the Board adopt the following motion:

Motion: I move that the Board adopt Resolution 2014-26 authorizing the General Manager to establish a Reserve Fund for the Los Osos Community Services District Community Fund.

DISCUSSION

It appears, based on July 19, 2002 documentation, that the District entered into a Pass-Through Fund Agreement with the San Luis Obispo County Community Foundation, Inc. The Foundation created this fund which was designated to receive gifts, in whatever form of money or property, and to administer this fund. In the Agreement, the Fund was established with the primary purpose of providing low income families living in Los Osos with financial assistance for costs associated with LOCSD sewer services.

On March 1, 2006, under the terms of the Agreement, the SLOCCF Board of Directors voted to invest the LOCSD Low Income Sewer District Pass-Through Fund and put it in the endowment. This was necessary because previously under the terms of the Pass-Through Fund Agreement, the principal of the fund was to accrue no interest and be assessed a 2% Administrative fee yearly by the Foundation.

The letter from the Foundation dated March 31, 2008, stated that the Foundation Board took the action because the sewer project was delayed indefinitely. The Foundation Board voted to invest the collected money and allocate the earnings to the fund rather than have the money sit idle waiting to be spent.

It is prudent to have investments recorded in the financial records. From staff's review the investment was not tracked or recorded for financial purposes. Any

funds owned by the District whether held in a separate investment account, Certificate of Deposit or other bank instrument need to be recorded. For that purpose, staff requests authorization to establish a Reserve Fund for the Community Foundation Pass-Through Fund.

On Thursday, November 20, 2014, staff met with Bob Semonsen of the Bay Foundation, regarding the criteria associated with establishing this fund. As the time draws closer for the release of monies, the Bay Foundation and staff agreed to develop written criteria and guidelines for disbursement.

FINANCIAL IMPACT

As of December 31, 2010, the ending Fund Balance was \$141,771.24. Staff received a Semi-Annual Statement of Fund Activity as of June 30, 2014 with a balance of \$173,994.83. The recommended action to establish a Reserve Fund will have no financial impact on the District.

Attachments

RESOLUTION 2014-26

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE LOS OSOS COMMUNITY SERVICES DISTRICT
ESTABLISHING A PASS-THROUGH FUND RESERVE IN THE WASTEWATER FUND**

WHEREAS, the Los Osos Community Services District ("District") provides water service within the District's water service area pursuant to § 61100 (a) of the Community Services District Law; and

WHEREAS, pursuant to § 61112 of the Community Services District Law the Board of Directors may establish designated reserves; and

WHEREAS, the Board of Directors pursuant to this same section find that establishing a reserve for ongoing investments are consistent with prudent financial operations; and

WHEREAS, the Board of Directors desires financial stability and accountability with transparency in their actions; and

WHEREAS, the Board of Directors recognizes in 2002 a Fund was created subject to Sections 170 (b)(1)(A), 170 (c), 2055(a) and 2522(a) of the Internal Revenue Code to accept gifts, in whatever form of money or property; and

WHEREAS, the Board of Directors recognizes the responsibilities of the San Luis Obispo County Community Foundations investment and administration of the Pass-Through Fund; and

WHEREAS, based on staff's extensive analysis and research the Board of Directors desires to take actions within their authority.

NOW THEREFORE, in consideration of the mutual covenants therein contained, the Board agrees and directs as follows:

1. Establish a Pass-Through Fund Reserve to reflect the dollars in the investment fund consistent with Standard Government Accounting Practices in the Wastewater Fund.
2. Authorize staff to take this action effective July 1, 2014.

The Board of Director hereby agrees with all the terms and conditions as outlined. This agreement was passed by Resolution No. 2014-26 adopted on the 4th day of December 2014 and incorporated therein by reference.

Upon motion of Director Dekycki, seconded by Director Wright and on the following roll call vote, to wit:

AYES: Dekycki, Wright, Yoothart, Storm, Baltimore
 NOES: _____
 ABSENT: _____
 ABSTAIN: _____

Craig W. Baltimore
 Craig W. Baltimore
 President of the Board of Directors
 Los Osos Community Services District

ATTEST:
Kathy A. Kivley
 Kathy A. Kivley
 General Manager and Secretary to the Board

APPROVED AS TO FORM:
Michael W. Seitz
 Michael W. Seitz
 District Legal Counsel

SAN LUIS OBISPO COUNTY
 COMMUNITY
FOUNDATION

Turning Passion into Action

1401 Higuera Street + Mail: P.O. Box 1580 + San Luis Obispo, CA 93406

Phone: 805.543.2323 + www.slocf.org + Fax: 805.543.2346

March 31, 2008

Mr. John Schempf
General Manager
Los Osos Community Services District
P.O. Box 6064
Los Osos, CA 93412

RECEIVED
APR 02 2008
BY: 

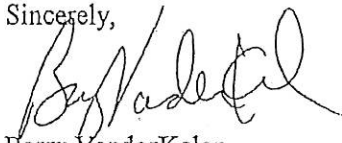
Dear John:

Enclosed is a copy of the agreement between the Los Osos Community Services District and the San Luis Obispo County Community Foundation regarding a fund to help low income residents of Los Osos afford a sewer project assessment. This fund allows individuals and organizations to make charitable donations to this project. Please be advised that the distribution of the collected money has not been defined because the sewer project itself has not been defined yet. I am happy to provide you with this copy for your files.

