

# Olivehurst Public Utility District



## Agenda Item Staff Report

Meeting Date: January 16, 2020

### Item description/summary:

**Consider approval of the Lease agreement with Rise Up Yuba-Sutter for use of the Youth Center Building.** Members of Rise Up Yuba Sutter have approached the District regarding leasing the Youth Center Building. They have examined the facility, and have determined that it would be an excellent space for them to provide their performing arts programs to the youth of Olivehurst and Plumas Lake. Due to their nature as a non-profit specifically created towards benefitting youth in the area, under the District's Facility Use Prioritization Policy, this organization ranks in Category 2, which indicated that no rental fee is to be charged, though custodial costs will be. Rise Up has been advised of the need to supply and maintain liability insurance upon approval of an agreement. A deposit for custodial fees can also be considered.

### Fiscal Analysis:

Initially, Rise Up Yuba-Sutter will be charged a utility fee of \$200, with the right retained to increase that amount based upon actual usage.

### Employee Feedback

None

### Sample Motion:

Approve the Lease agreement with Rise Up Yuba-Sutter for use of the Youth Center Building.

Prepared by:

Elizabeth Mallen, District Clerk/Executive Assistant

# LEASE AGREEMENT

**THIS LEASE AGREEMENT (“Agreement”)** is entered into on this the \_\_\_\_ day of \_\_\_\_\_, 200209, 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 [Rise Up-Youth Program for the Performing ArtsAlcoholies Anonymous](#), a 501(c)(3) nonprofit (hereinafter referred to as “[AARise Up](#)”).

## RECITALS

- A. OPUD owns and has available for lease certain premises; and
- B. [AARise Up](#) is seeking a facility to conduct its ~~programs meetings~~ and is willing to care for the facilities in question and offer low-cost programs to residents from Olivehurst and surrounding communities;
- C. [AARise Up](#) 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 9<sup>th</sup> Ave, Olivehurst, CA 95961 (“the Property”). OPUD hereby agrees to lease the Property to the [Rise UpAA](#).

## 2. TERM OF AGREEMENT

The term of this Agreement shall be for 12 months commencing upon execution of this Agreement shall continue thereafter until terminated by either party, with or without cause.

## 3. USE OF PROPERTY

The [Rise UpAA](#) 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. Rise UpAA shall not commit waste or any public or private nuisance upon the Property. In addition, the following provisions describe the Rise UpAA use of the Property:

- A. The Rise UpAA shall have use of the Property 74 days a week: Mondays, from 3:00-8:30pm, Tuesdays from 3:00-6:00pm, Wednesdays from 3:00-6:00pm, Thursdays from 3:00-8:30pm~~from 7 PM-9 PM~~. 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 AARise Up 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. AARise Up has submitted a \$100 key deposit and has been issued three keys for the Property. AARise Up 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, Rise UpAA shall forfeit the deposit.
- D. At times when either OPUD or the Rise UpAA 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.
- E.

#### **4. UTILITIES AND SERVICES**

OPUD and Rise UpAA shall share Utilities and Common Area Maintenance fees as provided for in this Article 4.

A. Utilities. Rise UpAA shall pay ~~one hundred and fifty dollars~~ (\$150) per month 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 Rise UpAA's use of the property pursuant to this lease (collectively "Utilities"). The payment for Utilities shall be paid by Rise UpAA on or before the tenth (10<sup>th</sup>) day of each month for the term of this Agreement.

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

Rise UpTheAA is a 501(c)(3) nonprofit organization. Rise UpAA agrees to keep the Property free and clear of all levies, liens and encumbrances for the term of the lease.

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

The Rise UpAA will not assign this Agreement, nor sublet the Property, nor any part thereof.

## 7. MAINTENANCE, REPAIR & ALTERATIONS AND ADDITIONS BY THE RISE UPAA

Rise UpThe AA, 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, Rise UpAA 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. Rise Up-AA agrees, at Rise UpsAA'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. Rise UpAA 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 Rise UpAA's sole cost and expense.

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

The Rise UpAA will be responsible for any and all costs associated with damages caused to any OPUD property as a direct result of Rise UpAA staff, volunteers or clients or its invitees.

This Agreement between OPUD and Rise UpAA is a commercial lease. Therefore, Rise UpAA 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 Rise UpAA 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 Rise UpAA business activities.

## **10. DUTY TO INSURE**

[Rise UpAA](#) 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.

[Rise UpThe AA](#) 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 [Rise UpAA](#), 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 [Rise UpAA](#) at [1561 Adams Road, Yuba City, CA 95993](#), 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 [Rise UpAA](#) 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**

[Rise UpThe AA](#) 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 [Rise UpAA](#)'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 [Rise UpAA](#) 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 [Rise UpAA](#).

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

OPUD: \_\_\_\_\_  
Name Signature

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



| [Rise UpAA:](#) \_\_\_\_\_

\_\_\_\_\_  
Name

Signature

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

\_\_\_\_\_  
Date