

# Olivehurst Public Utility District



## Agenda Item Staff Report

**Meeting Date: March 21, 2019**

### Item description/summary:

**Consider approving Amendment to MOU between OPUD and Enterprise Rancheria for fire service calls and emergency medical services to the casino that is being built on Forty Mile Road (Strategic Plan 4.1).** This item has been discussed with other local agencies including Wheatland Fire Authority and Plumas-Brophy Fire Protection District (collectively "WFA") and the County of Yuba. The Amendment to the MOU that was entered into between OPUD and the Estom Yumeka Maidu Tribe of the Enterprise Rancheria last year updates that MOU in the following ways:

- Payment by the Tribe to WFA for Fire Mitigation Fees and for Fire and Emergency Medical Services Calls that are provided to the casino site pursuant to a Mutual Aid Agreement and that are provided to the area surrounding the casino site that are related to casino operations; and
- Extending a limited waiver of sovereign immunity from the Tribe to WFA; and
- Payment by the Tribe to OPUD of additional Fire Mitigation Fees arising from the adoption of new rates by OPUD and from the increase in size of the casino that is being built.

The Amendment to the MOU continues to ensure that OPUD taxpayers will not bear any costs for these services. This Amendment to the MOU will enhance economy of scale benefits with increased operational efficiency to the fire department.

**Consider approving Mutual Aid Agreement between OPUD and WFA (Strategic Plan 4.1).** This item contains specific details about the manner in which OPUD and WFA will cooperate to provide Fire and Emergency Medical Services Calls for onsite and offsite casino operations and how each party will be compensated by the Tribe. The Mutual Aid Agreement has already been approved by WFA.

**Authorize District Staff to File a CEQA Notice of Exemption.** Filing of this document shortens the potential time frame for any challenge to the OPUD and WFA decisions pertaining to the provision of Fire and Emergency Medical Services Calls for onsite and offsite casino operations

**Authorize District Staff to Notify Yuba County of Amendment to MOU.**

**Authorize District Staff to Notify Yuba County LAFCO of Resolution of Issues with WFA.**

### Fiscal Analysis:

No cost to the Olivehurst taxpayers for these services.

### Employee Feedback

Very positive.

### Sample Motion:

Move to approve the Amendment to the MOU between OPUD and the Enterprise Rancheria for fire service calls and emergency medical services.

Move to approve the Mutual Aid Agreement Between OPUD and WFA.

Direct staff to: File a CEQA Notice of Exemption, Notify Yuba County of Amendment to MOU, and Notify Yuba County LAFCO of Resolution of Issues Between OPUD and WFA

Prepared by:

Joan Cox, Esq., OPUD Legal Counsel

## AMENDMENT TO MOU

THIS AMENDMENT TO MOU (“**Amendment**”) is made and entered into as of March 21, 2019 and is by and between OLIVEHURST PUBLIC UTILITY DISTRICT, a public utility district formed and operating under California Public Utilities Code sections 15501 et seq. (the “**District**”) and the ESTOM YUMEKA MAIDU TRIBE OF THE ENTERPRISE RANCHERIA, a federally recognized Indian tribe listed in the Federal Register as the Enterprise Rancheria of Maidu Indians of California (the “**Tribe**”).

### RECITALS

A. District and Tribe are parties to that certain Memorandum of Understanding Between the Olivehurst Public Utility District and the Estom Yumeka Maidu Tribe of the Enterprise Rancheria, dated for convenience April 19, 2018 (“**Original MOU**”).

B. The Tribe is constructing a Class III gaming facility and hotel (as further specified in the Original MOU, the “**Project**”) on approximately forty (40) acres of land located in Yuba County, California, which is owned by the United States and held in trust for the Tribe (as further specified in the Original MOU, the “**Yuba Site**”). Under the Original MOU, the District agreed to provide, and the Tribe agreed to pay for, fire protection and emergency medical services for the Project and any persons therein at the Yuba Site.

C. Subsequently, Wheatland Fire Authority, a Joint Powers Agency comprised of the City of Wheatland and the Plumas Brophy Fire Protection District (“**Wheatland/Plumas Brophy**”), filed a lawsuit in state court challenging the District’s approval of the Original MOU based, in part, on the Project’s location within Wheatland/Plumas Brophy’s sphere of influence. On or about September 18, 2018, and subject to various conditions subsequent (including this Amendment), Wheatland/Plumas Brophy and the District entered into a Conditional Settlement Agreement Following Mediation (the “**Conditional Settlement**”) to resolve the lawsuit. The Conditional Settlement is in the process of being further memorialized into several non-conditional documents, including without limitation a Settlement Agreement and General Release (“**Settlement Agreement**”) and Mutual Aid Agreement, each between Wheatland/Plumas Brophy and the District, and this Amendment.