You will note that the original agreement, signed in 2002, in item 8, stipulates that the fund accrue no interest. However, because the sewer project had been delayed indefinitely, in 2006 the Community Foundation Board of Directors voted to invest the collected money and allocate earnings to the fund rather than have the money sit idle waiting to be spent. I hope you will agree that this was a prudent action taken for the benefit of the people of Los Osos.

Please call me with questions at 543-2323.

Sincerely,



Barry VanderKelen
Executive Director

Enclosure

San Luis Obispo County Community Foundation
Advised Pass-Through
Fund Agreement

This Advised Pass-Through Fund Agreement ("Agreement") is made and entered into by and between SAN LUIS OBISPO COUNTY COMMUNITY FOUNDATION, Inc. ("Foundation") and THE LOS OSOS COMMUNITY SERVICES DISTRICT ("LOCSD")

Recitals

- A. LOCSD, in furtherance of its purposes, deems it to be in its best interest to create a fund to aid it in carrying out its mission in Los Osos.
- B. The Foundation is a nonprofit California public benefit corporation exempt from taxation pursuant to Section 170 (b)(1)(A)(vi) of the Internal Revenue Code of 1986, or any successor statute thereto ("Internal Revenue Code"), and is an appropriate institution within which to establish charitable funds.
- C. The Foundation is willing and able to create such a fund as an Advised Pass-Through Fund subject to the terms and conditions hereof.

Now, Therefore, the parties agree as follows:

1. Name of the Fund

There is hereby established in the Foundation, as a part thereof, a fund designated as the LOCSD Community Fund ("Fund") to receive gifts, in whatever form of money or property, and to administer the same.

2. Purpose

The primary purpose of the Fund shall be provide assistance to low income families living in Los Osos who need financial assistance to pay for LOCSD services.

3. Investment of Funds

The Foundation shall have all powers necessary (or in its sole discretion desirable) to carry out the purposes of the Fund, including, but not limited to, the power to retain, invest and reinvest the Fund in any manner within the "prudent person" standard and the power to commingle the assets of the Fund with those of other funds for investment purposes.

4. Distribution

Upon recommendation of the Organization, so much of the principal, net of any fees set forth in paragraph 8, shall be granted by the Board of Directors to the agency, organization or group recommended by the LOCSD; providing however, that the recommendations are solely advisory and the recipients meet the criteria established in the Code section 170 (c) (1) or (2) B of the IRS Code.

5. Administrative Provisions

Notwithstanding anything herein to the contrary, the Foundation shall hold the Fund, and all contributions to the Fund, pursuant to the terms of the California Corporations Code, including Sections 5231 and 5240, and subject to the provisions of the Foundation's Articles of Incorporation and Bylaws. The Board shall monitor the distribution of the Fund, and shall have all powers of modification and removal specified in Section 1.170.A-9 (e)(11)(v)(B) of the United States Treasury Regulations. All money and property in the Fund shall be assets of the Foundation and not a separate trust; however, the Fund shall be accounted for separately and apart from other gifts to the Foundation. The Board agrees to provide the LOCSD with a copy of the annual examination of the finances of the Foundation as reported upon by independent certified public accountants.

6. Conditions for Acceptance of Funds

The LOCSD agrees and acknowledges that the establishment of the Fund is made in recognition of, and subject to, the terms and conditions of Incorporation and Bylaws of the Foundation as amended from time to time, and that the Fund shall at all times be subject to such terms and conditions, including, but not by way of limitation, provisions for: a) presumption of donor's intent; b) variance from donor's direction; and c) amendments

7. Obsolescence

The Fund is not a permanent fund of the Foundation. It shall exist as long as the LOCSD is capable of fulfilling its mission. If the Board determines the LOCSD can no longer fulfill its mission, any remaining funds will be dispersed to the LOCSD.

8. Costs of the Fund

It is understood and agreed that the Fund shall share its pro rata portion of any banking or investment costs of the Foundation. The principal of the fund will accrue no interest during the period and will it be assessed an administrative fee of 2%. Any costs to the Foundation in accepting, transferring or managing property donated to the Foundation for the Fund shall be paid from the Fund.

9. Charitable Deduction

It is intended by the donors and the Foundation that federal gift, income and estate tax charitable deductions shall be allowed to donors and their estates and that the Foundation shall continue to qualify as an organization described in Sections 170 (b)(1)(A), 170 (c), 2055 (a) and 2522 (a) of the Internal Revenue Code. This entire Agreement shall be construed and applied so as to comply with the requirements of federal tax law for allowance of such charitable deductions and for such qualifications.

10. Grants

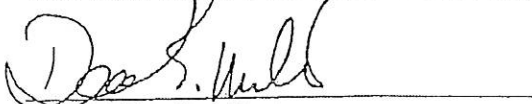
LOCSD desires to apply for grants from other entities using the Foundation's 501C3 status. Foundation reserves the right to consider each application prepared by LOCSD to determine if it will submit said application on behalf of LOCSD.

In Witness Whereof, the parties hereto have caused this Agreement to be executed on July 9, 2002

LOS OSOS COMMUNITY SERVICES DISTRICT



SAN LUIS OBISPO COUNTY COMMUNITY FOUNDATION, INC.



Dean Miller, President



David Edwards, Executive Director

Approved by Board of Directors of San Luis Obispo County Community Foundation on

July 10, 2002