

# Olivehurst Public Utility District



## Agenda Item Staff Report

**Meeting Date: December 21, 2017**

### Item description/summary:

**Consider authorizing the Field Use Agreement with Olivehurst Fireman’s Association.** The District was approached with a request from the Olivehurst Fireman’s Association to adopt one of the baseball fields in the Olivehurst Community Park. This adoption would involve making improvements to the park to make it usable for baseball and softball use, and taking over the maintenance of that section of the Olivehurst Community Park. The Association requested that the District ensure that the watering and maintenance of the sprinkler systems be continued by the District. The Association provided the District with a tentative schedule of which improvements would be made, and when they would occur. Staff provided the Fireman’s Association with Park Use Agreements from other organizations, and the Fireman’s Association has provided the District with a Field Use Agreement. The Agreement has been reviewed by Staff, and is ready for execution by the District. The Agreement is based on Agreements previously vetted by Legal Counsel, so should not require extensive review by Legal Counsel, if any.

### Fiscal Analysis:

Maintenance costs of the Parks Department would minimally decrease, since some tasks would be taken up by the Firemen’s Association.

### Employee Feedback

Employees are in favor of the adoption of the field by the Firemen’s Association.

### Sample Motion:

Move direct staff to execute a Facility Use Agreement with the Olivehurst Firemen’s Association for the adoption of the south field of the Olivehurst Community Park.  
No motion.

Prepared by:

Elizabeth Mallen, District Clerk/Executive Assistant

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# OPUD PARK BALL FIELD USE AGREEMENT

**THIS USE AGREEMENT (“Agreement”)** is entered into on this the \_\_\_\_ Day of December 2017, by and between the Olivehurst Public Utility District a public utility district formed and existing under California law (hereinafter referred to as “OPUD”), and Olivehurst Fireman’s Association (hereinafter referred to as OFA), a community benefit, non-profit organization.

## **RECITALS**

- A.** OPUD owns and has available for use certain premises; and
- B.** OFA is seeking a facility to conduct its recreation programs and is willing to care for the facilities in question;
- C.** OFA 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 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 Baseball/Softball fields at Olivehurst Community Park, Olivehurst, CA 95961 (“the Property”).

## **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**

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

- A. At times when either OPUD or OFA 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 9<sup>th</sup> Ave, Olivehurst, CA 95961. Such reservation is subject to written approval by OPUD.

#### **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 OFA's use of the Property pursuant to this lease (collectively "Utilities")

#### **5. TAX EXEMPT STATUS, LIENS, ENCUMBRANCES**

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

#### **6. ASSIGNMENT OR SUBLEASE**

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

#### **7. MAINTENANCE, REPAIR & ALTERATIONS AND ADDITIONS BY OFA**

With the express written permission of OPUD, OFA 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, OFA 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. OFA\_\_ agrees, at OFA'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. OFA 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 field and turf and painting walls/backstop where required by OPUD to OPUD's reasonable satisfaction, all at OFA's sole cost and expense.

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

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

This Agreement between OPUD and OFA is a commercial lease. The Property is being leased “AS IS, WHERE IS” WITHOUT WARRANTY BY OPUD AS TO ITS CONDITION AND FITNESS FOR OFA INTENDED USE. Therefore, OFA 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. OFA has inspected the Property and has confirmed to itself that the Property is fit and satisfactory for its intended purpose.

## **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 OFA 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 business activities.

## **10. DUTY TO INSURE**

OFA shall provide for and cause to be maintained 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. OFA is required to provide OPUD immediate notice of any change, cancellation or modification of insurance coverage of any kind. This agreement shall be voided if OFA does not submit a certificate of insurance contemporaneously with the execution of this agreement AND maintain insurance satisfactory to OPUD.

OFA 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 OFA, 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 9<sup>th</sup> 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 Olivehurst Fireman's Association, P.O Box 356, Olivehurst, 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, and throughout its term, OFA 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 unrestricted right to terminate this agreement without cause by giving written notice of its intent to terminate eighteen (18) months prior to the intended termination date. Either party may terminate this agreement for cause upon substantial breach of a material term hereof by the other party. Notwithstanding the foregoing, OPUD may terminate the agreement for cause in accordance with the following procedure:

- A. This agreement may be terminated at any time upon thirty (30) days' notice by OPUD's Board for a material uncured breach by OFA; provided, that OPUD shall not seek to terminate this agreement by reason of an asserted material breach by OFA unless OPUD has first provided at least thirty (30) days written notice of the asserted breach to OFA and OFA has failed to cure such breach (or to diligently commence curative actions satisfactory to OPUD for a breach that cannot be fully cured within thirty (30) days) within the thirty (30)-day notice period.

