

# PORT SAN LUIS HARBOR DISTRICT POLICY HANDBOOK

**POLICY TITLE:** Contracts Management (Lease, License, Operating Agreement)  
**POLICY NUMBER:** 3037  
**Originally Adopted:** April 22, 2008  
**Revised:** November 17, 2009; September 28, 2010, August 28, 2012, November 28, 2017; April 25, 2017

## 3037.10 DEFINITION OF TERMS:

- i) **Lessee, Licensee, Operator** - A business enterprise granted the right by the District to operate for a specific period in a specific District location in return for payment of rents.
- ii) **Contract** - A written document that specifies the terms and conditions for the use of District property, and could include concession, lease, license, operating agreement and temporary use permit.
- iii) **Lease**- Written contract by which the Port San Luis Harbor District (the District) grants another party the right to its exclusive possession and use of a specific District asset for a specific period and under specified conditions, in return for specified periodic rental or lease payments. A long-term written lease can create a leasehold interest which in itself can be assigned or mortgaged.
- iv) **License to Use District Property**- Revocable, written grant of permission by the District (for a specific period and under specified conditions) to allow another party (the licensee) to operate a business or facility under a specific set of terms and conditions. A license is not a lease, and is not assignable by the licensee. The term ‘license’ may also include a permit. The license holder does not have an exclusive right to occupy a specific location.
- v) **Operating Agreement**- A limited term, revocable written agreement by an authority or proprietor to allow a second party to operate a business or facility under a specific set of terms. An Operating Agreement is not a right, as the operator may not have the legal power to give all necessary permissions that constitute a legal right. It is also not a lease, and is not assignable by the operator.
- vi) **Selection Team**-
  - (1) Lease Agreements: Three to six persons may be assembled to review responses to Requests for Proposals and recommend an action to the Property Committee and Harbor Commission. The Selection Team may be comprised of the District Treasurer, the Harbor Manager, and Business Manager, and one to three persons selected for their independence, knowledge and expertise in the area of the matter in question. The Selection Team members shall be determined in consultation with the Harbor Manager. No individual with family or business relationships with any respondents to the RFP, or who participated in the development of the Proposal, or who may participate in the operation of any contract awarded as a result of this process, may serve on the Selection Team.
  - (2) License Agreements: Three to six persons may act as the Selection Team to review responses to a Request for Proposal and recommend an action to the

Property Committee and Harbor Commission. The Selection Team may be comprised of the Harbor Manager, Business Manager, Facilities Manager, and one to three persons selected for their independence, knowledge and expertise in the area of the matter in question. No individual with family or business relationships with any respondents to the RFP, or who participated in the development of the Proposal, or who may participate in the operation of any license awarded as a result of this process, may serve on the Selection Team.

### **3037.20 HARBOR DISTRICT’S VISION OF LEASE, LICENSE, AND OPERATING AGREEMENTS**

The Port San Luis Harbor District values the following components in its lease, license, and operating agreements, and will strive to implement policies, procedures, concession contracts, lease agreements, license agreements and operating agreements that meet or exceed these goals:

- i) Contracts that support coastal dependant and coastal related activities at Port San Luis Harbor District, within the terms of the Harbor District Master Plan.
- ii) A fair, open and public process for consideration of all contracts, that is appropriate in scale to the type and duration of the agreement.
- iii) Contracts that encourage long term relationships with lessees or licensees, and that maximize the public use of the District.
- iv) Maximum public enjoyment and service from the limited number of available lease and license locations available on District lands.
- v) Contracts that properly balance: a) the need of the public for quality goods and services; b) the need of lease and licensees to make a reasonable return on their investments; c) the long-term fiscal sustainability of the Harbor District.
- vi) Contracts that respect and protect the historical, environmental and cultural resources entrusted to the Harbor District by the people of California.

