

Olivehurst Public Utility District



Agenda Item Staff Report

Meeting Date: June 17, 2021

Item description/summary:

Agricultural lease for the Plumas Lake community park site. This item was discussed in the January parks committee. When the 25 acre community park site was first acquired from the Leaks, they set up a lease so that they could continue to farm the land until such time that OPUD builds the park. In about 2015, Danna Farms took over the lease and has leased the property ever since. Steve Danna has expressed interest in renewing the lease. The parks committee discussed a shorter term lease because OPUD is in the process of preparation for design and subsequent construction of the park. Although the lease doesn't provide a great deal of money for OPUD it does address weed abatement that would otherwise be our responsibility and cost money. We consider the lease arrangement a symbiotic relationship. The revised lease has a 1 year term with 9 one-year options for both parties to renew the lease.

Fiscal Analysis:

None

Employee Feedback

None

Sample Motion:

Move to approve the lease of the OPUD 25 acre Plumas Lake community park site per the attached lease.

Prepared by:

John Tillotson, P.E., General Manager

AGRICULTURAL LEASE

This LEASE is made and entered into this ____ day of _____ 2021 by and between the Olivehurst Public Utility District, a public utility district, California, as "LESSOR", and Danna Farms, Inc. as "LESSEE". The term of the LEASE and all other covenants and conditions provided herein shall take effect as of August 1, 2021.

I

The Premises

LESSOR leases to LESSEE, on the terms and conditions set forth in this LEASE, agricultural use on all that certain real property hereinafter referred to as the "PREMISES", situated in the County of Yuba, State of California, along River Oaks Boulevard containing approximately 25.7 acres and identified as Assessor Parcel Number 016-350-022.

II

Disclaimer of Warranty--Soil & Water Suitability

LESSOR makes no warranty or representation concerning the PREMISES as to soil, fencing, and water quality or suitability for growing crops. LESSOR makes no warranty as to supply of water for growing the crops. LESSEE agrees that LESSEE is taking the PREMISES "as is" and "where is" for all purposes relating to this LEASE. The PREMISES are leased to LESSEE in the condition existing on the first day of the term hereof without warranty, express or implied, as to the current physical condition thereof, and LESSEE acknowledges that LESSEE has inspected the PREMISES and accepts the same in such current condition.

III

Entry by LESSOR

LESSEE shall permit LESSOR, and LESSOR'S agents and assigns, at all reasonable times, to enter the leased PREMISES, to use the roads established on the PREMISES now or in the future, for the purposes of inspection, compliance with the terms of this LEASE, exercise of all rights under this LEASE, posting notices, and all other lawful purposes.

IV

Utilities

LESSEE shall make arrangement for and pay for all water, power, and utility company charges and for all other services supplied to the PREMISES, for purposes associated with this LEASE.

V

Term; Successive Options to Extend

Subject to LESSOR'S early termination rights set forth in Article XXII, the initial term of this LEASE shall commence on August 1, 2021 and end on October 31, 2022 (the "Initial Term"). As used herein, the "Term" includes the Initial Term and any extensions thereof pursuant to the immediately following subparagraph.

LESSEE shall have the option to extend the Term for nine (9) successive periods of one (1) year each (each one-year extension is referred to as an "Extension Term"). All terms and conditions of this LEASE shall remain in full force and effect during each Extension Term, including the annual rental. To exercise the option for an Extension Term, LESSEE shall give LESSOR written notice of exercise no later than ninety (90) days before expiration of the Initial Term or the then Extension Term, as applicable.

VI

Abandonment

LESSEE shall not vacate or abandon the PREMISES at any time during the term hereof without notification to the LESSOR.

VII

Rent

LESSEE shall pay to LESSOR the sum of Five Thousand Dollars (\$5,000.00) on August 1, 2021 as rent for the PREMISES for the Initial Term, and on the first day of each Extension Term (November 1) for which LESSEE has exercised an option. on the

VIII

Payment of Expenses and Costs

LESSEE shall bear all expenses specifically including, but not limited to: costs of water and water delivery, all utility charges for light and power. LESSEE is responsible for any vandalism, theft, damage, and or waste, which may occur on the leased PREMISES.

IX

Use of the PREMISES

Fertilizers and Chemicals

The PREMISES are leased to LESSEE for the purpose of planting and harvesting agricultural crops. LESSEE shall not use, or permit to be used, any part of the PREMISES for any other purpose other than the purposes for which the PREMISES are leased. LESSEE shall cultivate on the PREMISES in a proper and farmer-like manner in accordance with good and commercially reasonable cropping practices.

