

Olivehurst Public Utility District



Agenda Item Report

Meeting Date: October 20, 2022

Item description/summary:

Consider approving the request made by Plumas Lake Sports Association to extend the use of the property.

Plumas Lake Sports Association currently has an approved use agreement for the softball field at Eufay Woods, Sr. Park. The approved season in the current contract (section 3 part A) is from April 1st through October 1st each year. They would like to extend that use time from April 1st through December 1st to allow for a fall season.

Fiscal Analysis:

None

Employee Feedback

None

Sample Motion:

Move to approve the request made by Plumas Lake Sports Association to modify the current use agreement as requested.

Prepared by:

Bri Anne Ritchie, Board Clerk

USE AGREEMENT

THIS USE AGREEMENT (“Agreement”) is entered into on this the 4th Day of May 2015 , by and between the Olivehurst Public Utility District a public utility district formed and existing under California law (hereinafter referred to as “OPUD”), and the Plumas Lake Sports Association (hereinafter referred to as “PLSA”).

RECITALS

- A.** OPUD owns and has available for use certain premises; and
- B.** PLSA is seeking a facility to conduct its recreation programs and is willing to care for the facilities in question and offer low-cost programs to residents from Plumas Lake and surrounding communities;
- C.** PLSA will benefit from this agreement in that it will obtain shared use of the premises where it can operate its programs and activities; and
- D.** OPUD will benefit in that it will help to facilitate community-oriented programs coming into Plumas Lake and surrounding communities and that said premises will again be utilized for its intended purposes, which is to serve community oriented activities in and around Plumas Lake.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby stipulated, the parties agree as follows:

1. AGREEMENT

OPUD is the owner of certain real property situated in the County of Yuba, State of California, commonly known as the Baseball/Softball fields at Eufay Wood Sr Park on River Oaks Blvd. @ Zanes Dr, Plumas Lake, CA 95961 Plumas Lake, CA 95961. (“the Property”). OPUD hereby agrees to allow limited use of the Property to the PLSA.

2. TERM OF AGREEMENT

The term of this Agreement shall commence upon the execution of this Agreement and continue thereafter indefinitely or until otherwise terminated by either party, with or without cause.

3. USE OF PROPERTY

PLSA hereby acknowledges and agrees that the Property shall be used only for community and public purposes consistent with its non-profit status. No use shall be made of the Property, nor any use that would result in an increase in the existing rate of insurance upon the Property, or in a cancellation of any insurance policy covering the Property. PLSA

shall not commit waste or any public or private nuisance upon the Property. In addition, the following provisions describe the PLSA use of the Property:

- A. PLSA shall have use of the Property from 3:00pm to dusk every Sunday, between April 1st and October 1st each year. Any further requests for the space will be determined on a case-by-case basis. OPUD or other lessees or invitees of OPUD are free to utilize the Property at all other times or upon 2 weeks minimum notice to PLSA an alternative use which OPUD, in its sole discretion, deems is necessary.
- B. At times when either OPUD or PLSA does not use the Property, either party may reserve the use of the Property by means of placing a reservation through the OPUD office located at 1970 9th Ave, Olivehurst, CA 95961.

4. UTILITIES AND SERVICES

OPUD will cover all Utility and Service expenses including but not limited to phone, water, electricity, gas, garbage removal, sanitary sewage disposal service and any other cost necessary or incidental to PLSA use of the property pursuant to this agreement (collectively "Utilities")¹

5. TAX EXEMPT STATUS, LIENS, ENCUMBRANCES

The PLSA is a not-for-profit community organized group. The PLSA agrees to keep the Property free and clear of all levies, liens and encumbrances for the term of the lease.

6. ASSIGNMENT OR SUBLEASE

PLSA will not assign this Agreement, nor sublet the Property, nor any part thereof.

7. MAINTENANCE, REPAIR & ALTERATIONS AND ADDITIONS BY THE WSSL

PLSA, may, during the term of the Agreement, make minor alterations, modifications or improvements to the Property provided the same shall not be detrimental to the Property, including its integrity and usefulness. Anything used in the alteration process will then become the Property of OPUD. At the discretion of OPUD, the PLSA may be required to return the Property to pre-lease condition upon the expiration of the term of the lease, reasonable wear and tear expected. PLSA agrees, at the PLSA's own expense, to keep the Property in good condition and repair, and to deliver to OPUD physical possession of the Property at the end of the Term in good condition and repair, reasonable wear and tear and use, and loss by fire or other casualty or by earthquake or other act of God accepted. The PLSA agrees to repair any damage to the Property caused by or in connection with the use of the Property, the removal of any articles of personal property, business or trade fixtures, machinery, equipment, furniture, movable partition or permanent improvements or additions, including without limitation thereto, repairing the floor and patching and painting walls where required by OPUD to OPUD's reasonable satisfaction, all at the PLSA's sole cost and expense.

