

Olivehurst Public Utility District



Agenda Item Staff Report

Meeting Date: September 16, 2021

Item description/summary:

Dissolve frontage cost share agreement for OPUD Community Park site. This item was discussed in committee. This has been submitted by the County and is basic 'housekeeping.' The agreement addresses cost share for frontage improvements relating to access to the development area. At the time of the agreement there was an RD 784 drainage canal between River Oaks and the area which would require culverts and bridges to gain access. That canal has since been filled in rendering the agreement obsolete. Attached for reference is the original agreement and the termination agreement. Note that OPUD was not a party to the original agreement but as a successor parcel owner is a signatory on the termination agreement.

Fiscal Analysis:

None

Employee Feedback

None

Sample Motion:

Move to approve the termination agreement to the "cost share and access agreement" dated October 18, 2011 (attached).

Prepared by:

John Tillotson, P.E., General Manager

1/11 Project No. 8079 4211005258
Plumas Lake Parkland Acquisition
A.P. No. 016-350-003
Portion of Remainder Parcel
Parcel Map No. PM 2004-09

TERRY A. HANSEN
YUBA COUNTY RECORDER
MARYSVILLE, CA
RECORDED ON
12/09/2011 10:36AM
REC FEE: 0.00
PAGE 1 OF 11
DEPUTY INITIALS: SB

666103
Recorded at the Request of and:
When Recorded Return To:
NO RECORDING FEE *ENSTC*
CDSA Director
Yuba County
915 8th Street, Suite 125
Marysville, CA 95901

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AGREEMENT

COST SHARE and ACCESS AGREEMENT

Between the COUNTY OF YUBA and Barbara E. Leak, as Trustee
of the Edwin F. Leak Marital Q Tip Trust, dated January 4, 1998,
and Alan J. Leak and Cindy Leak, Husband and Wife as Joint Tenants

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COST SHARE and ACCESS AGREEMENT

THIS AGREEMENT is made this 18th day of OCTOBER, 2011, by and between the COUNTY OF YUBA ("COUNTY") and the current owners of the subject property, Barbara E. Leak, as Trustee of the Edwin F. Leak Marital Q Tip Trust, dated January 4, 1998, and Alan J. Leak and Cindy Leak, Husband and Wife as Joint Tenants (collectively "Owner"). Owner and County are collectively referred to as "Parties".

RECITALS:

WHEREAS, Owner is the owner of approximately 270 acres of real property located within the Plumas Lake Specific Plan (APN 016-350-003), which is more specifically described in the legal description set forth on **Exhibit "A,"** attached hereto and incorporated herein by this reference (the "Parent Parcel"); and

WHEREAS, pursuant to a separate Purchase and Sale Agreement, County is purchasing a 100-acre portion of the Property (the "Property") for a future 25-acre community park site, a 25-acre intermediate school site, and a 50-acre high school site as described in the legal description set forth on the attached **Exhibit "B";** and

WHEREAS, pursuant to the conditions of approval of Tentative Subdivision Tract Map No. 2002-0598 and standards established by the Plumas Lake Specific Plan, the Parent Parcel is to be accessed from River Oaks Boulevard, and development of the Parent Parcel will require the construction of three bridge/culvert crossings over Reclamation District 784's Lateral 16 with at least one crossing needing to be constructed prior to any development for initial access and a second crossing needed prior to traffic volumes equivalent to the occupancy of one hundred homes; and

WHEREAS, Owner of the Parent Parcel is to deed to the County an 18.154 acre portion of the Parent Parcel, which is more particularly described in the Grant of Easement and Agreement dated September 17, 2007, that runs parallel to River Oaks Blvd on the west side and is adjacent to the 19.5' wide landscape, sidewalk and utility strip of land, for the purpose of Reclamation District 784's Lateral 16 and required environmental setbacks; and

WHEREAS, development of the Parent Parcel requires the construction of certain frontage improvements along River Oaks Boulevard as well as improvements to the 18.154 acre parcel including but not limited to the three bridge/culvert crossings to meet County of Yuba standards and conditions of approval of Tentative Subdivision Tract Map No. 2002-0598; and

WHEREAS, all parties agree that the improvements to the 18.154 acre parcel, including the three bridge/culvert crossings, and the frontage improvements along River Oaks Boulevard, together referred to herein as the "Improvements" are needed and benefit the Parent Parcel equally; and

WHEREAS, the Parties desire to enter into this Agreement to set forth fair and equitable cost sharing responsibilities, terms, and conditions for the construction of the Improvements; and

WHEREAS, the Parties desire to enter into this Agreement to set forth the ability for one Party to cross another Party's property for the purposes associated with development of the Parent Parcel.