### **3037.30 GENERAL POLICY**

- i) The Harbor Commission will be involved in the development and review of any RFP content, and the final review and award of any contract.
- ii) The Harbor District will manage the District’s property agreements to provide and support harbor facilities, enhance fiscal sustainability and encourage maximum public use and enjoyment.
- iii) The Harbor District will actively attempt to enhance coastal dependent or coastal related recreational and commercial uses in compliance with the District’s goals of maintaining a commercial fishing harbor and working waterfront.
- iv) Dependant on the location within the District properties, jurisdictional authority for land use regulation rests either with the California Coastal Commission, the County of San Luis Obispo, or both.

### **3037.40 GOVERNING DOCUMENTS, LEGISLATION**

- i) Any proposed use of District property shall comply with all relevant federal, state and local legislation, including but not limited to the Harbors and Navigation Code, California Coastal Act, California Environmental Quality Act, the San Luis Bay Area Plan (Coastal), the Harbor District’s adopted Master Plan and District ordinances and policies. Additionally, any proposed use shall comply with the terms and conditions of any grants of land or facilities from federal or state agencies, including but not

limited to U.S. Department of the Interior, the California State Lands Commission, and the California Department of Boating and Waterways.

- ii) **Master License Agreement/ Lease Agreement Format:** The Harbor District will use a Master License Agreement and Master Lease Agreement. District staff in consultation with the District’s legal counsel will forward to the Harbor Commission for adoption any substantive or material changes to the Master License Agreement and Master Lease Agreement as may be necessary for quality improvement. The District may use a license or operating agreement for temporary, interim or non-exclusive use of property when appropriate.

### **3037.50 CONTRACT ADMINISTRATION**

- i) **Lease Agreement/Lease Renewal:** It is the intent of the Harbor District to encourage a public process for all lease transactions. The Harbor Commission recognizes there may be limited times when an agreement directly negotiated with one party will benefit the public, prospective tenant and the Harbor District.
- ii) **Interim Lease or Interim License:** The operation of District properties for which contracts are not renewed may be subject to the public Request for Proposal process or kept in short-term interim lease or license arrangements until a public process can be undertaken.
- iii) **License:** All requests for new licenses and renewals to existing licenses shall be reviewed annually by the Harbor Commission in the year prior to operation. The Harbor Commission will annually evaluate the impact of all concessions on the public and on public facilities at the harbor, and determine the appropriate mix of licensees for the following year.

#### **iv) Negotiated Agreement Without Issuing a Request for Proposals:**

(1) Negotiated Lease Agreements without issuing a Request for Proposals: Negotiating lease agreements without issuing a Request for Proposals may be considered by the District in the following instances and subject to the following conditions:

- (a) Under unusual circumstances as determined by the Harbor Commission (see Harbors and Navigation Code Section 72 for legal requirements). Otherwise the following conditions must be met.
  1. Must be a renewal of an existing contract with the existing party to the contract.
  2. Must be of short duration, i.e., five years or less.
  3. Should provide for the same or higher rent return to the District for the current use.
  4. Renegotiation of current leases where the tenant is seeking a rent reduction may trigger a public bid process.
  5. Must be for existing uses.
  6. Any proposed change in use for a lease facility may trigger a public bid process.
  7. Only one such negotiation per lessee or that modifies or amends a specific, existing contract shall be allowed.