The PLSA shall after each meeting or use of the Property, clean any debris, trash, or other soiling caused by the meeting or use. The PLSA shall use its own cleaning supplies to perform the same.

The PLSA will be responsible for any and all costs associated with damages caused to any OPUD property as a direct result of the PLSA's staff, volunteers or members, participants or its invitees.

8. LEGAL TITLE

Legal title to the Property shall remain vested in OPUD.

9. ENTRY AND INSPECTION

OPUD or its agents may, at any time, enter into and upon the Property for the purpose of inspecting the same, or to make repairs, alterations or additions. . OPUD shall not have access to confidential information related to PLSA business activities.

10. DUTY TO INSURE

PLSA shall obtain and maintain in force a commercial general liability insurance policy covering liability for injury to persons or property occurring in or about the Property (1 million dollars per occurrence). The required insurance shall be obtained from a company lawfully authorized to do business in California. A certificate of insurance evidencing the foregoing and showing OPUD as an additional insured shall be provided to OPUD contemporaneously with the execution of this agreement.

The PLSA shall forthwith notify OPUD, in writing, with a full description of the facts, circumstances, nature, results, and names and addresses involved about any occurrences on the Property which involve any injury to person or property, and shall provide OPUD promptly with copies of any claims for damages of any sort, including complaints in any court actions involving such claims.

11. SUCCESSORS

OPUD and the PLSA, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other party to this agreement with respect to the terms of this Agreement.

12. WRITTEN NOTICE

All notices to be given between the parties hereto shall be in writing and may be served by depositing the same in the United States mail, postage pre-paid, certified and addressed to General Manager, OPUD, 1970 9th Ave, Olivehurst, CA 95691, or such other address as either party may designate in writing from time to time.

All notices to be given between the parties hereto shall be in writing and may be served by depositing the same in the United States mail, postage pre-paid, certified and addressed to PLSA, 1186 Dark Horse Way, Plumas Lake, CA 95961, or such other address as either party may designate in writing from time to time.

13. WAIVER

None of the provisions of this agreement shall be considered waived by either party unless such waiver is specified in writing.

14. LICENSES AND PERMITS

Upon commencement of this agreement, the PLSA will possess all current licenses and permits required by OPUD, the State of California and/or any other applicable public agency to operate as a nonprofit organization.

15. TERMINATION

Either party has the right to terminate this lease, with or without cause, during its term, by giving written notice of its intent to terminate thirty (30) calendar days prior to the intended termination date.

16. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this agreement shall be deemed to be inserted and this agreement shall be read and enforced as though it were included. If through mistake or otherwise, any provision is not inserted or is not correctly inserted, then upon application of either party the agreement shall be amended to make the insertion or correction. All references to statutes and regulations shall include all amendments, replacements, and enactments in the subject, which are in effect as of the date of this agreement, and any later changes, which do not materially and substantially alter the provision of the parties.

17. SEVERABILITY

Should any provision of this agreement be declared or determined by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity and enforceability of the remaining parts, terms or provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision shall be deemed not to be part of this agreement.

18. ARBITRATION OF DISPUTES

THE PARTIES AGREE THAT IF ANY DISPUTE SHOULD ARISE UNDER THE TERMS AND PROVISIONS OF THIS AGREEMENT, EACH PARTY WAIVES ANY RIGHT TO COMMENCE LEGAL ACTION OR ARBITRATION OTHER THAN AS PROVIDED UNDER THE TERMS OF THIS AGREEMENT, AND THIS AGREEMENT SHALL PROVIDE THE SOLE AND EXCLUSIVE REMEDY FOR RESOLUTION OF DISPUTES.

THE DETERMINATION OF THE ARBITRATOR WILL BE FINAL AND BINDING UPON EACH PARTY AND EACH PARTY SPECIFICALLY WAIVES ANY RIGHT TO CLAIM THAT THE ARBITRATOR HAS EXCEEDED THE SCOPE OF THE ARBITRATION, HAS DISREGARDED EVIDENCE OR PRINCIPLES OF LAW, AND FURTHER WAIVES ANY RIGHT TO DISCLAIM THE QUALIFICATION OR FUNCTION OF THE ARBITRATOR IN ANY MANNER OR FASHION.

APPOINTMENT OF THE ARBITRATOR SHALL BE MADE BY MUTUAL AGREEMENT OF THE PARTIES. IF THE PARTIES CANNOT AGREE UPON THE IDENTIFICATION OF THE ARBITRATOR WITHIN THIRTY (30) DAYS FROM THE MAILING OF THE OBJECTION, A PETITION FOR APPOINTMENT OF ARBITRATOR SHALL BE FILED WITH THE SUPERIOR COURT OF THE COUNTY OF YUBA.