D. The overall settlement terms also contemplate that following execution of the Settlement Agreement and the Mutual Aid Agreement, the District as Lead Agency shall file a Notice of Exemption under CEQA.

E. Based on the foregoing, the parties hereto wish to amend the Original MOU as provided in this Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, stipulated and agreed, the parties hereby agree as follows:

**1. Defined Terms.** All capitalized terms not otherwise defined in this Amendment (if any) shall have the respective meanings provided in the Original MOU.

2. **Amendments.**

(a) Section 1 of the Original MOU is hereby amended by adding the following definitions (in the applicable places by alphabetical order):

**“CEQA”** means the California Environmental Quality Act, Public Resources Code section 21000 et seq., and all regulations, rules and guidelines thereunder.

**“Mutual Aid Agreement”** means that certain Mutual Aid Agreement regarding the Project, dated on or about March 21, 2019 substantially in form attached hereto as Exhibit D.

**“Offsite Emergency Medical Services Call”** means an Emergency Medical Services Call which does not originate from the Yuba Site but otherwise originates from Wheatland/Plumas-Brophy’s service area.

**“Offsite Fire Services Call”** means a Fire Services Call which does not originate from the Yuba Site but otherwise originates from Wheatland/Plumas-Brophy’s service area.

**“Offsite Services Calls”** means Offsite Fire Services Calls and Offsite Emergency Medical Services Calls.

**“Onsite Emergency Medical Services Call”** means an Emergency Medical Services Call which originates from the Yuba Site.

**“Onsite Fire Services Call”** means a Fire Services Call which originates from the Yuba Site.

**“Onsite Services Calls”** means Onsite Fire Services Calls and Onsite Emergency Medical Services Calls.

**“Settlement Agreement”** means that certain Settlement Agreement and General Release between Wheatland-Plumas/Brophy, the District and the Olivehurst Public Utility District Board of Directors, dated on or about March 21, 2019.

**“Toyota Amphitheatre”** means the facility with an address of 2677 Forty Mile Road, Wheatland California 95692, previously known as the Sleep Train Amphitheatre and now known as the Toyota Amphitheater, as modified from time to time.

**“Wheatland/Plumas Brophy”** means Wheatland Fire Authority, a Joint Powers Agency comprised of the City of Wheatland and the Plumas Brophy Fire Protection District.

(b) Section 2 of the Original MOU is amended by adding at the end the following as a new Section 2(d):

(d) Project Changes.

Following final execution of the Settlement Agreement and Mutual Aid Agreement, the District shall file a Notice of Exemption under CEQA.

(c) Section 3(a) of the Original MOU is hereby amended and restated in its entirety as follows:

(a) Fire Services.

(i) From and after the Start Date, the District shall respond to all Onsite Fire Services Calls. Should the District be unavailable to respond to any such Onsite Fire Services Call, the District will first contact Wheatland/Plumas Brophy. The foregoing sentence will apply unless the District reasonably determines that another fire protection agency is better able to respond to the specific circumstances of an Onsite Fire Services Call. The intent of this provision is to provide the best possible service at the earliest possible opportunity.

(ii) The District shall provide such fire services on a non-discriminatory basis as compared with any other sites, and subject to all obligations of the District to provide fire or other services to other areas as required by California law and Mutual Aid.

(d) Section 3(b) of the Original MOU is hereby amended and restated in its entirety as follows:

(b) Emergency Medical Services.

(i) From and after the Start Date, the District shall respond to all Onsite Emergency Medical Services Calls. Should the District be unavailable to respond to any such Onsite Emergency Medical Services Call, the District will first contact Wheatland/Plumas Brophy. The foregoing sentence will apply unless the District reasonably determines that another fire protection agency is better able to respond to the specific circumstances of an Onsite Emergency Medical Services Call. The intent of this provision is to provide the best possible service at the earliest possible opportunity.

(ii) The District shall provide such emergency medical services on a non-discriminatory basis as compared with any other sites, and subject to all obligations of the District to provide similar services to other areas as required by California law.

(e) Section 4(d) of the Original MOU is hereby renumbered 4(e), and the following is added as a new Section 4(d):

(d) Additional Payment Matters.