- (b) If a renewal meets all of the above requirements the District will use the following factors in determining if it should enter contract renewal negotiations:
    - 1. The applicant must have a good history of performance and contract compliance and the improvements on the site must be well maintained. Good history of performance is determined by:
      - a. The applicant's record with respect to the prompt and accurate payment of rent and other charges due the District;
      - b. The applicant's record of compliance with existing contract conditions;
      - c. The applicant's record of compliance with all federal, state and local laws and regulations;
  - (c) Additionally, the District will review any application with the following considerations:
    - 1. The impact of the proposed extension on other plans and projects of the District;
    - 2. The total financial return to District from the contract;
    - 3. Other pertinent considerations as may be appropriate and determined by the Harbor Commission.
- (2) Negotiated License Agreements without issuing a Request for Proposal: Negotiating license agreements without issuing a Request for Proposal may be considered by the District in the following instance and subject to the following conditions:
- (a) Under unusual circumstances as determined by the Harbor Manager (see Harbors and Navigation Code Section 72 for legal requirements).
  - (b) Amendments to licenses are not permitted, unless determined in item 2a (listed above). If an amendment to a license is permitted, the following conditions apply:
    - 1. Must be a renewal of an existing contract with the existing party to the contract.
    - 2. Must be of short duration, i.e., two years or less.
    - 3. Should provide for the same or higher rent return to the District for the current use.
    - 4. Gross percentage terms are not and will not be negotiable.
    - 5. Annual license renewal fee is not and will not be negotiated or waived.
    - 6. Must be for existing uses.
    - 7. Any proposed change in use for a license is not permitted.
    - 8. Only one such negotiation per licensee or that modifies or amends a specific, existing license agreement shall be allowed.
    - 9. The licensee must have a good history of performance and contract compliance and the improvements on the site must be well maintained. Good history of performance is determined by:
      - a. The licensees' record with respect to the prompt and accurate payment of rent and other charges due the District;
      - b. The licensees' record of compliance with existing contract conditions;
      - c. The licensees' record of compliance with all federal, state and local laws and regulations;

- (c) License Renewals: Licenses to do business on district property are Month to Month licenses, with two one (1) year renewals available. Licenses will not be extended more than twice, and will not exceed three years.
    - 1. First Year: Revocable License issued
    - 2. Second Year: 1<sup>st</sup> Renewal
    - 3. Third Year: 2<sup>nd</sup> Renewal-Final
  - (d) If a renewal meets all of the above requirements the District will use the following factors in determining if it should renew a license agreement:
    - 1. The applicant must have a good history of performance and contract compliance and the improvements on the site must be well maintained. Good history of performance is determined by:
      - a. The licensees' record with respect to the prompt and accurate payment of rent and other charges due the District;
      - b. The licensees' record of compliance with existing contract conditions;
      - c. The licensees' record of compliance with all federal, state and local laws and regulations;
  - (e) Additionally, the District will review any license with the following considerations:
    - 1. The impact of the proposed extension on other plans and projects of the District;
    - 2. The total financial return to District from the license agreement;
    - 3. Other pertinent considerations as may be appropriate and determined by the Harbor Commission
- (3) Negotiated Operating Agreements without issuing a Request for Proposal: Negotiating operating agreements without issuing a Request for Proposal may be considered by the District in the following instance and subject to the following condition:
- (a) Under unusual circumstances ad determined by the Harbor Commission (see Harbors and Navigation Code Section 72 for legal requirements). ). Otherwise the following conditions must be met.
    - 1. Must be a renewal of an existing operating agreement with the existing party to the operating agreement.
    - 2. Must be of short duration, i.e., two years or less.
    - 3. Should provide for the same or higher rent return to the District for the current use.
    - 4. Renegotiation of current operating agreement where the operator is seeking a rent reduction may trigger a public bid process.
    - 5. Must be for existing uses.
    - 6. Any proposed change in use as provided in the operating agreement may trigger a public bid process.
    - 7. Only one such negotiation per operating agreement or that modifies or amends a specific, existing contract shall be allowed.
  - (b) If a renewal meets all of the above requirements the District will use the following factors in determining if it should enter contract renewal negotiations:

1. The applicant must have a good history of performance and contract compliance and the improvements on the site must be well maintained. Good history of performance is determined by:
  2. The applicant's record with respect to the prompt and accurate payment of rent and other charges due the District;
  3. The applicant's record of compliance with existing contract conditions;
  4. The applicant's record of compliance with all federal, state and local laws and regulations;
- (c) Additionally, the District will review any application with the following considerations:
1. The impact of the proposed extension on other plans and projects of the District;
    1. The total financial return to District from the contract;
    2. Other pertinent considerations as may be appropriate and determined by the Harbor Commission.

