

RESOLUTION NO. 2417

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
OLIVEHURST PUBLIC UTILITY DISTRICT
APPROVING FRAMEWORK FOR AGREEMENTS
BETWEEN OLIVEHURST PUBLIC UTILITY DISTRICT (DISTRICT) AND
CITY OF WHEATLAND (CITY) REGARDING PROVISION OF
REGIONAL WASTEWATER TREATMENT SERVICES
AND DIRECTING STAFF TO PREPARE FINAL AGREEMENTS**

WHEREAS, the District and the City each currently own, operate, and maintain separate facilities for the collection and treatment of wastewater in their respective service areas, and

WHEREAS, the District owns and operates a Wastewater Treatment Facility (“Facility”) located at 3908 Mary Avenue, Olivehurst, California, and which is capable of accepting flows from the City; and

WHEREAS, to safeguard water quality in the region, protect the environment, and promote the health, safety, and general welfare of both the District and the City, the Parties have determined it is in their mutual best interests to develop a framework for a regional approach to wastewater treatment and conveyance in South Yuba County, and

WHEREAS, the City’s existing wastewater treatment plant is not sufficient to meet anticipated regulatory requirements or the City’s anticipated growth; and

WHEREAS, the Parties are working collaboratively to design, construct and finance a conveyance system capable of delivering 1.5 MGD average dry weather flow and 3.3 MGD peak flow from the City’s and District’s service areas to the Facility; and

WHEREAS, the District warrants the Facility has current and future expansion capacity to receive and treat the City’s current and anticipated flow from the conveyance system to be constructed; and

WHEREAS, the City intends to secure capacity in the Facility and reimburse the District for treatment services pursuant to agreements to be drafted between the District and the City based on the attached Frameworks; and

WHEREAS, Attachments 1 and 2 to this Resolution together constitute the framework which will form the basis for both an Interagency Capacity Purchase Agreement and an Interagency Operations Agreement between the City and the District; and

WHEREAS, the City and District intend that the final, executed Interagency Capacity Purchase Agreement and Interagency Operations Agreement shall constitute the sole enforceable agreements between the Parties regarding the subject matter contained in Attachments 1 and 2; and

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Olivehurst Public Utility District hereby approves the attached framework set forth in Attachments 1 and 2, and directs staff to prepare final agreements consistent with this Resolution for further review and approval.

PASSED AND ADOPTED by the Board of Directors of Olivehurst Public Utility District, this 28th day of February 2023, by the following vote:

SO ORDERED.

OLIVEHURST PUBLIC UTILITY DISTRICT

President, Board of Directors

ATTEST:

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

District Clerk and Ex-Officio Secretary

Deirdre Joan Cox, Legal Counsel

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I hereby certify that the foregoing is a full, true, and correct copy of a Resolution duly adopted and passed by the Board of Directors of the Olivehurst Public Utility District, Yuba County, California, at a meeting thereof held on the 28th day of February 2023, by the following vote:

AYES, AND IN FAVOR THEREOF:

NOES:

ABSTAIN:

ABSENT:

District Clerk and ex-officio Secretary

ATTACHMENT 1

DRAFT WHEATLAND/OPUD REGIONAL SEWER DEAL POINTS
INTERAGENCY CAPACITY PURCHASE AGREEMENT FRAMEWORK

STAFF RECOMMENDATIONS

Staff has prepared the following deal points to outline of the essential terms of an Interagency Capacity Purchase Agreement between the City of Wheatland (the “City”) and the Olivehurst Public Utility District (“OPUD”) for the City’s purchase of capacity in the OPUD wastewater treatment plant and related infrastructure. These deal points have been prepared to summarize the recommendations of the City and OPUD staffs to each agency’s elected representatives to obtain further direction in drafting the Interagency Capacity Purchase Agreement. The final, executed Interagency Capacity Purchase Agreement (which may contain additional terms and provisions recommended by staff and legal counsel in the drafting process consistent with this summary) shall constitute the sole enforceable agreement between the agencies regarding the subject matter hereof.