NOW, THEREFORE, for the purposes set forth herein, the Parties hereby agree as follows:

1. **Incorporation of Recitals.** The Parties hereby affirm the facts set forth in the Recitals above and agree to the incorporation of the Recitals as though fully set forth herein.

2. **Improvements and Access to be Shared.** Parties agree that the Improvements are necessary for the proper development of the Parent Parcel and shall be borne equally per acre. The Improvements are more specifically identified in Exhibit "C", but generally consist of three access roads to the Parent Parcel as well as sidewalk and landscaping along the frontage of River Oaks Blvd. Parties further agree that construction of the three access roads is dependent on how development within the Parent Parcel occurs and that one Party shall grant free of charge to another Party an easement in order to construct a street in conformance with the approved Tentative Subdivision Tract Map No. 2002-0598 and standards established by the Plumas Lake Specific Plan should the need arise in order to satisfy the Party's need for access to River Oaks Blvd. In addition, Parties agree to grant, free of charge, temporary construction easements to one another, to the extent they do not conflict with development on a Party's portion of the Parent Parcel, for the purpose of development within the Parent Parcel.

3. **Calculation of Fair Share.** Parties agree that each Party's respective fair share cost of the Improvements shall be calculated based on each Party's acreage owned. For example, if the total cost of the improvements is \$2 million and the Parent Parcel consists of 252 acres after dedication of the 18.154 acres, then the fair share cost to develop is \$2 million / 252 acres or \$7,936.51 per acre. If the COUNTY owns 100 acres, then the COUNTY's fair share cost is \$793,651.

4. **County Obligations.** COUNTY agrees to update the Plumas Lake Specific Plan / North Arboga Study Area Traffic Impact Fee Nexus Study. The cost of the Improvements will be estimated and included in the updated Nexus Study as a supplemental impact fee to be charged per acre within the approximately 252 acres contained on the Parent Parcel once the 18.154 acre parcel is separated. The COUNTY will collect the supplemental impact fee prior to development on any portion of the Parent Parcel. Under no circumstances is any of the cost of the Improvements to be borne by the COUNTY's General Fund.

5. **Collection of Fair Share.** Prior to development of any portion of the Parent Parcel, COUNTY agrees to require the payment of the supplemental impact fee identified in clause 4. The supplemental impact fee shall be payable to COUNTY upon approval of a County or State permit allowing development on any portion of the Parent Parcel and the amount collected will be based on the acreage of the area to be developed. In the event one of the Parties to this agreement constructs a portion of the Improvements prior to the requirement to pay the supplemental impact fee, then the full cost of the eligible Improvements shall be credited prior to collection of any remaining amount owed. In the event that a Party constructs improvements that exceed the value of the supplemental impact fees to be collected, then the

Party shall be reimbursed from the funds in the account associated with the supplemental impact fee as they become available.

6. **Payment of Extra Costs or Reimbursement to Parties (if any).** When construction of all of the Improvements identified in Exhibit C are complete and the final cost is determined, Parties agree to either: (i) make up any deficit on the same per acre basis identified above of the total cost of the Improvements from the total amount collected as supplemental impact fees; or (ii) receive a reimbursement on the same per acre basis identified above of any supplemental impact fees collected by the County beyond the total amount needed to construct the Improvements. In either event, payments shall be issued within 90 days of the County filing the Notice of Completion for construction of the Improvements.

7. **Binding.** Each and every provision of this Agreement shall be binding and inure to the benefit of the successors in interest of the Parties hereto.

8. **Notice.** This Agreement shall be recorded in the Yuba County Recorder's Office.

9. **Miscellaneous.**

9.1 **Authority to Execute Agreement.** The person or persons executing this Agreement on behalf of each Party warrant and represent that they have the authority to execute this Agreement and the authority to bind that Party to the performance of its obligations hereunder.

9.2 **Cancellation or Modification.** Any Party may propose cancellation or modification of this Agreement, but such cancellation or modification shall require the consent of each Party to become effective.

9.3 **Construction of Agreement.** Because all Parties have been represented by counsel in the preparation of this Agreement, no presumption or rule that ambiguity shall be construed against a drafting Party shall apply to interpretation or enforcement hereof. Captions on sections or subsections are provided for convenience only and shall not be deemed to limit, amend or affect the meaning of the provision to which they pertain.