(i) For Fire Services Calls and Emergency Services Calls related to the Project that Wheatland/Plumas-Brophy or a neighboring fire protection agency properly responds to, the District will pay the responding agency (as applicable) the Per-Fire Services Call Amount or Per-Emergency Medical Services Call Amount otherwise specified in this MOU.

(ii) Any Offsite Services Call that occurs on Forty Mile Road between the intersection of Highway 65 and Forty Mile Road south to the intersection of Forty Mile Road and Plumas Arboga Road and west between the intersection of Forty Mile Road and Plumas Arboga Road to the railroad tracks east of the intersection of Plumas Arboga Road and Algodon Road, including, or that occur within, Area 1 as depicted in yellow on the diagram attached here to as Exhibit "E", shall be presumed to be a Services Call related to casino operations unless there is an event simultaneously occurring at the Toyota Amphitheatre. The District shall maintain in its records an ongoing schedule of Toyota Amphitheater events to facilitate the determination whether a Services Call is related to casino operations or not. Nevertheless, should the responding fire protection agency deem a Services Call that occurs while an event is occurring at the Toyota Amphitheater to be related to casino operations, then that Services Call shall be treated as a Services Call related to casino operations under this MOU until such presumption shall be rebutted.

(iii) Any Offsite Services Call that occurs within Wheatland/Plumas Brophy's service area but outside of the area described in Section 4(d)(ii) above (including, or that occur within, Area 1 as depicted in yellow on the diagram attached here to as Exhibit E), whether or not there is an event simultaneously occurring at the Toyota Amphitheatre, shall be presumed *not* to be a Services Call related to casino operations. Nevertheless, should the responding fire protection agency deem the Services Call to be related to casino operations, then that Services Call shall be treated as a Services Call related to casino operations under this MOU until such presumption shall be rebutted.

(iv) If more than one fire protection agency (including the District) responds to a Services Call, that Services Call will be treated as multiple Fire Services Calls or Emergency Medical Services Calls, as applicable.

(f) Section 9 of the Original MOU is hereby amended and restated in its entirety as follows:

9. Indemnification.

As additional consideration for the District's agreement to respond to certain Service Calls under this MOU, and for Wheatland/Plumas-Brophy's agreement to respond to certain Service Calls under the Mutual Aid Agreement, the Tribe shall defend, indemnify and hold harmless the District, Wheatland/Plumas-Brophy, and each of their respective members, board members, officers, employees, departments, officials, representatives, inspectors, contractors, consultants and agents from and against all claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to claims and fines of regulatory agencies and attorney's fees and consultant's fees, directly or indirectly arising out of, connected with or resulting from (i) the performance or nonperformance of fire and emergency medical services contemplated under this Agreement, or (ii) following the District's filing of a Notice of Exemption under CEQA, any claim against the District or Wheatland/Plumas-Brophy challenging the legality of their agreements to respond to certain Services Calls under this MOU or the Mutual Aid Agreement, as applicable, or challenging any actions taken by the District's Board of Directors or any governing body of Wheatland/Plumas-Brophy to approve this MOU, any amendment hereto, the Mutual Aid Agreement, or any associated agreement, document or permit, which requests or results in a court order requiring any of the foregoing bodies to set aside any of its approvals associated with the MOU, MOU, any amendment hereto, the Mutual Aid Agreement, or any associated agreement, document or permit, except (for both (i) and (ii) above) to the extent caused by the sole negligence, gross negligence or intentional misconduct of the District, Wheatland/Plumas-Brophy, and other identified parties.

(g) Section 10 of the Original MOU is hereby amended as follows:

(i) By amending and restating the first sentence to read in full as follows: "The parties agree to the dispute resolution procedures set forth in this Section 10."

(ii) By amending and restating subsection (c)(ii) to read in full as

follows:

ii. No monetary damages may be awarded except those which require the payment of sums pursuant to breaches of obligations of the parties under this MOU and which are not inconsistent with Section 12 and the Tribe's limited waiver of sovereign immunity as set forth in Section 11.

(iii) adding at the end the following as a new subsection (f):

(f) Wheatland/Plumas-Brophy.

The parties agree that in the event of any dispute specifically arising under this MOU and which also includes Wheatland/Plumas-Brophy, Wheatland/Plumas-Brophy shall have the same rights and obligations of the Parties hereto, including without limitation the benefit of the Tribe's limited waiver of sovereign immunity as set forth in Section 11.