Recitals

WHEREAS, the District and the City each currently own, operate, and maintain separate facilities for the collection and treatment of wastewater in their respective service areas, and the District owns and operates a Wastewater Treatment Facility (“Facility”) located at 3908 Mary Avenue, Olivehurst, California, and which is capable of accepting flows from the City; and

WHEREAS, to safeguard water quality in the region, protect the environment, and promote the health, safety, and general welfare of both the District and the City, the Parties have determined it is in their mutual best interests to develop a framework for a regional approach to wastewater treatment and conveyance in South Yuba County, and

WHEREAS, the City’s existing wastewater treatment plant is not sufficient to meet anticipated regulatory requirements or the City’s anticipated growth; and

WHEREAS, Parties are working collaboratively to design, construct and finance a conveyance system capable of delivering 1.5 MGD average dry weather flow and 3.3 MGD peak flow to Facility; and

WHEREAS, District warrants the Facility has current and future expansion capacity to receive and treat City’s flow; and

WHEREAS, Wheatland agrees to secure capacity in the Facility according to the terms herein; and

WHEREAS, Parties have entered into a separate agreement to share Facility operational costs; and

WHEREAS, District and City agree to share the Facility Capital Repair and Replacement Costs proportionately

THEREFORE, the Parties agree to the following:

Term:

1. Term is for the useful life of the facilities.

Capacity Purchases

2. This agreement is conditioned upon award of SRF funding for the project in amount sufficient to support this agreement, completion of a rate analysis and/or rate stabilization method satisfactory to Wheatland, and Wheatland's satisfaction with condition of the OPUD treatment facility.
3. OPUD is contractually obligated to provide 1.5 mgd of average annual dry weather (ADWF) or 3.3 mgd peak flow capacity in the plant (including the shared transmission main and shared collector sewer system). The sum of the upfront payment for reservation of EDUs totaling approximately .75 mgd of plant capacity, plus payment of per EDU connection fees by all new users who have not already paid a connection fee, is Wheatland's total obligation, now or in the future, for payment for this plant capacity (not including CRRP payments).
4. Wheatland will buy connections up front totaling .75 mgd ADWF or, if remaining plant capacity is less than 1.5 mgd, 50% of remaining unused capacity in the plant. At the time Wheatland's purchase is made, both Wheatland and OPUD will have reserved capacity in the plant equal to 50% of the remaining plant capacity at the time of the purchase.
5. The cost for the upfront purchase is dependent on CWSRF funding and will not exceed OPUD's per EDU capacity fee in effect when flows are first received at the OPUD plant.
6. Peaking Factors. Wheatland will be responsible to OPUD for District costs incurred if Wheatland exceeds the following peaking factors (PF):
 - (1) PF shall not exceed 3.3 initially when Wheatland's ADWF is less than 0.75 mgd.
 - (2) PF shall be reduced to 2.8 when Wheatland's ADWF exceeds 0.75 mgd.
 - (3) PF shall be reduced to 2.6 when Wheatland's ADWF exceeds 0.90 mgd.
 - (4) PF shall be reduced to 2.2 and no lower when Wheatland's ADWF exceeds 1.26 mgd.
7. The agreement will include language committing Wheatland to securing the 1.5 mgd ADWF capacity, after the initial capacity purchase, incrementally only as building permits are issued. The agreement will also include the commitment for both parties, along with Yuba County, to plan collaboratively for plant capacity based on growth throughout the OPUD and Wheatland service areas.
8. OPUD acknowledges that the 1.5 mgd ADWF capacity of the shared transmission main has been sized for Wheatland's 40-year growth. Wheatland acknowledges that use of .75 mgd of this capacity may not be required initially. Wheatland agrees to share this excess capacity with OPUD, provided OPUD guarantees the availability to Wheatland of its full 1.5 mgd capacity when required by Wheatland and at no further cost to Wheatland.
9. Parties acknowledge that upon completion of the regional conveyance project, OPUD does not have the current capacity in either the plant or the shared transmission main to meet all of Wheatland's and OPUD's anticipated growth. OPUD warrants and guarantees to Wheatland that it will utilize connection fees paid by Wheatland to expand the plant as required by this agreement. OPUD further warrants and guarantees that it will collect sufficient connection fees from any party (other than Wheatland) using any of the capacity of the 1.5 mgd shared transmission main built as part of the Wheatland Regionalization Project in an amount reasonably expected to be sufficient to replace that capacity, or use other funding that may be secured, and provide the full capacity to Wheatland as required by this agreement, at no further cost to Wheatland (e.g., Wheatland is assured that

grant funds shall provide Wheatland with 1.5 mgd ADWF, which is equivalent to 3.3 mgd peak flow, in the shared transmission facilities at no additional cost to Wheatland).

