




air pollution control district
SANTA BARBARA COUNTY

Agenda Item: E-6
Agenda Date: December 17, 2020
Agenda Placement: Admin
Estimated Time: N/A
Continued Item: No

Board Agenda Item

TO: Air Pollution Control District Board

FROM: Aeron Arlin Genet, Air Pollution Control Officer 

CONTACT: Molly Pearson, Planning Division Manager, (805) 961-8838

SUBJECT: Facility Use Agreement with Orcutt Union School District

RECOMMENDATIONS:

Consider recommendations as follows:

1. Authorize the Air Pollution Control Officer to execute a Facility Use Agreement between the Orcutt Union School District (OUSD) and the Santa Barbara County Air Pollution Control District (District) for the purpose of installing and operating an air monitoring station at Lakeview Junior High School; and
2. Delegate Authority to the Air Pollution Control Officer to terminate the Facility Use Agreement and execute an agreement similar to the attached agreement for an alternative location, subject to review by District Counsel, Auditor-Controller, and Risk Management, in the event that the location at Lakeview Junior High School is found to be unsuitable.

BACKGROUND:

Since 1999, the California Air Resources Board (CARB) has operated a State and Local Air Monitoring Station (SLAMS) station in Santa Maria located near the intersection of South Broadway and Morrison Avenue. In 2018, CARB notified the District that they were interested in shutting down the station. Because the Santa Maria Valley is home to a large percentage of Santa Barbara County's population, the District is interested in continuing to operate a SLAMS air monitoring station in the area. Also, Assembly Bill (AB) 1647 requires the District to operate a "refinery-related community air monitoring system" in the area of the existing asphalt refinery located off Sinton Road in the unincorporated area near Santa Maria. To date, CARB has

Aeron Arlin Genet, Air Pollution Control Officer

continued operating the existing Santa Maria monitoring station; however, they have recently conveyed that they plan to discontinue its operation as of January 1, 2021.

DISCUSSION:

In order to maximize District resources and minimize the cost of implementation for both the District and the affected industrial facility, District staff evaluated numerous potential locations for air monitoring station locations, with the intent of installing a co-located monitoring station location that fulfills both the need for a SLAMS monitoring station in the Santa Maria Valley and the need for a refinery-related community air monitoring station. Staff contacted numerous organizations including the Orcutt Union School District, Santa Maria Airport, the City of Santa Maria, Santa Barbara County Parks & Recreation, Santa Maria YMCA, Santa Maria Joint Union High School District, Your Orcutt Youth Organization, and Church of Christ in Orcutt in an attempt to find a property at which to locate the monitoring station. Ultimately the District, working with the Orcutt Union School District, was able to identify a location at the southern end of the Lakeview Junior High School property that had access to electrical power and met EPA siting requirements for SLAMS stations. In addition to meeting these siting requirements, locating this station at Lakeview Junior High will provide for learning opportunities at the school, and will raise the community's awareness of the District and its mission.

District staff worked with District Counsel, OUSD staff and their counsel to develop the Facility Use Agreement that is included as Attachment A to this letter. The agreement allows for the temporary placement of a portable monitor that the District intends to install and operate for a short duration (approximately 1 to 2 months) prior to installing a permanent monitoring station. The portable monitor will measure pollutant values at the existing location and will help the District assess whether there are any existing emission sources that would bias the air monitoring data and make the location unsuitable for a permanent station. Staff recommends that your Board authorize the Air Pollution Control Officer to execute the attached Facility Use Agreement.

In the event that the proposed location for a monitoring station (identified on the Site Map included with the Facility Use Agreement) is deemed unsuitable for a permanent monitoring station, staff recommends that that your Board delegate authority to the Air Pollution Control Officer to terminate the Facility Use Agreement and execute an agreement similar to the attached agreement for an alternative location, subject to review by District Counsel, Auditor-Controller, and Risk Management. This is recommended so that the District can expedite the installation and operation of an air monitoring station in the Santa Maria Valley, and avoid any data gaps that might be caused by the closure of the existing monitoring station operated by CARB.

In summary, the District has local, skilled, technicians to install and operate a monitoring station at this key location within the County. The attached Facility Use Agreement will allow the District to continue this important service to the community and will also help fulfill the requirements of AB 1647. Installing an air monitoring station at a local junior high school is an exceptional opportunity to promote air quality education and awareness to local students and their families.