LESSEE shall be responsible for the cost of all fertilizers, herbicides, pesticides, insecticides and other required sprays and chemicals necessary for crop production on the PREMISES during the term. The application of such fertilizers, herbicides, pesticides, insecticides, sprays and chemicals shall be in accordance with applicable laws, statutes, ordinances, rules and regulations of all federal, state, county and city entities having jurisdiction in such matters. Further, LESSEE shall not use or apply any substance imposing plant-back restrictions on the PREMISES that would extend beyond the termination date of this LEASE. If LESSEE fails to comply with one or more of the obligations stated in this ~~Section~~ Paragraph, then LESSEE shall indemnify, defend and hold LESSOR harmless from any and all claims, judgments, penalties, fines, costs, liabilities or losses, including without limitation, diminution in the value of the PREMISES, damages for the loss or restriction on use of rentable or usable space or of any amenity of the PREMISES, settlement of claims, attorney's fees, consultant fees and expert fees which arise as a result of such failure to comply.

X

Waste

LESSEE shall not commit, or permit others to commit, on the PREMISES, waste, trespass or a nuisance. LESSEE is responsible for cleanup of any waste deposited on the PREMISES.

XI

Governmental Farm Subsidy Programs

LESSEE shall be entitled to apply for and receive the benefit of any federal, state or local agricultural and farm subsidy or other assistance programs. LESSOR shall cooperate in executing any required documents to allow LESSEE to receive the full benefits of such governmental programs.

XII

Maintenance

LESSEE shall be responsible for both the PREMISES and the approaches to the PREMISES, including, but not limited to, all ditches and roadways, and maintain them in the same order and condition in which received, ordinary wear and tear excepted. LESSEE acknowledges the PREMISES are not fenced and hereby assumes the risk and responsibility to protect the PREMISES from trespassers, vandals, illegal dumping or damage to the PREMISES.

XIII

Alteration

LESSEE shall not make, or permit to be made, alterations of the PREMISES, without first obtaining LESSOR'S prior written consent. LESSEE shall keep the PREMISES free from any liens arising out of any work performed, material furnished, or obligations incurred by LESSEE.

XIV

Compliance With Law

LESSEE shall comply with all requirements of all governmental authorities, in force either now or in the future, affecting the PREMISES, and shall faithfully observe in LESSEE'S use of the PREMISES, all laws, statutes, ordinances, rules, restrictions, regulations and orders of federal, state, county or any agency of these authorities in force now or in the future.

XV

Non-Liability and Indemnity of LESSOR for Damages

LESSEE agrees to keep LESSOR free from all liability and claims for damages arising from any injury from any cause to any person, including LESSEE, or to the property of any kind belonging to anyone, including LESSEE, while in, upon or in any way connected with the PREMISES.

LESSEE shall defend, indemnify and hold the LESSOR harmless from and against any and all claims, liability, loss, damage, costs or expenses, including reasonable attorney's fees and all other costs related to defending against litigation, awards, fines, or judgments, arising by reason of the death or bodily injury to persons, including employees, invitees, or agents of LESSEE, injury to property of all kinds, or other loss, damage or expense relating solely to including any of the same resulting from LESSEE's negligent act or omission, regardless of whether such act or omission is active or passive, and to specifically include claims for damage arising out of LESSEE's use or occupation of the PREMISES and arising as the result of drifting sprays or dust, or seepage of overflow or irrigation water, used in connection with the growing of the crops upon said PREMISES during the term of this LEASE.

XVI

Insurance and Indemnity

During the full term hereof, LESSEE shall, at its sole cost and expense, procure and maintain, on forms acceptable to LESSOR, insurance for the following minimum insurance coverage:

A. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

B. Full Worker's Compensation and Employers' Liability Insurance covering all employees of LESSEE as required by law in the State of California for employees working on PREMISES.

C. Additional Insureds: The insurance required shall include LESSOR, its officers and employees, as additional insureds except with regard to occurrences that are the result of their sole negligence.

D. Cancellation Notice: To the extent permitted by LESSEE's insurance providers, the insurance required shall provide that no cancellation or material change in any policy shall become effective except upon thirty (30) days' prior written notice to LESSOR.

E. Proof of Insurance: LESSEE shall furnish proof of coverage satisfactory to LESSOR as evidence that the insurance required above is being maintained.

LESSEE shall indemnify and defend ~~(LESSOR)~~ and its officers, agents, and employees against and hold it harmless from any and all loss, damage, and liability for damages, including attorneys' fees and other costs of defense incurred by LESSOR, whether for damage to or loss of property, or injury to or death of person, including properties of LESSOR and injury to or death of LESSOR's officers, agents, and employees, which shall in any way arise out of or be connected with LESSEE's operations hereunder, unless such damage, loss, injury or death shall be caused solely by the negligence of LESSOR.