10. Except for existing homes or lots within the OPUD service area currently zoned for residential housing, or non-residential building within OPUD's current service area, OPUD will not allow use of the shared transmission main by any other party without express written permission of City.
11. Wheatland will adopt the same EDU waste strength definition as is used by OPUD.
12. Once the plant is expanded beyond the current 3.0 mgd capacity both OPUD and Wheatland new connections will pay OPUD's connection fee per EDU in effect at the time of the purchase on a first come/first served basis.
13. In both the OPUD and Wheatland service areas, first come/first served capacity purchases will only be made for actual building permits being issued.
14. The agreement will include a table showing both OPUD and Wheatland's reserved capacity. Neither party's capacity may be consumed by the other without express written permission, which shall not be unreasonably withheld. The agreement will specify in a table the District capacity and Wheatland capacity in the plant. The table will be updated annually as necessary.

Plant and Conveyance Expansion and Management

15. OPUD is solely responsible for permitting, regulatory compliance, plant expansion, capacity management, and ensuring there is sufficient capacity to meet the obligations of the agreement.
16. OPUD acknowledges this agreement will provide substantial seed money for future expansion and agrees to expedite expansion based on the projected growth in both the City of Wheatland and the OPUD service area in the event that an expedited expansion is required..
17. Planning for expansion of the plant must begin at any time the plant reaches 70% of permitted capacity, when either party is using 50% of or more of their initial reserved capacity, or when forecasted growth makes it prudent to begin plant expansion. Planning, design and construction of expansion or capacity improvement of the treatment facility, up to 1.5 mgd of flow for Wheatland, will be at OPUD's expense.
18. Planning for expansion or capacity improvement of the 1.5 mgd shared transmission main sized for Wheatland's 40-year growth must begin when capacity of the shared transmission main reaches 50%. Planning, design and construction of expansion or capacity improvement of the shared transmission line, up to 1.5 mgd of flow for Wheatland, will be at OPUD's expense.
19. Will serve letters issued by either party will clearly state that plant capacity is committed first come/first served based on issuance of building permits. After Wheatland's initial purchase of capacity in the plant, neither party will allow a developer to purchase and reserve plant capacity in advance of the issuance of building permits.
20. If any moratorium on new connections is initiated, the moratorium will apply to both jurisdictions equally.
21. Any need for expansion driven by Wheatland needs above 1.5 mgd adwf will be negotiated separately and is not considered in this agreement.

Joint Planning Advisory Committee

OPUD and Wheatland will each designate two elected members to serve on a Joint Planning Advisory Committee. Yuba County will also be invited to designate two members to sit on the Joint Planning

Advisory Committee. The committee will meet quarterly following execution of the agreement, or as often as necessary.

Future Joint Powers Authority

22. Both parties agree to discuss formation of a Regional Wastewater Treatment JPA no later than three years after the OPUD plant begins receiving Wheatland's flow.

Capital Repair and Replacement (CRRP) Projects

23. Prior to entering into this agreement, Wheatland, at its sole cost, will engage a consultant to review the condition of the plant to provide an opinion as to OPUD's ability to meet the conditions of this agreement.
24. Wheatland is responsible for paying a fair share of capital repair and replacement project (CRRP) costs once Wheatland delivers flow to the OPUD system.
25. Prior to receiving Wheatland's flows, OPUD will complete a rate analysis for sewer treatment. That rate analysis will include a factor for treatment plant CRRP based on the total number of connections expected during the rate cycle, including both projected OPUD and Wheatland connections. The total cash value of all treatment plant CRRP costs included in the rate analysis will be spread equally across the entire combined OPUD and Wheatland rate base.
26. Wheatland agrees to include in its own rate for sewer treatment that same treatment plant CRRP factor. Wheatland will transfer the amount collected for CRRP with each periodic payment to OPUD.
27. The parties agree that Wheatland will be responsible for 70% of CRRP related to the shared transmission main and OPUD will be responsible for 30%. The projected basis for CRRP will be agreed to by both parties who will include that amount pro rata in the calculation of both their respective sewer collection rates and sewer collection impact fees. Wheatland will transfer the amount collected for shared transmission CRRP with each periodic payment to OPUD. Once Wheatland exceeds 70% of capacity in the shared transmission main, OPUD CRRP will be reduced proportionately to the actual percentage of capacity in use by OPUD. Conversely, at any time OPUD exceeds 30% capacity in the shared transmission main, OPUD will become responsible for CRRP based on the actual percentage of capacity in use by OPUD.
28. OPUD is solely responsible for implementing all CRRP projects related to the treatment plant and the shared transmission main. Wheatland has no financial obligation to these projects beyond payment to OPUD of CRRP as specified in this section.

