

Olivehurst Public Utility District



Agenda Item Report

Meeting Date: May 18, 2023

Item description/summary:

Consider approving the youth center building lease agreement with Yuba Sutter Cheer Association.

Yuba Sutter Cheer Association would like to enter into a lease agreement for the Youth Center Building to hold cheer practices during the winter months. They plan on using the building from October through May and would like the contract to run through May 28, 2024. They plan on using the building Monday through Friday from 5:00pm until 10:00pm.

Insurance and deposits have not been received yet but will be furnished once agreement is approved.

Fiscal Analysis:

Employee Feedback

Sample Motion:

Move to approve the youth center building lease agreement with Yuba Sutter Cheer Association.

Prepared by:

Bri Anne Ritchie, Board Clerk

LEASE AGREEMENT

THIS LEASE AGREEMENT (“Agreement”) is entered into on this the ___ day of _____, 20___, by and between the Olivehurst Public Utility District a public utility district formed and existing under California law (hereinafter referred to as “OPUD”), and Yuba Sutter Cheer Association, (hereinafter referred to as “YSCA”).

RECITALS

- A.** OPUD owns and has available for lease certain premises; and
- B.** YSCA 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 Olivehurst and surrounding communities;
- C.** YSCA 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 Olivehurst 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 Olivehurst.

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 Olivehurst Youth Center, located at 1966 9th Ave, Olivehurst, CA 95961 (“the Property”). OPUD hereby agrees to lease the Property to the YSCA.

2. TERM OF AGREEMENT

The term of this Agreement shall commence upon the execution of this Agreement and continue thereafter until May 28, 2024 or otherwise terminated by either party, with or without cause.

3. USE OF PROPERTY

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

- A. YSCA shall have use of the Property from 5PM to 10PM am/pm, 5 days a week Monday through Friday. Days to be determined on or before _____, 20___. Any further requests for the space will be determined on a case-by-case basis, and monthly rent amount will be adjusted accordingly. 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 YSCA an alternative use which OPUD, in its sole discretion, deems is necessary.
- B. No smoking is permitted in the Youth Center Building or on the Property within 50 feet of the Youth Center Building.
- C. YSCA will submit a \$100 key deposit prior to usage and will be issued three keys for the Property. YSCA shall not duplicate the keys and, upon the termination of this Agreement, shall promptly return the three keys to OPUD. If the keys are not returned, in whole or part, or if the keys are duplicated, YSCA shall forfeit the deposit.
- D. At times when either OPUD or YSCA 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 and YSCA shall share Utilities and Common Area Maintenance fees as provided for in this Article 4.

- A. Utilities. YSCA shall pay \$25 per month, per day of the week when classes are held, for its share of Utilities for the Property including, but not limited to, phone, water, electricity, gas, garbage removal, sanitary sewage disposal service and any other costs necessary or incidental to YSCA's use of the property pursuant to this lease (collectively "Utilities"). The payment for Utilities shall be paid by YSCA on or before the tenth (10th) day of each month for the term of this Agreement.

5. TAX EXEMPT STATUS, LIENS, ENCUMBRANCES

The YSCA is a not-for-profit, government agency. The YSCA agrees to keep the Property free and clear of all levies, liens and encumbrances for the term of the lease.

6. ASSIGNMENT OR SUBLEASE

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

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

The YSCA, with prior written consent from OPUD, may, during the term of the Agreement, make minor alterations, modifications or improvements to the Property provided that same shall not be detrimental to the Property, including its structural integrity and usefulness. Anything used in the alteration process will then become the Property of OPUD. At the discretion of OPUD, the YSCA 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. The YSCA agrees, at the YSCA'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 excepted. The YSCA 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 YSCA's sole cost and expense.

The YSCA shall after each meeting or use of the Property, clean any debris, trash, or other soiling caused by the meeting or use. The YSCA shall use its own cleaning supplies to perform the same. Included in the obligation to clean and maintain the Property, the YSCA must provide its own bathroom supplies including such items as hand soap, bathroom tissue, and paper towels.

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

This Agreement between OPUD and the _____ YSCA _____ is a commercial lease. Therefore, _____ YSCA _____ waives the provisions of California Civil Code §§ 1941 and 1942, the implied warranty of habitability, and any other law or regulation, judge-made or statutory, that would require OPUD to maintain the Property in a tenantable condition other than conditions expressly required by this Agreement.

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. For those maintenance or repair activities that OPUD has advance notice of, it shall notify the _____ YSCA _____ and coordinate an appropriate time to enter the Property to perform said maintenance or repair. OPUD shall not have access to confidential information related to _____ YSCA _____ business activities.

10. DUTY TO INSURE

_____ YSCA _____ 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 _____ YSCA _____ 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 _____ YSCA _____, 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 YSCA of Superior California, 729 D Street, Marysville, CA 95901, 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 YSCA 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 YSCA 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 YSCA'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 YSCA 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 YSCA.

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

OPUD:

Name Signature

Position Title Date

Yuba Sutter Cheer Association: Elvia Mauch *Elvia Mauch*
(Organization) _____

Name Signature

President 5/9/23

Position Title Date