9.4 **California Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California.

9.5 **Assignment.** All covenants in this Agreement shall pertain to and run with the real property as described in Exhibit A herein, and this Agreement shall apply to, bind, and inure to the benefit of the successors in interest of the respective Parties.

9.6 **No Joint Venture or Partnership.** Owner and Buyer hereby renounce the existence of any form of joint venture, partnership or other association between Owner and Buyer, and agree that nothing in this Agreement or in any document executed in connection with it shall be construed as any such relationship between Owner and Buyer.

9.7 **Covenant of Good Faith and Fair Dealing.** No Party shall do anything that shall have the effect of injuring the right of another Party to receive the benefits of this Agreement or do anything that would render its performance under this Agreement impossible. Each Party shall perform all acts contemplated by this Agreement to accomplish the objectives and purposes of this Agreement.

9.8 **Cooperation; Further Acts.** The Parties shall fully cooperate with one another and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

9.9 **No Third Party Beneficiaries.** This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

9.10 **No Waiver.** No delay or omission by a Party in exercising any right or power accruing upon non-compliance or failure to perform by another Party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver. A waiver by a Party of any of the covenants or conditions to be performed by another Party shall not be construed as a waiver of any succeeding breach or nonperformance of the same or other covenants and conditions hereof.

9.11 **Severability.** If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

9.12 **Venue.** Any action arising out of this Agreement shall be brought in Yuba County, California, regardless of where else venue may lie.

9.13 **Time is of the Essence.** Time is of the essence in this Agreement, and the Parties agree to execute all documents and proceed with due diligence to complete all covenants and conditions contained herein.

9.14 **Counterparts.** This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

9.15 **Entire Agreement.** This Agreement contains the entire agreement between Owner and Buyer and supersedes any prior oral or written statements or agreements between Owner and Buyer concerning the subject matter of this Agreement.

9.16 **Notices.** All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

To COUNTY: County of Yuba
 Attn: CDSA Director
 915 8th Street, Suite 123
 Marysville, CA 95901
 Fax No.: (530) 749-5424

To Owners: Barbara E. Leak, as Trustee of the Edwin F. Leak Marital
 Q Tip Trust, dated January 4, 1998,
 3868 Leak Lane, Loomis, CA 95650-8203

 Alan and Cindy Leak
 3831 Leak Lane, Loomis, CA 95650-8203

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of seventy-two (72) hours after deposit in the U.S. Mail.

9.17 **Exhibit List.** The following exhibits are attached hereto and made a part hereof:


- Exhibit A - Legal Description of the Parent Parcel, APN 016-350-003
- Exhibit B - Legal Description of the 100 acre Property
- Exhibit C - Improvements for Cost Sharing

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day of the year first above written.


COUNTY: OF YUBA

By: 
Kevin Mallen, CDSA Director

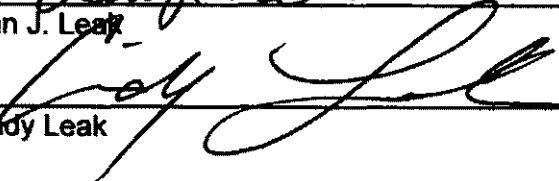
APPROVED AS TO FORM:

By: 
Angil P. Morris-Jones, County Counsel

OWNERS:


Barbara E. Leak, as Trustee of the Edwin F. Leak Marital Q Tip Trust, dated January 4, 1998


Alan J. Leak


Cindy Leak

State of California

County of Sutter

On October 18 2011 before me, K Grossman, a Notary Public, personally appeared Kevin Mallen

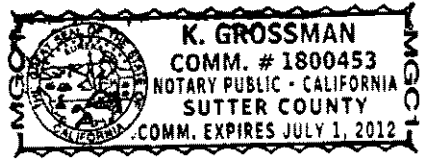
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature K Grossman

Name: K Grossman
(typed or printed)



(Area reserved for official notarial seal)

State of California

County of Sutter

On October 19 2011 before me, K Grossman, a Notary Public, personally appeared Barbara Heak, Alan J. Heak & Cindy Heak

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature K Grossman

Name: K Grossman
(typed or printed)



(Area reserved for official notarial seal)

EXHIBIT "A"

Remainder Parcel PM 2004-09

All that real property, situate in the County of Yuba, State of California, being a portion of Blocks 5, 6, 7, and 8 of the map entitled Arboga Colony No. 2 filed June 8, 1920 in Book 2 of Maps at Page 2, in the Office of the Yuba County Recorder, also being a portion of Sections 5, 6, 7, and 8 of Township 13 North, Range 4 East, M.D.B.&M., more particularly described as follows:

The Remainder Parcel, as said parcel is shown and so designated on Parcel Map No. 2004-09, filed March 22, 2004, in Book 77 of Maps, Pages 34 through 41 inclusive, in the Office of the Yuba County Recorder.