FISCAL IMPACT:

Rent associated with the Lakeview Junior High School site is \$300 per month. This expense was included in the District's Board-adopted budget for Fiscal Year 2020-21.

ATTACHMENT:

- A. Facility Use Agreement

ATTACHMENT A

Facility Use Agreement

December 17, 2020

Santa Barbara County Air Pollution Control District
Board of Directors

260 San Antonio Road, Suite A
Santa Barbara, California 93110

Facility Use Agreement
between
Orcutt Union School District
and
Santa Barbara County Air Pollution Control District

This AGREEMENT, made and entered into this ____ day of _____, 2020, is by and between Orcutt Union School District (OUSD), and Santa Barbara County Air Pollution Control District (APCD).

The parties hereto mutually agree as follows:

WITNESSETH:

1. OUSD hereby leases to APCD, and APCD hereby leases from OUSD, a portion of the real property located at Lakeview Junior High School, 3700 Orcutt Road, Santa Maria, CA 93455, APN: 107-040-002. Said property is owned by OUSD. The portion of the Lakeview Junior High School site covered by the agreement (hereinafter the "premises"), as depicted in the attached site map, on the southern portion of the Lakeview Junior High School property, will be used by APCD for the purpose of installing and maintaining a secure, gated air monitoring station. All improvements made by APCD shall be done at its sole cost and shall be built in a good and workmanlike manner in accordance with all applicable laws and regulations. APCD's rights with respect to the premises include access to the premises by means of a school office check-in if during school hours Monday-Friday or by arranged appointment with the OUSD Maintenance, Operations, and Transportation Department for afterhours and Saturday and Sunday per the provisions of paragraph 16.
2. The term of this agreement shall commence on January 1, 2021 and shall end on December 31, 2023, or earlier with a thirty (30) day written right of termination from either party. Upon termination, APCD shall be responsible for removing all improvements installed pursuant to this agreement and return the premises to their original condition, ordinary wear and tear excepted.
3. In the event the APCD remains in possession of the premises after the expiration of the term of the agreement, or any extension thereof, this agreement shall be automatically extended on a month-to-month basis, subject to thirty (30) days written termination by either party, and otherwise on the terms and conditions herein specified, so far as applicable.
4. If the APCD fails to complete its move out within the notice period and remains on the premises, rent shall continue to be paid for each month or portion thereof until APCD has evacuated the property. Should APCD continue to fail to complete its move out following written demand by OUSD with thirty (30) days notice, OUSD shall have the right to remove APCD's property and return the premises to their original condition, normal wear and tear excepted.
5. Rental payments will be paid by the APCD, from legally available funds and subject to the California Constitution, in arrears on the last day of each month during said term as follows:

THREE HUNDRED and 00/100 DOLLARS (\$300.00)

From January 1, 2021 through December 31, 2023, at which time either party can renegotiate the terms.

6. All notices herein provided to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States Postal Service, mailed certified and postage prepaid, and addressed as follows:

To: Orcutt Union School District
Attn: Assistant Superintendent of Business
500 Dyer Street
Orcutt, CA 93455
Email: business@orcutt-schools.net

Santa Barbara County Air Pollution Control District
Attn: Molly Pearson
260 N. San Antonio Road Suite A
Santa Barbara, CA 93110
Email: pearsonm@sbcapcd.org

Nothing herein contained shall preclude the giving of any such written notice by personal service. Notification may also be given, by either party to the other, by e-mail.