XVII

Remedies of LESSOR on Default

If LESSEE breaches this LEASE, LESSOR shall have the right of re-entry, after giving forty-eight (48) hours' notice, and the right to take possession of any property of LESSEE's remaining on the PREMISES, and to remove all persons and property from the PREMISES.

XVIII

Insolvency; Receiver

Any one of the following constitutes a breach of this LEASE by LESSEE:

- A. The appointment of a receiver, except a receiver mentioned in Paragraph XIX of this LEASE, to take possession of all or substantially all assets of LESSEE; or
- B. A general assignment by LESSEE for the benefit of creditors; or
- C. An action taken or suffered by LESSEE under any insolvency or Bankruptcy Act;
- D. The levy of any lien, writ of attachment, garnishment, execution or restraint on all or any parties of LESSEE's rights or interests under this LEASE;
- E. Abandonment and vacation of the PREMISES. Failure to occupy and operate the PREMISES for thirty (30) consecutive days shall be deemed abandonment and vacation.

XIX

Action of Receiver

If, in an action against LESSEE, LESSOR has a receiver appointed to take possession of the PREMISES, or to collect the rents or profits derived from the PREMISES, or both, the receiver has the right, if it is necessary or convenient in order to collect rents or profits, to conduct the business of LESSEE then being carried on the PREMISES and to take possession of any personal property belonging to LESSEE and used in the conduct of the business, and to use the personal property in conducting the business on the PREMISES. Neither the application for the appointment of the receiver, nor the appointment of the receiver shall be construed as an election by LESSOR to terminate this LEASE unless a written notice of such intention is given to LESSEE.

XX

Assignment or Subletting

LESSEE may NOT assign this LEASE, or any rights under it, and may NOT sublet the entire or any part of the PREMISES, or any right or privilege appurtenant to the PREMISES, or permit any other person to occupy or use the entire or any portion of the PREMISES.

XXI

Subordination--Sale of Premises

This LEASE shall be subordinate to any mortgages or deeds of trust that now exist or that may subsequently be placed on the PREMISES, to all advances made under them, to the interest on all obligations secured by them, and to all renewals, replacements, and extensions of them, unless the mortgagee or beneficiary in those mortgages or deeds of trust elects to recognize the LEASE of LESSEE in the event of foreclosure and provided that LESSEE is not then in default.

In the event that the PREMISES or any portion of it are sold for any reason, LESSOR, at LESSOR'S sole option and discretion, shall have the right to terminate the LEASE upon the giving of written notice to the LESSEE specifically referring to this Paragraph and exercising the option provided herein to terminate the LEASE; provided, however, that LESSEE shall nonetheless have the right to continue farming and complete the harvest of any crops already planted for the then current crop year.

XXII

Lease Termination

In the event the LESSOR has other desired uses for the PREMISES, the LESSOR has the right to terminate this LEASE upon providing LESSEE a written notice at least 90 days in advance; provided, however, LESSEE shall nonetheless have the right to continue farming and complete the harvest of any crops already planted for the then current crop year.

XXIII

Notices

Any notice to be given to either party by the other shall be in writing and shall be served either personally or by certified mail, return receipt requested, addressed as follows:

LESSOR: Olivehurst Public Utility District
1970 9th Ave Olivehurst CA 95961
Attn: John Tillotson, General Manager

LESSEE: Danna Farms
1001 Feather River Blvd
Olivehurst, CA 95961
Attn: Steve Danna

XXIV

Legal Effect

All covenants of LESSEE contained in this LEASE are expressly made conditions of the LEASE. The provisions of this LEASE shall apply to and bind the heirs, successors, executors, administrators and assigns of LESSOR and LESSEE hereto and all parties to this LEASE shall be jointly and severally liable under it.

The titles or headings to the paragraphs of this LEASE are not a part of this LEASE and shall have no effect on the construction or interpretation of any part of this LEASE.

XXV

Environmental Indemnity

LESSEE shall indemnify, hold harmless, and defend LESSOR from and against any and all claims, liability, loss, damage, costs or expenses, including reasonable attorney's fees related to defending against any such actions which arise from the use or release of hazardous materials ("Hazardous Materials") upon the PREMISES by LESSEE, LESSEE'S agents, assigns, vendors, suppliers, employees, or invitees. Hazardous Materials shall include but not be limited to: (a) any insecticides, herbicides, pesticides, or fertilizers which are not shipped, stored, handled, mixed, applied, cleaned up, or disposed of: (1) in strict compliance with the manufacturer's instructions, and (2) in strict compliance with any applicable regulations established by any Federal, State, County, or Local agency; (b) any material now contained in, or that may be added to, the list of chemicals known to the Federal Government and the State of California to cause cancer or reproductive toxicity, which is further contained in the State of California Health and Welfare Agency Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65); (c) any material defined as a "hazardous substance" in section 101(14) "infectious waster" or "hazardous material" as defined in sections 25117, 25117.5 or 25501(j) of the Health and Safety Code.