## **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**

OFA 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 OFA’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 OFA 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 OFA.

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

OPUD:

\_\_\_\_\_  
Name Signature

\_\_\_\_\_  
Position Title Date

OFA  
OFA:

\_\_\_\_\_  
Name Signature

\_\_\_\_\_  
Position Title Date

# OPUD PARK BALL FIELD USE AGREEMENT

**THIS USE AGREEMENT (“Agreement”)** is entered into on this the 1813th Day of August 20 16 ~~December 2017~~, by and between the Olivehurst Public Utility District a public utility district formed and existing under California law (hereinafter referred to as “OPUD”), and Plumas Lake Little League Olivehurst Fireman’s Association (hereinafter referred to as PLLOFA), PLLOFA, a community benefit, non-profit organization.

## **RECITALS**

- A.** OPUD owns and has available for use certain premises; and
- B.** PLLOFA is seeking a facility to conduct its recreation programs and is willing to care for the facilities in question ~~and offer a youth recreation program to residents from Plumas Lake and surrounding communities;~~
- C.** PLLOFA 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 Olivehurst and surrounding communities and that said premises will be utilized for its intended purposes, which is to serve community oriented activities in and around Plumas Lake 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 Baseball/Softball fields at Eufay Wood Sr. Memorial Park and Veterans Park, Plumas Lake Olivehurst Community Park, Olivehurst, CA 95961 (“the Property”). ~~The Property does NOT include the concession stand at Eufay Wood Sr. Memorial Park. The concession stand is operated under a separate OPUD policy and program. OPUD hereby agrees to authorize scheduled use of the baseball/softball fields stand to by~~ PLLOFA.

## **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**

~~\_\_\_\_\_ PLLLOFA \_\_\_\_\_~~ 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. ~~\_\_\_\_\_ PLLOFAL \_\_\_\_\_~~ shall not commit waste or any public or private nuisance upon the Property. In addition, the following provisions describe ~~\_\_\_\_\_ PLLOFAL \_\_\_\_\_~~'s use of the Property:

A. ~~\_\_\_\_\_ PLLL \_\_\_\_\_~~ shall have use of the Property only for scheduled, official games. Furthermore, the scheduling of official game will be within the following days and times each year: March 1<sup>st</sup> through July 31<sup>st</sup> excluding Sundays. Games shall not be scheduled during the times of day when school is in session.

~~\_\_\_\_\_ PLLL \_\_\_\_\_~~  
~~\_\_\_\_\_~~ use of the Property is limited to actual scheduled games. Days to be determined on or before \_\_\_\_\_ (month, day) March 1<sup>st</sup> each year of use. ~~\_\_\_\_\_ PLLL \_\_\_\_\_~~ is to submit a schedule of games to be published and posted by OPUD so that other recreational benefits can be enjoyed at the Property. Furthermore, games shall not be scheduled on Sundays and games at the Veteran's Park ball field shall not be scheduled during dates and times when school is in session. In addition to the scheduled games, PLLL may schedule one evening (excluding weekends) each week during the season for practices at the ballfields. The practice sessions shall be included in the above described schedule.  
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 ~~\_\_\_\_\_ PLLL \_\_\_\_\_~~ an alternative use which OPUD, in its sole discretion, deems is necessary.

~~B-A.~~ At times when either OPUD or ~~\_\_\_\_\_ PLLOFAL \_\_\_\_\_~~ 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 9<sup>th</sup> Ave, Olivehurst, CA 95961. Such reservation is subject to written approval by OPUD.

~~\_\_\_\_\_~~ Other than stipulated in section 'A' above, ~~\_\_\_\_\_ PLLL \_\_\_\_\_~~ does not have exclusive use of the property for practice. Use of the property during all times other than officially scheduled games is on a first come first served basis. This is to allow for the recreational use of the Property by other individuals and recreational events.