- v) **Common Area Maintenance:** Common areas of District properties, such as parking lots and piers, are intended for the use and enjoyment of all, including guests and customers of the various business enterprises operating under a contract with the District.

**PROCEDURE TITLE: Contracts Management (Lease, License, Operating Agreement)**

**PROCEDURE NUMBER: 3037A**

**3037A.10 CONTRACT DEVELOPMENT (LEASE, LICENSE, OPERATING AGREEMENT)**

- i) Request for Proposal (RFP):** A process whereby the District encourages open and public participation in the development and operation of District properties. The Harbor District may develop a master RFP format based on modern practices and similar formats used by other public agencies. District staff, in consultation with the District’s legal counsel, will forward to the Harbor Commission for approval any substantive or material amendments or changes to the RFP format as may be necessary for quality improvement.
  
- ii) Process Chart:** In general, the process will follow the Process Chart as shown in §3037A.40, below, and as may be amended by District staff and adopted by the Harbor Commission.
  
- iii) Harbor Commission:** In an open and public process, the Harbor Commission will, with staff and public input, determine:
  - (a) the need for the issuance of a Request for Proposals
  - (b) the desired outcomes of the process
  - (c) the content and parameters of the RFP
  - (d) the timeline associated with the process.
  
- iv) RFP Packet Preparation:** District staff will prepare the following elements of the RFP Packet:
  - (1) Proposer Instruction Sheet, which details the following:
    - (a) The date, time and place for receipt of proposals. After the publicized time for submittal of proposals, no additional proposals, exhibits, attachments or addenda will be considered by the District. Any materials received after the stated time will be returned to the proposer unopened.
    - (b) The date, time and place for any pre-proposal meeting for any interested parties to allow for the discussion of the RFP, and answer any questions that may arise.
    - (c) A detailed description of the District asset under consideration and/or a detailed description of the minimum service to be provided
    - (d) Minimum and maximum term of the contract
    - (e) Minimum rent required
    - (f) A detailed list of required elements of any response, including but not limited to financial references, bonds required, history and experience of the proposer
    - (g) A detailed description of the basis on which any award will be made; this may include a ‘scoring matrix’, the composition of the Selection Team, and other financial and operational determinants. This shall include a list of those elements of the response that are required and constitute a ‘pass/fail’ review of the proposal, and those that are scored.

- (h) A statement of a limitation on the period for appeal by unsuccessful proposers of any proposed award by the Harbor Commission. Any such appeal shall be made in writing, and received by the District within the time specified.
  - (i) A statement of the District's right to reject any or all proposals, to waive any irregularities, to further negotiate a proposal, or not to award any contract
- v) **Property Committee Review:** The Property Committee will meet to review the RFP prior to publication. District staff will amend the RFP packet as directed by the Property Committee.
- vi) **Harbor Commission Review:** The Harbor Commission will meet subsequent to the Property Committee, to review the RFP prior to publication. District staff will amend the RFP packet as directed by the Harbor Commission.
- vii) **Receipt of Proposals:** At the publicized time for receipt of proposals, all proposals received shall, in public, be recorded and a list generated of all respondents.
- viii) **Contract Award:**
  - (a) **Phase I** - District staff will review all proposals received for inclusion of the required elements, without which proposals will be deemed non-responsive.
    - 1. Responses deemed in compliance with all the required provisions of the RFP will be moved forward to 'Phase II'.
    - 2. Non-compliant proposals will be: so noted in the log and returned to the proposer with a cover letter detailing reasons for rejection and describing the appeal process.
  - (b) **Phase II** – District Treasurer and staff will review the financial data provided in the proposal received. This review of the financial qualifications, stability and credit worthiness of the respondents will be provided to the Selection Team.
  - (c) **Phase III** – The Selection Team will review the content of the proposals. This review will be based on the scoring system as outlined in the RFP. Based on the results of Phases I, II and III, the Selection Team will forward first to the Property Committee (for review) and then to the Harbor Commission a synopsis of all responsive proposals received, and will make a recommendation to the Harbor Commission of whether and to whom a contract should be awarded.
  - (d) **Phase IV** – At a subsequent public meeting of the Harbor Commission, the Selection Team shall report their findings and recommendation to the Harbor Commission. The Commission may elect to:
    - 1. Award the contract based on the recommendation of the Selection Team and direct staff to draft a contract for Commission approval and authorization to execute.
    - 2. Award the contract to another, equally qualified respondent to the RFP and direct staff to draft a contract for Commission approval and authorization to execute.