LESSEE covenants that it will not use or release any Hazardous Materials upon the PREMISES. LESSEE further covenants that it will not or knowingly allow the use or release of any Hazardous Material upon the PREMISES by any other party in violation of the provisions of this Paragraph. In the event that any Hazardous Material is used or released which results in diminution, in value,

of the PREMISES or results in actions by Federal, State, County, or Local agencies, LESSEE shall conduct corrective work regardless of whether such actions are directed to LESSOR or LESSEE. Corrective work shall mean the removal, relocation, elimination, remediation or encapsulation of chemicals or other materials from all or any portion of the PREMISES and to the extent thereby required the reconstruction and rehabilitation of the PREMISES pursuant to and in compliance with any requirements set forth by any Federal, State, County, or Local agencies, or to reverse any diminution, in value, of the PREMISES, that may have occurred.

LESSEE shall not take any remedial action in response to the presence of any Hazardous Materials in or about the PREMISES, nor enter into any settlement agreement, consent decree, or other compromise in respect to any claims relating to any Hazardous Materials in any way connected with LESSEE's use and occupancy of the PREMISES, without first notifying LESSOR of LESSEE's intention to do so and according LESSOR ample opportunity to appear, intervene, or otherwise appropriately assert and protect LESSOR's interest with respect thereto.

LESSEE shall promptly notify LESSOR in writing of: (a) any enforcement, cleanup, removal or other governmental or regulatory action instituted, completed or threatened pursuant to any Hazardous Materials Laws; (b) any claim made or threatened by any person against LESSEE or the PREMISES relating to damage, contribution, cost recovery from any Hazardous Materials; and (c) any reports made to any environmental agency arising out of or in connection with any Hazardous Materials in or removed from the PREMISES, including any complaints, notices, warnings or asserted violations in connection therewith. LESSEE shall also supply to LESSOR as promptly as possible, and in any event within five business days after LESSEE first receives or sends the same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the PREMISES or LESSEE's use thereof.

XXVI

No Partnership

Nothing contained in the LEASE shall create a partnership, joint venture, or employment relationship between LESSOR and LESSEE. Neither LESSOR nor LESSEE shall be liable, except as otherwise expressly provided for in this LEASE, for any obligation or liabilities incurred by the other.

XXVII

Time is of the Essence

Time is declared to be of the essence of this LEASE and each and every stipulation, covenant and condition to be paid, kept and performed by LESSOR and LESSEE under this LEASE.

XXIII

Future Acts

LESSOR and LESSEE agree to cooperate in the performance of the LEASE and to execute and deliver any and all documents and perform any and all acts necessary to carry out its purpose and intent.

XXIX

No Waiver

No waiver of any breach of any of the covenants, agreements, restrictions and conditions of this LEASE shall be construed to be a waiver of any succeeding breach of the same or other covenants agreements, restrictions or conditions. It is mutually agreed that the various rights, powers, options, elections and remedies of the LESSOR contained in this LEASE shall be construed as cumulative, and no one of them is exclusive of the other or exclusive of any rights or priorities now or hereafter allowed to the LESSOR by law.

XXX

Counterparts

This LEASE may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument. Signature and acknowledgment pages may be detached from individual counterparts and attached to a single or multiple original(s) in order to form a single or multiple original(s) of this LEASE. Further, this LEASE may be executed by scanned copy, telecopy or other facsimile transmission, and such facsimile transmission shall be valid and binding to the same extent as if it were an original.

XXXI

Possessory Interest Notice

Lessee, pursuant to Revenue and Taxation Code section 107.6, is hereby advised that by entering into this agreement, a possessory interest subject to taxation may be created and that property interest may be subject to property taxation if created, and that the party in whom the possessory interest is vested may be subject to property taxes levied on the interest.

XXXII

Entire Agreement

This LEASE contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this LEASE, and no prior agreements or understanding pertaining to any such matters shall be effective for any purpose. No provision of this LEASE may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. This LEASE shall not be effective or binding upon LESSOR or LESSEE until fully executed and delivered by both parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed the day and year first above written.

LESSOR: Olivehurst Public Utility

DATE: _____

BY: _____

Approved as to Form:

BY: _____
Courtney Abril
Interim County Counsel

LESSEE: Danna Farms, Inc.

DATE: _____

BY: _____
Steve Danna, President