(h) Section 11 of the Original MOU is hereby amended as follows:

(i) By amending and restating the last sentence of the first paragraph to read in full "The Tribe further agrees that exhaustion of administrative remedies, including before any tribal court, shall not be required prior to proceeding to arbitration or court action under Section 10, Dispute Resolution."

(i) Section 4(e) (formerly 4(d)) of the Original MOU is hereby amended and restated in its entirety as follows:

(e) Impact Fees.

In addition to the other amounts payable by the Tribe under this MOU, the Tribe will pay the District FMF calculated based on the size, nature and character of the Project. Based on the change to the currently anticipated Project from a 50,000 square foot Light Load Commercial building to a 302,000 square foot Light Load Commercial building constructed with sprinklers, and the District's current FMF rates of \$1.22 per sq. foot (which is the same fire mitigation fee rate the District charges to all developers in its jurisdiction), the Tribe's current FMF obligation to the District is Three Hundred Forty Three Thousand Four Hundred Forty Dollars (\$343,440.00) (based on the aggregate of 50,000 square feet at \$.72 or \$36,000 as set forth in the Original MOU and 252,000 sq. ft. at \$1.22 per square foot or \$307,440). The Tribe will pay this amount in sixteen (16) equal quarterly installments of Twenty One Thousand Four Hundred Sixty Five Dollars (\$21,465.00) each with the first installment due ninety days after commencement of casino operations at the Project. The Tribe will pay all other FMF's within 30 days of commencement of applicable construction or, if applicable, at the time of building permit issuance. In addition to the foregoing FMF, the Tribe will make a one-time payment to Wheatland/Plumas-Brophy in lieu of fire mitigation fees at Wheatland/Plumas-Brophy's current FMF rate of \$1.22 per square foot (which is the same fire mitigation fee rate Wheatland/Plumas-Brophy charges to all developers in its jurisdiction) based on the size, nature and character of the Project and will pay this amount in sixteen (16) equal quarterly installments with the first installment due ninety days after commencement of casino operations at the Project. In the event of any future expansion of the Project, the Tribe will make similar payments in lieu of impact fees as applicable.

(j) The List of Exhibits and Schedules following the Original MOU signatures is amended and restated to read in full as follows:

**List of Exhibits and Schedules**

Exhibit A:	Yuba Site Location Map
Exhibit A-1:	Specific Location of Yuba Site
Exhibit A-2:	Concept Site Plan
Exhibit B:	General Council Resolution No.: GC-1 8-03
Exhibit C:	Form of Confirmation of Effectiveness of MOU
Exhibit D	Mutual Aid Agreement
Exhibit E	Map of Area 1

3. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original. Copies of signatures transmitted by facsimile from counsel of the signatory shall be deemed an original counterpart hereunder at all times until receipt of the original signature.

4. **No Other Modifications to MOU.** Except as specifically modified herein, the Original MOU remains in full force and effect. To the extent that any provision of this Amendment conflicts with any provisions of the Original MOU, this Amendment shall control.

5. **Other Agreements.** The District intends this Amendment to fully satisfy its obligations under Settlement Agreement Section 2.b. However, nothing in this Amendment modifies any other provision of the Settlement Agreement, the Mutual Aid Agreement or any other agreement between the District and Wheatland/Plumas-Brophy.

6. **Miscellaneous.** All Recitals and Exhibits to this Amendment, and any defined terms herein and therein, are incorporated into this Amendment by this reference. Headings at the beginning of each Section and subsection are solely for the convenience of the parties and are not a part of the Amendment. No provision of this Amendment may be modified or amended, nor shall any term be waived, except expressly in a writing signed by all parties hereto. This Amendment may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. This MOU shall be governed by, and construed in accordance with, the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Amendment on the respective dates set forth below.

OLIVEHURST PUBLIC UTILITY DISTRICT

Date: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Mary Jane Griego  
Board President

APPROVED AS TO FORM BY LEGAL  
COUNSEL FOR THE OLIVEHURST PUBLIC  
UTILITY DISTRICT

Date: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Deirdre Joan Cox  
Burke, Williams & Sorensen, LLP

ESTOM YUMEKA MAIDU TRIBE OF THE  
ENTERPRISE RANCHERIA

Date: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Glenda Nelson  
Tribal Chairperson

APPROVED AS TO FORM BY LEGAL  
COUNSEL FOR THE TRIBE

Date: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
John Maier, Esq.  
Maier Pfeffer Kim Geary & Cohen, LLP