3. Reject all proposals received and issue an additional Request for Proposals
4. Terminate the process.

**ix) Appeal:** The Harbor Manager serves as the initial level of appeal.

- (a) If issues remain unresolved after review by the Harbor Manager, the appellant may submit a written document to the Harbor Manager outlining the outstanding issues, with a request for a review by the Property Committee.
- (b) Upon receipt of the written report, the Harbor Manager shall cause the item to be placed on the next available Property Committee agenda, and the appellant or his/her representative may provide a brief verbal summary of their perspectives to the Committee during a public meeting.
- (c) The Property Committee shall provide direction to staff, based on the input received from staff and the appellant.
- (d) If desired, the appellant may appeal the action of the Property Committee to the Harbor Commission, whose decision shall be final.

### **3037A.20 LEASE ADMINISTRATION**

- i) Rent:** A minimum rent will be established by District staff and the District Treasurer. This may be a fixed amount, a percentage of sales, or a combination of both.
- ii) Percentage of Gross Sales Audits:** Where tenants are subject to percentage of gross sales rent, the District reserves the right, at its own expense, to conduct an annual audit. District staff will require tenants to comply with or cure any deficiencies noted in the accounting records examinations.
- iii) Lease Assignment/Sale:** Leases may be sub-leased or assigned according to the terms and conditions of the agreement in question.
  - (a) Any sale or assignment of a lease agreement requires approval by the Harbor Commission after review by the District's treasurer, legal counsel and Property Committee.
  - (b) Any lessee requesting such approval will be required to pay administrative fees provided in the contract, to submit financial documentation to establish the proposed sub-lessor or assignee qualifications (both corporate and personal) to the satisfaction of the Treasurer, and to be in full compliance with the terms and conditions of the contract prior to being considered by the Property Committee.
  - (c) Fees collected are intended to effect full cost recovery for the significant staff time involved in lease assignments, and will be detailed in any contract.
  - (d) In keeping with the District's desire to have a public process for any changes in use, the Harbor District will not consider lease assignments that involve any change in use.
  - (e) District staff may warn any potential buyer that they are only purchasing the rights that are contained in the current contract. Potential buyers may request a copy of this policy or the current lease agreement.
  - (f) In some cases parties who are considering buying a leasehold interest desire to renegotiate the lease (to extend the term, change rent or uses) prior to completing the sale/assignment of the lease. District staff will not negotiate with prospective buyers due to the potential impact on the "sale" price of a

lease and the appearance of an unfair process that lacks the public process that the District desires.

- (g) Prospective buyers of leasehold interest are cautioned that they are buying the business opportunity subject to existing concession contract/lease agreement only.

**iv) Lease Amendments:** Lease Amendments may occur according to the terms and conditions of the agreement in question.

- (1) Any amendment of a lease agreement requires approval by the Harbor Commission after review by the District's Harbor Manager, Business Manager, and if needed, the District treasurer and legal counsel. An amendment request will be reviewed first by the Property Committee prior to Harbor Commission review.
- (2) Any lessee requesting an amendment will be required to pay administrative fees provided in the lease agreement, no less than \$1,000, and prior to being considered by the Property Committee.
- (3) Fees collected are intended to effect full cost recovery for the significant staff time involved in lease amendments, and may be detailed in any lease agreement.
- (4) In keeping with the District's desire to have a public process for any changes in use, the Harbor District will not consider lease amendments that involve any change in use.