C. ~~\_\_\_\_\_~~ will submit a \$100 key deposit prior to usage and will be issued three keys for the Property. ~~\_\_\_\_\_~~ shall not duplicate the keys nor permit them to be used by other than its authorized officials and, on or about September 1<sup>st</sup> of each year 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, ~~\_\_\_\_\_~~ shall forfeit the deposit.

C. ~~OPUD~~ does not provide recreation supervisors, coaches, trainers or similar staff. ~~\_\_\_\_\_ PLLL \_\_\_\_\_~~ will be responsible for any and all costs associated with damages

caused to any OPUD property as a direct result of \_\_\_\_\_ PLLL staff, volunteers or members, participants or its invitees. \_\_\_\_\_ PLLL shall provide all reasonably required staff, supervisors, volunteers, coaches and shall insure that all staff, including volunteers, are properly trained and supervised, and that all participants are properly supervised.

#### **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 \_\_\_\_\_ PLLOFAL’s use of the Property pursuant to this lease (collectively “Utilities”)

#### **5. TAX EXEMPT STATUS, LIENS, ENCUMBRANCES**

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

#### **6. ASSIGNMENT OR SUBLEASE**

\_\_\_\_\_ PLLOFA will not assign this Agreement, nor sublet the Property, nor any part thereof.

#### **7. MAINTENANCE, REPAIR & ALTERATIONS AND ADDITIONS BY \_\_\_\_\_ PLLOFA**

**With the express written permission of OPUD,** \_\_\_\_\_ PLLOFA 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, \_\_\_\_\_ PLLOFA 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. \_\_\_\_\_ PLLOFA agrees, at \_\_\_\_\_ PLLOFA’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. \_\_\_\_\_ PLLOFA 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 field and turf and painting walls/backstop where required by OPUD to OPUD’s reasonable satisfaction, all at \_\_\_\_\_ PLLOFA’s sole cost and expense.

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

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

This Agreement between OPUD and                     PLLOFA is a commercial lease. The Property is being leased "AS IS, WHERE IS" WITHOUT WARRANTY BY OPUD AS TO ITS CONDITION AND FITNESS FOR                     PLLOFA INTENDED USE. Therefore,                     PLLOFA 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.                     PLLOFA has inspected the Property and has confirmed to itself that the Property is fit and satisfactory for its intended purpose.

## **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                     PLLOFA 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 business activities.

## **10.   DUTY TO INSURE**

                    PLLOFA shall provide for and cause to be maintained 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.                     PLLOFA is required to provide OPUD immediate notice of any change, cancellation of modification of insurance coverage of any kind. This agreement shall be voided if                     PLLOFA does not submit a certificate of insurance contemporaneously with the execution of this agreement AND maintain insurance satisfactory to OPUD.

                    PLLOFA 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                      PLLOFA, 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 9<sup>th</sup> 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 Plumas Lake Little League 2070 Wilcox Ranch Road Plumas Lake, CA 95961 Olivehurst Fireman's Association, P.O Box 356, Olivehurst, 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, and throughout its term,                      PLLOFA 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 unrestricted right to terminate this agreement without cause by giving written notice of its intent to terminate eighteen (18) months prior to the intended termination date. Either party may terminate this agreement for cause upon substantial breach of a material term hereof by the other party. Notwithstanding the foregoing, OPUD may terminate the agreement for cause in accordance with the following procedure:

- A. This agreement may be terminated at any time upon thirty (30) days' notice by OPUD's Board for a material uncured breach by                     ; PLLOFA; provided, that OPUD shall not seek to terminate this agreement by reason of an asserted material breach by                      PLLOFA unless OPUD has first provided at least

thirty (30) days written notice of the asserted breach to PLLOFAL and PLLOFA has failed to cure such breach (or to diligently commence curative actions satisfactory to OPUD for a breach that cannot be fully cured within thirty (30) days) within the thirty (30)-day notice period.

## **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**

                     PLLOFA 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                      PLLOFA’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                      PLLOFA 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                      PLLOFA.

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

OPUD:

Name		Signature
Position Title		Date

                     PLLOF  
AL  
                     PLLL  
OFA:

Name		Signature
Position Title		Date