THE ARBITRATOR'S FEES AND COSTS OF PETITIONING FOR THE APPOINTMENT OF THE ARBITRATOR SHALL BE PAID BY ONE OR BOTH PARTIES TO THE ARBITRATION IN ACCORDANCE WITH THE DETERMINATION OF THE ARBITRATOR AS TO THE FAIR

APPORTIONMENT OF SUCH FEES AND COSTS. THE ARBITRATOR UPON RENDERING ITS AWARD SHALL DETERMINE THE PARTY THAT PREVAILED BASED UPON WRITTEN STATEMENTS MADE BY EACH PARTY AT THE COMMENCEMENT OF THE ARBITRATION AS TO THE POSITION OF THE PARTIES AND THEIR ALTERNATIVES FOR SETTling THE MATTER. A STATEMENT OF PROPOSED SETTLEMENT SHALL NOT BE BINDING UPON ANY PARTY AND SHALL NOT BE CONSIDERED AS EVIDENCE BY THE ARBITRATOR EXCEPT TO THE EXTENT THAT THE ARBITRATOR UPON MAKING ITS SOLE AND INDEPENDENT DETERMINATION SHALL DETERMINE THE PARTY WHICH PREVAILED BASED UPON THE PROPOSALS FOR SETTLEMENT OF THE MATTER MADE BY EACH PARTY AND SHALL DETERMINE THAT THE NON-PREVAILING PARTY SHALL PAY SOME OR ALL OF THE COSTS OF ARBITRATION INCLUDING ANY COSTS INCURRED BY THE ARBITRATOR AND IN EMPLOYING EXPERTS TO ADVISE THE ARBITRATOR IN REGARD TO SPECIFIC SUBJECTS OR QUESTIONS. THE ARBITRATOR MAY FURTHER AWARD THE COSTS OF ATTORNEYS' FEES OR EXPERT WITNESSES CONSULTED OR EMPLOYED IN THE PREPARATION OR PRESENTATION OF EVIDENCE TO THE ARBITRATOR BY THE PREVAILING PARTY, IF IN THE ARBITRATOR'S DETERMINATION, THE POSITION TAKEN OR MAINTAINED WAS BASED UPON A FAILURE TO PROPERLY EXCHANGE OR COMMUNICATE INFORMATION WITH THE PREVAILING PARTY IN REGARD TO THE SUBJECT SUBMITTED TO ARBITRATION.

THE ARBITRATOR'S DETERMINATION MAY FURTHER PROVIDE FOR PROSPECTIVE ENFORCEMENT AND DIRECTIONS FOR THE PARTIES TO COMPLY WITH. UNDER SUCH CIRCUMSTANCES, THE ARBITRATOR'S AWARD SHALL BE BINDING UPON THE PARTIES AND SHALL BE UNDERTAKEN AND PERFORMED BY EACH OF THE PARTIES UNTIL (A) SUCH TIME AS THE ARBITRATOR'S DIRECTIONS TO THE PARTY SHALL LAPSE BY THEIR TERM, OR (B) THE ARBITRATOR SHALL NOTIFY THE PARTIES THAT THOSE TERMS ARE NO LONGER IN FORCE OR EFFECT OR (C) THE ARBITRATOR SHALL MODIFY THOSE TERMS.

THIS ARBITRATION PROVISION SHALL BIND THE PARTIES AND THE PARTIES' SUCCESSORS, ASSIGNS, TRANSFEREES, OR ANY OTHER PERSON OR ENTITY ALLEGING RIGHTS BY OR THROUGH DISTRICT OR DEVELOPER.

19. VENUE/GOVERNING LAWS

This agreement shall be governed by the laws of the State of California and venue shall be exclusive to Yuba County, California.

20. INDEMNIFICATION; ATTORNEY'S FEES

The PLSA shall indemnify, defend and hold harmless OPUD and its officers, officials, employees and agents from and against any and all liability, loss, damage, expense, and costs, including without limitation costs and fees of litigation, of every nature and kind arising out of or in connection with the PLSA 's performance or work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage that is caused by the intentional misconduct of OPUD, its employees, agents or contractors. This indemnification includes any and all costs and expenses for attorneys' and consultants' fees in litigation, mediation and arbitration.

If suit is brought by either party to this Agreement to enforce any of its terms, the prevailing party shall be entitled to recover their reasonable attorney's fees and costs.

21. ENTIRE AGREEMENT

This agreement represents the entire agreement between OPUD and the PLSL and supersedes all prior negotiations, representations or agreements, either written or oral. This agreement may be amended or modified only by an agreement in writing, signed by both OPUD and the WSSL.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

OPUD:

Timothy R. Shaw
Name



Signature

General Manager
Position Title

3-18-2016
Date

Plumas Lake Sports Association

Brendan K. McHugh
Name


Signature

President, Plumas Lake Sports Assoc.
Position Title

3-18-2016
Date