**v) Tenant Improvements:** As detailed more fully in any Lease Agreement, all modifications, alterations and improvements made or added to the premises by lessee (other than lessee inventory, equipment, movable furniture, wall decorations and trade fixtures) shall be deemed fixtures of the real property and a part of the Leased Premises, shall remain the property of Lessee during the Lease, and shall remain with the property on expiration of the Lease, unless the District, in its sole discretion, requires them to be removed.

**vi) Maintenance of Improvements:** The District has a paramount interest in ensuring that the improvements on the lease site are being properly maintained and are in a safe and secure condition. The District may have the lease sites inspected and a report made on such inspections every five years. District staff may require significant deficiencies noted in the lease site inspection reports to be repaired or cured by the tenants.

### **3037A.30 LICENSE ADMINISTRATION**

**i) License Fee:** New licenses will be subject to a New Coastal Dependent License Fee or New Other Than Coastal Dependent License Fee (not including application fee). Licenses approved for renewal will be subject to the Annual Application Fee-Coastal Dependent or an Annual Application Fee-Other Than Coastal Dependent. The fees are approved by the Harbor Commission and are located in the Code of Ordinances, Chapter 4-Fees, Tariffs, and Charges.

**ii) Percentage of Gross Sales Audits:** Where licensees are subject to percentage of gross sales, the District reserves the right, at its own expense, to conduct an annual

audit. District staff will require licensees to comply with or cure any deficiencies noted in the accounting records examinations.

### 3037A.40 Contracts Management – Process Chart

|     | Who                              | What   | How            |
|-----|----------------------------------|--|----------------|
| 1.  | BOC, public, stakeholders, staff | Generate a list of outcomes, hopes, needs, content and desires for the operation. Develop timeline for RFP process, from conception to contract execution. | Public Meeting |
| 2.  | Legal Team                       | Approve RFP & Lease/License/Operating Agreement Templates.   | Office         |
| 3.  | Staff                            | Incorporate step #2 information into RFP documents (goals, outcomes, conditions, terms, performance goals, etc.).  | Office         |
| 4.  | Property Committee               | Review RFP documents to verify step #2 information was accurately incorporated into step #3 activities.  | Public Meeting |
| 5.  | Staff                            | Finalize RFP   | Office         |
| 6.  | BOC                              | Approve RFP, authorize publication.  | Public Meeting |
| 7.  | Staff                            | Generate a list of qualities or skills for potential Selection Team members.   | Office         |
| 8.  | Harbor Manager                   | Approves Selection Team members  |                |
| 9.  | Staff                            | Publish RFP.   | Public Notice  |
| 10. | Staff                            | Site meeting, as necessary.  | Public Meeting |
| 11. | Proposer                         | Submit RFP and Lease/License/Operating Agreement Questions.  | Public Process |
| 12. | Staff                            | Answer proposer questions and issue Errata Sheet.  | Public Process |
| 13. | Proposer                         | Submit proposal by deadline.   | Deliver/Mail   |
| 14. | Staff                            | Review Phase I & II Scoring  | Office         |
| 15. | Selection Team                   | Review & approve Phase I & II Scoring.<br>Score Phase III.<br>Make recommendation to Property Committee, then to BOC.                                      | Office         |
| 16. | Staff                            | Prepare staff report for Board of Commissioners; including list of all proposers and scoring results.  | Office         |
| 17. | BOC                              | Accept or reject Selection Team recommendation.  | Public Meeting |
| 18. | Staff, Legal Team                | Finalize Lease/License/Operating Agreement.  | Office         |
| 19. | BOC                              | Approve final contract.  | Public Meeting |
| 20. | Staff                            | Implement as directed by the BOC, policies, and process.   | Office         |