Dated: October 13, 2011



Michael G. Lee, PLS 7853
County Surveyor – Yuba County



EXHIBIT "B"**100 Acre Site**

All that real property, situate in the County of Yuba, State of California, being a portion of Blocks 5, 6, 7, and 8 of the map entitled Arboga Colony No. 2 filed June 8, 1920 in Book 2 of Maps at Page 2, in the Office of the Yuba County Recorder, also being a portion of Sections 5, 6, 7, and 8 of Township 13 North, Range 4 East, M.D.B.&M., more particularly described as follows:

All that portion of the Remainder parcel, as said parcel is shown and so designated on Parcel Map No. 2004-09, filed March 22, 2004, in Book 77 of Maps, Pages 34 through 41 inclusive, in the Office of the Yuba County Recorder on described as follows:

Beginning at the northeast corner of said Remainder parcel; thence S89°44'17"W along the north line of said Remainder parcel, also being the north line of the Lineal Parkway parcel as described in Deed to the County of Yuba, recorded December 9, 2011, at Document No. 2011R-014841 in the Office of the Yuba County Recorder, a distance of 100.44 feet to the northwest corner of said Lineal Parkway; thence along the west line of said Lineal Parkway parcel the following four courses: (1) S09°00'46"E, 120.41 feet; (2) S02°16'06"E, 271.21 feet; (3) S03°20'28"W, 198.85 feet; (4) S01°25'23"W, 272.31 feet, to the True Point of Beginning of the herein described parcel.

Thence from said True Point of Beginning, S89°44'17"W, a distance of 1,739.03 feet to the east line of that certain parcel described in Deed to Reclamation District 784, recorded November 2, 2007 at Document No. 2007R-018541, in the office of the Yuba County Recorder; thence along the east line of said Reclamation District 784 parcel the following three courses: (1) S00°17'29"E, 1,708.53 feet; (2) S89°44'59"W, 60.86 feet; (3) S00°16'05"E, 1,497.28 feet; thence leaving said east line N89°44'17"E, 406.22 feet; thence N67°21'24"E, 242.95 feet; thence N74°54'29"E, 993.34 feet, to the west line of said Lineal Parkway parcel; thence northerly along the west line of said Lineal Parkway parcel the following nineteen courses:

- (1) N15°54'37"W, 270.81 feet;
- (2) N19°28'42"W, 270.60 feet;
- (3) N18°19'19"W, 397.23 feet;
- (4) N07°55'31"W, 81.45 feet;
- (5) N04°01'22"E, 121.92 feet;
- (6) N10°17'39"W, 50.51 feet;
- (7) N06°55'47"E, 32.43 feet;
- (8) N32°32'44"E, 53.72 feet;
- (9) N16°41'20"E, 42.45 feet;
- (10) N06°10'35"E, 157.21 feet;
- (11) N02°25'10"E, 641.73 feet;


- (12) N23°51'38"E, 196.90 feet;
- (13) N21°27'14"E, 113.89 feet;
- (14) N11°00'57"E, 182.87 feet;
- (15) N36°59'41"E, 94.59 feet;
- (16) N55°07'54"E, 153.07 feet;
- (17) N35°20'51"E, 95.73 feet;
- (18) N14°55'49"E, 43.86 feet;
- (19) N01°25'23"E, 50.67 feet,

to the True Point of Beginning.

Containing 100.00 acres, more or less.

The basis of bearing for this description is the same as that shown on said Parcel Map No. 2004-09. This description has been prepared from record data and is not based on a field survey.