Miscellaneous Provisions

29. This agreement may not be modified, amended, changed, or terminated, unless otherwise expressly provided herein, in whole or in part, except by an agreement in writing duly authorized and executed by both parties.
30. Insurance and Indemnification provisions will have to be approved by insurers for both Parties.
31. Attorneys for parties will agree to the standard contract paragraphs that will follow the core deal points.
32. We will include definitions as Exhibit 2.
33. We need a dispute resolution process.
34. Given the public policy considerations underlying this agreement and its importance to the health, welfare and safety of the parties' residents, OPUD and Wheatland acknowledge that each party is

entitled to enforce this agreement by seeking injunctive relief and specific performance in court, as money damages for breach will be inadequate.

ATTACHMENT 2

WHEATLAND/OPUD REGIONAL SEWER DEAL POINTS

INTERAGENCY OPERATIONS AGREEMENT

JOINT STAFF RECOMMENDATIONS

Staff has prepared the following deal points to outline of the essential terms of an Interagency Operations Agreement between the City of Wheatland (the “City”) and the Olivehurst Public Utility District (“OPUD”) for the use of the OPUD wastewater treatment plant and related infrastructure. These deal points have been prepared to summarize the recommendations of the City and OPUD staff to each agency’s elected representatives to obtain further direction in drafting the Interagency Operations Agreement. The final, executed Interagency Operations Agreement (which may contain additional terms and provisions recommended by staff and legal counsel in the drafting process consistent with this summary) shall constitute the sole enforceable agreement between the agencies regarding the subject matter hereof.

Recitals

WHEREAS, the District and the City each currently own, operate, and maintain separate facilities for the collection and treatment of wastewater in their respective service areas, and the District owns and operates a Wastewater Treatment Facility (“Facility”) located at 3908 Mary Avenue, Olivehurst, California, and which is capable of treating flows from the City; and

WHEREAS, to safeguard water quality in the region, protect the environment, and promote the health, safety, and general welfare of both the District and the City, the Parties have determined it is in their mutual best interests to develop a framework for a regional approach to wastewater treatment and conveyance in South Yuba County, and

WHEREAS, the City’s existing wastewater treatment plant is not sufficient to meet anticipated regulatory requirements or the City’s anticipated growth; and

WHEREAS, Parties are working collaboratively to design, construct and finance a conveyance system capable of delivering 1.5 MGD average dry weather flow and 3.3 MGD peak flow to Facility; and

WHEREAS, Parties have entered into a separate agreement for Wheatland to purchase capacity at the Facility and pay a fair share of costs for Capital Repair and Replacement Costs; and

WHEREAS, District and City agree to share the Facility operation costs proportionately.

THEREFORE, the Parties agree to the following:

Term

1. Term of agreement is for the useful life of the facilities.

Determination of Shared Operating Costs

2. Wheatland will pay a fair share of annual treatment operating costs based on % of flow to the plant. Wheatland's flow volume will be measured continuously prior to entering the shared pump station at Ostrom Road (OPUD Pump Station 21) and an annual flow will be calculated for each fiscal year (July 1 – June 30)
3. Wheatland will pay a fair share of annual shared transmission main operating costs based on % of flow in the shared transmission main. Share of flow will be determined by calculating the difference between total flows from the shared transmission main into the plant and Wheatland flow entering Pump Station 21.
4. The Operations Agreement will define the component costs of OPUD operations for which Wheatland is required to pay a fair share (to be Exhibit 1).
5. Wheatland's waste strengths will not exceed an agreed to profile as measured prior to entering OPUD Pump Station 21. The agreed-to waste strength limits will be included as an Exhibit 2 to the treatment and operations agreement.
6. Samples of waste strength will be taken monthly by both parties prior to flow entering Pump Station 21.
7. Wheatland's flow will be metered prior to entering OPUD Pump Station 21. % of flow will be calculated by $\text{Wheatland's Flow at Pump Station 21} / \text{Total flow into the OPUD plant}$.
8. Wheatland's failure to meet flow and or waste strength specifications (as stated in the Interagency Capacity Purchase Agreement) will trigger an initial review, and may trigger additional costs if not corrected (adopt language from the Marysville/LCWD Agreement).
9. OPUD and the City shall operate and maintain their respective sewer collector systems in compliance with the requirements of the discharge permits and other applicable laws and regulations, and shall reasonably agree to amend this Agreement from time to time as necessary to comply with the requirements of the Discharge Permits or other applicable laws and regulations. OPUD and the City shall cooperate with, and assist, each other as reasonably necessary to comply with the discharge permits, including, without limitation, making its sewer collector system available for any studies and inspections required by the discharge permits. A party violating its discharge permit or whose wastewater discharges exceed the maximum allowable flow characteristics resulting in increased treatment costs or damage to the treatment plant shall reimburse the other party for such additional treatment costs or costs of repair. Fines or penalties imposed as a result of a violation of a discharge permit shall be the sole responsibility for the party in violation.
10. Both parties must notify the other if there is a violation that occurs within their respective systems
11. Initial baseline percentage of flow will be determined by an independent third party agreed upon by OPUD/Wheatland based on analysis of the most recent OPUD FY eligible costs and the median from the five prior years of flow from each agency. The cost for the review will be shared by Wheatland and OPUD equally. The baseline charge will remain in effect through the first full two fiscal years of operation and will not change prior to the July following the second full fiscal year.

Establishing the Baseline

12. For purposes of Wheatland establishing a rate schedule, OPUD will provide Wheatland with 5 years of audited financial statements and the data on the five prior years of annual flow.

Methodology for Adjusting Wheatland's Fair Share of Cost Reimbursement

13. Once the baseline flow % has been established, that flow % will be used as the % of eligible operating costs Wheatland will pay. The Wheatland reimbursement will be calculated by multiplying the flow % by the approved operating expenses as shown in the OPUD year-end financial statement. The calculated annual amount will be paid quarterly based on 12 equal monthly payments. OPUD will send Wheatland an annual invoice for the coming fiscal or calendar year based on these calculations, due in quarterly payments in June, September and December and March. The annual invoice will provide details on the calculation of eligible costs and the determination of % of flow. Wheatland and OPUD Finance Directors will meet prior to completion of the final agreement to work out the timing of the reimbursement payments.
14. The Joint Advisory Committee will review and discuss the flow and expense report and any identified true-up payment in November of each calendar year following the close of the prior fiscal year.
15. Any change in billing will be effective during the next fiscal or calendar year as determined by the Finance Directors of Wheatland and OPUD.
16. A true-up will be based on actual flow and actual operating costs for each full fiscal year. Any increase in cost will be spread over the next 12 months payments during the calendar or fiscal year as determined by the Wheatland and OPUD Finance Directors. Any overpayment will be deducted over the next 12 months during the calendar year. The true up payment or deduction will show as a separate charge on the annual invoice. The initial true-up payment will be paid back over 12 months or the same # of months the baseline payment was in effect, whichever is greater.
17. After December 31 of each fiscal year, if total OPUD budgeted expenses for operational costs for wastewater treatment in the first six months of the current FY have been exceeded/not reached by a factor greater than 20%, Parties agree to meet and confer regarding potential adjustments to the current calendar year payments from Wheatland that are in effect.

Miscellaneous

18. This agreement may not be modified, amended, changed, or terminated, unless otherwise expressly provide herein, in whole or in part, except by an agreement in writing duly authorized and executed by both parties.
19. Need dispute resolution clause.
20. Insurance and Indemnification provisions will have to be approved by insurers for both Parties.
21. Attorneys for parties will agree to the standard contract paragraphs that will follow the core deal points.
22. Definitions will be included as an Exhibit.

(2.21.2023)