7. During the term of the agreement, OUSD shall maintain the leased premises together with appurtenances, rights, privileges, and easements belonging or appertaining thereto, in good repair and tenantable condition, except in case of damage arising from the negligence of APCD's agents, invitees or employees. APCD shall be responsible for maintaining all of APCD property at its sole cost.
8. OUSD reserves the right to enter and inspect the leased premises, at reasonable times, and to make any necessary repairs to the premises; however, OUSD may not disturb the air monitoring station.
9. OUSD agrees that APCD, keeping and performing the covenants and agreements herein contained on the part of APCD to be kept and performed, shall at all times during the existence of this agreement, peaceably and quietly, have hold and enjoy the leased premises, without suit, trouble or hindrance from OUSD, or any person claiming authority under OUSD.
10. In the event the leased premises or any essential part thereof shall be destroyed by fire or other casualty, this agreement, shall, in the case of total destruction of the leased premises, immediately terminate. In case of partial destruction or damage APCD may elect to terminate by giving written notice setting forth the date of termination to OUSD within fifteen (15) days after such fire or casualty, and no rent shall accrue or be payable to OUSD after such termination. In the event of any such destruction where APCD remains in possession of said premises, whether for the remainder of the term or temporarily pending termination, the rental fee as herein described and provided shall remain in effect. OUSD shall not be responsible for damage to property of APCD unless caused by the sole fault or negligence of OUSD.
11. To the extent authorized by any fire and extended coverage insurance issued to OUSD on the herein demised premises, OUSD releases APCD from liability for loss or damage covered by said insurance and waives subrogation rights of the insurer unless the loss or damage is caused, in whole or part, by the fault or negligence of APCD.
12. During the performance of this agreement, neither party shall deny benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age, or sex. Both parties shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
13. OUSD hereby warrants to the best of its knowledge that the space leased to APCD will be operated and maintained free of hazard from Asbestos Containing Construction Materials.
14. Except in emergency situations, OUSD shall give not less than 24 hours' prior notice to APCD tenants when any pest control, remodeling, renovation, or repair work under its control affecting the APCD occupied space that may result in employee health concerns in the work environment. OUSD shall not be responsible for pest control or other disruptions outside its control (including neighboring property owners or members of the public).
15. APCD shall maintain and shall cause each subcontractor to maintain General Liability and Property Damage Insurance to protect them and OUSD from all claims for personal injury, including accidental

death, as well as from all claims for property damage arising from the operations under this Agreement. The minimum amounts of such insurance shall be as hereinafter set forth.

Amounts of Insurance:

Commercial General Liability \$1,000,000 per occurrence

Professional Liability \$1,000,000 per occurrence

Auto Liability for owned and non-owned vehicles \$1,000,000 per occurrence

APCD shall provide Certificates of Insurance indicating a thirty-day (30) cancellation notice and naming OUSD as an additional insured within 30 days of installation of the air quality monitoring station.

16. APCD shall access the premises by school office check-in if during school hours Monday-Friday or by arranged appointment with at least 24 hours notice the OUSD Maintenance, Operations, and Transportation Department for afterhours and Saturday, Sunday, and holidays. Emergency access will require immediate notice the Assistant Superintendent – Business Services. If the premises is not located at a school, APCD shall coordinate with the OUSD Maintenance, Operations, and Transportation Department to gain access to the premises.
17. OUSD grants APCD access to the Lakeview School property initially for the purpose of installing a temporary portable monitor that will be used to collect air quality data and to evaluate the suitability of location for placement of a permanent air monitoring station. If the Lakeview School property is appropriate for installation of a permanent monitoring station, the terms of this agreement shall continue to control. If the Lakeview School property proves to not be appropriate for a permanent monitoring station, OUSD grants APCD access to other OUSD properties including but not limited to Alice Shaw Elementary School at 759 Dahlia Place, Joe Nightingale Elementary School at 255 Winter Road, and Orcutt Junior High School at 608 Pinal Avenue for the purpose of installing a temporary portable monitor to evaluate the suitability of other locations for placement of a permanent air monitoring station. The location of the temporary portable monitor shall be proposed by APCD and is subject to approval by OUSD, and access shall be provided per the provisions of paragraph 16. If another location proves suitable for the installation of a permanent monitoring station, an agreement for the new location shall be negotiated and executed by the parties.
18. APCD and OUSD agree to save, indemnify, defend and hold harmless each other, including the directors, officers, employees or agents of APCD and OUSD from any and all liability, claims, suits, actions, arbitration proceedings, administrative proceedings, and regulatory proceedings, losses, expenses, or any injury or damage of any kind whatsoever, whether actual, alleged or threatened, attorney fees, court costs, and any other costs of any nature without restriction incurred in relation to, as a consequence of, or arising out of, the performance of this agreement, and attributable to the fault or negligence of the other.
19. This agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its choice of law rules. Any action or proceeding seeking any relief under or with respect to this agreement shall be brought solely in the Superior Court of the State of California for the County of Santa Barbara, subject to transfer of venue under applicable State law, provided that nothing in this agreement shall constitute a waiver of immunity to sue by either party.
20. Each and every provision of law and clause required by law to be inserted into this agreement shall be deemed to be inserted herein and this agreement shall be read and enforced as though it were included therein.
21. Notwithstanding anything stated herein to the contrary, OUSD shall not be liable for any special, consequential, indirect, or incidental damages, including but not limited to lost profits in connection with this agreement.
22. This agreement may be executed in any number of identical counterparts, and each such counterpart shall be deemed a duplicate original thereof.