Dated: October 13, 2011



Michael G. Lee, PLS 7853
County Surveyor – Yuba County



EXHIBIT "C"

IMPROVEMENTS FOR COST SHARING

- Plans, permits and construction of a six foot wide meandering sidewalk constructed in conformance with the Plumas Lake Specific Plan on the west side of River Oaks for the entire length of APN 016-350-003.
- Plans, permits and construction of a twenty foot wide landscape, lighting and utility strip constructed in conformance with the Plumas Lake Specific Plan on the west side of River Oaks for the entire length of APN 016-350-003.
- Plans, permits and construction of three urban collector access roads constructed in conformance with the Plumas Lake Specific Plan between River Oaks Blvd and APN 016-350-003 and that cross the 18.154 acre parcel containing the RD 784 lateral and environmentally sensitive areas.
- Plans, permits and construction of a "minimalist" landscape within the 18.154 acre parcel containing the RD 784 lateral that is in conformance with the character of the Plumas Lake Specific Plan, meets RD 784 requirements (if any), and avoidance of environmentally sensitive areas.

A.P. Nos. 016-350-021, 016-350-022, 016-350-023,
016-350-024, 016-350-026, and 016-350-027

Recorded at the request of and
after Recording return to:

County Surveyor – Dept. of Public Works
Community Development & Services Agency
915 8th Street, Suite 125
Marysville, CA 95901

TERMINATION AGREEMENT

THIS TERMINATION AGREEMENT is made as of September __, 2021, by and between the County of Yuba (“County”), the Wheatland Union High School District, the Plumas Lake Elementary School District, the Olivehurst Public Utility District, SJ&R Amber Properties LLC, and Danna Properties LP (collectively the “Parties”).

RECITALS

WHEREAS, the County entered into one certain Cost Share and Access Agreement with Barbara E. Leek, as Trustee of the Edwin F. Leek Marital Q Trust, dated January 4, 1988 and Alan J. Leak and Cindy Leak, husband and wife as joint tenants (collectively the “Leaks”) dated as of October 18, 2011, [LMG1] for the purposes of allocating improvement costs and easements impacting the 100 acre parcel that the County acquired from the Leaks (“Cost Share and Access Agreement”); said agreement was recorded as Document 2011R-014844 in the office of the Yuba County Recorder [LMG2].

WHEREAS, the Cost Share and Access Agreement is binding and inures to the benefit of successors in interest.

WHEREAS, Wheatland Union High School District is a successor owner and current owner of APN 016-350-023 as evidenced by Document 2013R-010731 filed in the office of the Yuba County Recorder.

WHEREAS, Plumas Lake Elementary School District is a successor owner and current owner of APN 016-350-021 as evidenced by Document 2013R-010730.

WHEREAS, Olivehurst Public Utility District is a successor owner and current owner of APN 016-350-022 as evidenced by Document 2013R-013439.

WHEREAS SJ&R Amber Properties LLC is a successor owner and current owner of APN 016-350-027 as evidenced by Document 2015-013470.

WHEREAS Danna Properties LP a California Limited Partnership is a successor owner and current owner of APN 016-350-026 as evidenced by Document 2021-000189.

WHEREAS the County retains ownership of APN 016-350-024.

WHEREAS, the Parties believe that it would now be in the best interests of the Parties to terminate the Cost Share and Access Agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the adequacy and sufficiency of which all parties acknowledge, the Parties agree as follows:

TERMS

1. The Parties agree that the Cost Share and Access Agreement is hereby immediately deemed terminated and rendered null and void and of no further legal force or effect.
2. This Agreement shall be construed and enforced in accordance with the laws of the State of California.
3. By signing this Agreement, the Parties are confirming that they have read this Agreement, understand its contents, agree to its terms, and are voluntarily entering into this Agreement.
4. This Agreement contains the entire understandings and agreement between the Parties and replaces and supersedes any other agreements or understandings that may have existed regarding the subject matter hereof. The Parties agree that any modification of this Agreement must be in writing, signed by all parties to this Agreement, and must refer specifically to this Agreement and the provisions modified. No other modifications will be valid.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement on the date indicated below.

COUNTY OF YUBA

By: _____ Dated: _____

Its: _____

WHEATLAND UNION HIGH SCHOOL
DISTRICT

By: _____ Dated: _____

Its: _____

PLUMAS LAKE ELEMENTARY SCHOOL
DISTRICT

By: _____ Dated: _____

Its: _____

OLIVEHURST PUBLIC UTILITY DISTRICT

By: _____ Dated: _____

Its: _____

SJ&R AMBER PROPERTIES LLC

By: _____ Dated: _____

Its:

DANNA PROPERTIES LP, A CALIFORNIA
LIMITED PARTNERSHIP

By: _____ Dated: _____

Its:
