

# Olivehurst Public Utility District



## Agenda Item Staff Report

Meeting Date: November 18, 2021

### Item description/summary:

**Measure K funding:** See attached document from Yuba County. I would recommend accepting agreement with Yuba County.

### Fiscal Analysis:

### Employee Feedback

### Sample Motion:

Move to approve Measure K Transactions and use Tax funding agreement between Olivehurst Public Utility District and County of Yuba

Prepared by:

Chief Randy York

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**MEASURE K TRANSACTIONS AND USE TAX FUNDING AGREEMENT BETWEEN OLIVEHURST PUBLIC UTILITY DISTRICT AND COUNTY OF YUBA**

**THIS AGREEMENT** made and entered into by and between Olivehurst Public Utility District, a California public utility district (hereinafter referred to as “District”) and County of Yuba, a political subdivision of the State of California (hereinafter referred to as “County”).

**WHEREAS**, Measure K is a one-cent transactions and use tax applied to sales transactions in the unincorporated portions of Yuba County.

**WHEREAS**, Measure K was approved by voters in November 2018 and confirmed by the Third District Court of Appeals in July 2021 as being a general tax.

**WHEREAS**, Measure K established Chapter 5.60 of the Yuba County Ordinance Code that outlines the establishment of the general tax, its purpose and use.

**WHEREAS**, the County desires to allocate a portion (20%) of Measure K one-time and ongoing revenue to enhance fire services in the unincorporated areas of the County.

**WHEREAS**, the nine (9) Districts (Camptonville, Dobbins/Oregon House, D-10/Hallwood, Foothill, Linda, Loma Rica/Browns Valley, Olivehurst Public Utility, Plumas Brophy and Smartsville) within the unincorporated areas of the County and the County have a mutual desire to enhance fire services for the residents residing in these areas.

**WHEREAS**, all nine (9) Districts have provided the County with a mutually agreed upon revenue distribution methodology for their 20% allocation of one-time and ongoing Measure K revenue.

**NOW, THEREFORE**, District and County mutually agree as follows:

**ARTICLE I**

**Payment of Funds:** County will process payment to District of its allocation of one-time and ongoing Measure K Funds upon receipt of approved inter-district distribution methodology signed by all nine (9) Districts and receipt of an executed funding agreement between the District and the County.

All one-time funds available will be disbursed based on the inter-district distribution methodology. One-time revenue is identified as revenue that was earned in the sales tax period prior to June 30, 2021 (prior to the decision rendered by the Third District Court of Appeals that Measure K is a general tax). One-time revenue can only be used for one-time expenses (i.e. capital projects, fixed assets).

Ongoing revenue will be disbursed on a monthly basis based on the inter-district distribution methodology.

Districts must provide the County Auditor-Controller with an inter-district distribution methodology agreed upon and signed by all nine (9) Districts prior to revenue disbursement by July 1<sup>st</sup> of each fiscal year. If the distribution methodology is not received by July 1<sup>st</sup>, the Auditor-Controller will distribute funds based on the prior year’s distribution methodology.

In no event shall County’s obligation under this Agreement exceed the approved allocation for the District.

## ARTICLE II

**Use of Funds:** District will use the funds to enhance fire services for the benefit of their District in a manner and for uses in accordance with Measure K.

**Prohibited uses include:**

- the enhancement of compensation and or fringe benefits to existing officers, directors, or employees;
- the payment of a fine, penalty, damages, or other settlements resulting from a failure to comply with Federal or State laws or regulations;
- legal costs incurred in defending or prosecuting any proceeding in state or federal court or before any administrative body.
- Any other expenditures not directly related to the enhancement of fire prevention or suppression activities.

**Allowed uses include but are not limited to:**

- the construction, renovation, installation, maintenance, operation, lease or purchase of capital improvements or facilities;
- the purchase, lease, rental, repair, or replacement of equipment;
- the purchase of materials and supplies for use in fire prevention or suppression efforts;
- additional staffing directly involved in fire prevention or suppression;
- recruitment costs incurred to increase staffing levels;
- development of new practices, procedures, or programs to enhance fire safety or the level of fire protection service provided in the District;
- development and presentation of educational programs focused on fire safety practices

The foregoing are not intended to be a comprehensive list of prohibited and allowed uses for the expenditure of funds granted pursuant to this Agreement, but provides examples of the types of expenditures which would be either prohibited or allowed uses. District is encouraged to consult with County in writing prior to expending funds received under this agreement if there is any question as to whether such expenditure is an allowed use under this Agreement.

## ARTICLE III

**Reporting:** District shall provide the Board of Supervisors with an annual report identifying by category and amount how the District spent its Measure K funds to enhance fire services by August 15<sup>th</sup> of each year. The report will provide backup documentation satisfactory to the County to support each category and amount of spending of the funds including contracts, invoices, bills, purchase orders, agenda items, or other writings supporting such expenditures. Failure to provide the annual report by the prescribed deadline will suspend disbursements to the District until the report and supporting documentation is provided to the County.

#### ARTICLE IV

**Audit:** District will keep and maintain an accurate financial account, in accordance with generally accepted accounting principles, all documentation related to Measure K revenue and expenditures for a period of five (5) years after the termination of this Agreement. Such accounting records shall be made available for inspection by the Measure K Citizens' Oversight Committee if so requested.

**In the event the Board of Supervisors determines that funds were not expended for the intended purpose of enhancing fire services, disbursements will be suspended to the District and the District will be responsible for reimbursing the County for the funds that the Board determined to be improperly expended by the District.**

#### ARTICLE V

**Compliance with Applicable Law:** The District will comply with all Federal, State, local laws, ordinances and policies, which are or may be applicable to the receipt and expenditure of Measure K funds.

#### ARTICLE VI

**Liability:** The District is and shall be at all times, deemed independent and shall be wholly responsible for the acts of District employees, board members, and contractors, if any, in connection with Measure K funds.

#### ARTICLE VII

**No Third Party Beneficiary:** Nothing in this Agreement shall be construed to create any rights of any kind or nature in any other party not named a party to this Agreement.

#### ARTICLE VIII

**Term:** This Agreement shall become effective when fully executed by both parties ("Effective Date") and shall expire on November 6, 2028 when Measure K sunsets.

**County may terminate this Agreement in the event District ceases to operate as a Community Services District or otherwise becomes unable to substantially perform any terms or conditions of the Agreement. In the event of early termination of this Agreement, the District shall return funds previously received from the County, which have not been expended by the District, to the County within thirty (30) days of termination.**

**If changes in the District occur in the future (i.e. consolidation, new district) revisions to the inter-district distribution methodology and/or new agreement(s) will need to be completed.**

#### ARTICLE IX

**Reservation of Future Budgetary Authority:** Notwithstanding any other provision of this Agreement, nothing herein shall be interpreted to in any way infringe upon or limit the legislative authority of the Board of Supervisors to increase or decrease the amount or percentage of Measure K revenues allocated to the Districts as part of the County's annual budget process. Furthermore, this Agreement shall not be interpreted as causing the County to incur any indebtedness, liability, or obligation exceeding the income and revenue provided for each fiscal year covered by this Agreement.

**ARTICLE X**

**Indemnity:** District shall defend, indemnify, and hold harmless COUNTY, its elected and appointed councils, boards, commissions, officers, agents, and employees from any liability for damage or claims for damages, or injunctive or declaratory relief that arise out of, pertain to, or relate to the claimed negligence, recklessness, or willful misconduct of District, its officers, directors, agents, or employees involving the expenditure of or accounting for the expenditure of funds allocated to District under this Agreement.

District shall also defend, indemnify, and hold harmless COUNTY, its elected and appointed councils, boards, commissions, officers, agents, and employees from any liability for damage or claims for damages arising out of or in any way related to the activities funded by District with the Measure K revenues allocated under this Agreement.

**ARTICLE XI**

**Notice to Parties:** All notices or other communication required or permitted to be given under this Agreement shall be in writing and either served personally or sent by prepaid, first class U.S. mail addressed as follows:

District:  Chairperson Olivehurst Public Utility District P.O. Box 670 Olivehurst, CA 95961	County:  County Administrator County of Yuba 915 8th Street, Suite 115 Marysville, CA 95901
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Any party may change its address by notifying the other party of the change in the manner provided above.

**ARTICLE XII**

**Partial Invalidity:** If any term, covenant, condition or provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provision and/or provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**ARTICLE XIII**

**Jurisdiction:** It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a Court of competent jurisdiction in the County of Yuba, State of California.

**ARTICLE XIV**

**Authority:** All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such entity(s), person(s), estate(s) or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Further, by entering into this Agreement,

neither party hereto shall have breached the terms or conditions of any other contract or agreement to which such party is obligated, which such breach would have a material effect hereon.

OLIVEHURST PUBLIC UTILITY  
DISTRICT

COUNTY OF YUBA

By: \_\_\_\_\_  
John Floe, Chairperson

By: \_\_\_\_\_  
Kevin Mallen, County Administrator

APPROVED AS TO FORM:

By:  \_\_\_\_\_  
Michael Ciccozzi, County Counsel