IN WITNESS WHEREOF, the parties have executed this agreement hereto as of the date first above written.

Orcutt Union School District

Santa Barbara County Air Pollution Control District

By  _____,
Nicholas Taylor, Asst. Superintendent of Business Services

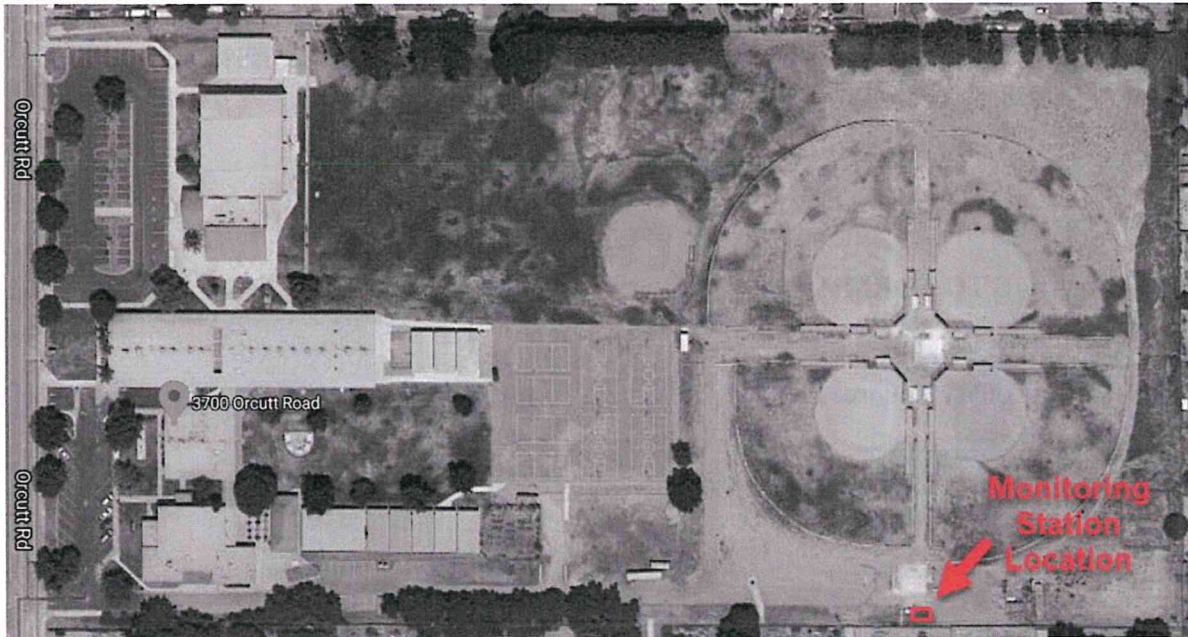
By _____,
Aeron Arlin Genet, Air Pollution Control Officer

Date: 12/10/20

Date: _____

Site Map

Facility Use Agreement – OUSD and APCD
Lakeview Junior High School – 3700 Orcutt Road, Santa Maria




Facility Use Agreement for real property located at Lakeview Junior High School
Effective Date: January 1, 2021

This Facility Use Agreement is by and between the Orcutt Union School District and the Santa Barbara County Air Pollution Control District.

APPROVED AS TO FORM:

MICHAEL C. GHIZZONI
Santa Barbara County Counsel

By 
Jennifer Richardson (Dec 3, 2020 07:53 PST)
District Counsel


APPROVED AS TO FORM:

RAY AROMATORIO
Risk Manager

By 
Risk Manager

APPROVED AS TO FORM:

BETSY M. SCHAFER, CPA
Auditor-Controller

By 
Deputy