**APPROVAL AND ACCEPTANCE BY WHEATLAND/PLUMAS-BROPHY**

The undersigned Wheatland Fire Authority, a Joint Powers Agency comprised of the City of Wheatland and the Plumas Brophy Fire Protection District (“**Wheatland/Plumas-Brophy**”), hereby accepts the foregoing Amendment to MOU (“**Amendment**”) between the Olivehurst Public Utility District (the “**District**”) and the Estom Yumeka Maidu Tribe of the Enterprise Rancheria (the “**Tribe**”), as the District’s complete satisfaction of its obligations under Section 2.b of that certain Settlement Agreement and General Release (“**Settlement Agreement**”) between Wheatland/Plumas Brophy and the District, and agrees that nothing in the Amendment modifies any other provision of the Settlement Agreement, the Mutual Aid Agreement (as defined in the Amendment) or any other agreement between the District and Wheatland/Plumas-Brophy.

WHEATLAND FIRE AUTHORITY

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Art Paquette, Fire Chief

PLUMAS-BROPHY FIRE PROTECTION DISTRICT

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Art Paquette, Fire Chief

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

By: \_\_\_\_\_  
Harriet Steiner  
Attorneys for Wheatland Fire Authority and  
Plumas-Brophy Fire Protection District

**MUTUAL AID AGREEMENT  
BETWEEN THE OLIVEHURST PUBLIC UTILITY DISTRICT, PLUMAS-  
BROPHY FIRE PROTECTION DISTRICT, AND WHEATLAND FIRE  
AUTHORITY REGARDING PROVIDING SERVICES TO THE ENTERPRISE  
RANCHERIA**

This Mutual Aid Agreement (“Agreement”) is made and entered into this \_\_\_ day of March, 2019, by and between Wheatland Fire Authority (“WFA”), Plumas-Brophy Fire Protection District (“PBFPD”), and the Olivehurst Public Utility District (“OPUD”). WFA, PBFPD, and OPUD are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

**Recitals**

WHEREAS, the Estom Yumeka Maidu Tribe of the Enterprise Rancheria is a federally recognized Indian tribe listed in the Federal Register as the Enterprise Rancheria of Maidu Indians of California (the “Tribe”); and

WHEREAS, the Tribe is constructing a Class III gaming facility and hotel (the “Project”) on approximately 40 acres of land in Yuba County taken in trust for the Tribe for gaming purposes (the “Yuba Site”) pursuant to a Record of Decision issued in November 2012 by the Bureau of Indian Affairs; and

WHEREAS, on or about April 19, 2018, OPUD entered into a Memorandum of Understanding (as amended on or about March 21, 2019, “MOU”) with the Tribe to provide fire protection and emergency medical services to the Project and any persons therein at the Yuba Site; and

WHEREAS, PBFPD asserts that the Yuba Site is located within its service area; and

WHEREAS, PBFPD provides fire protection and emergency medical services within its services area through the WFA, a joint powers agency of PBFPD and the City of Wheatland; and

WHEREAS, PBFPD and WFA filed a lawsuit seeking to invalidate the MOU on a number of grounds; and

WHEREAS, PBFPD, WFA and OPUD have executed a Settlement Agreement, dated on or about the date hereof (“Settlement Agreement”) to resolve the above lawsuit; and

WHEREAS, the Settlement Agreement requires PBFPD, WFA and OPUD to execute this Agreement as part of the Parties’ settlement.

## Agreement

NOW, THEREFORE, based on the foregoing Recitals, and the terms, conditions, and consideration set forth in this Agreement, the Parties hereto agree as follows:

1. **Recitals and Defined Terms.** The Recitals set forth above are hereby integrated into this Agreement and made part of the terms and representations hereof. Any capitalized term not otherwise defined in this Agreement shall have the meaning provided in the MOU.

2. **Purpose.** The stated purpose of this Agreement is to provide mutual assistance to the Parties and the Tribe for Services Calls required to be provided under the MOU. Nothing herein shall limit any of the Parties' obligations under applicable law for other matters (including without limitation hazardous materials control, technical rescue incidents, confined space rescues, structural collapse, transportation emergencies, tower rescues, trench rescues, high and low angle rescues, and/or other emergency support in the event of a fire or other emergency) for which they are required to respond but that may not fall within the scope of the MOU.

3. **Responding Agency.**

a. OPUD shall be the first responder to Services Calls originating on the Yuba Site. In the event that OPUD is unavailable to respond to a Services Call on the Yuba Site, OPUD shall first contact WFA to respond to that Services Call before seeking assistance from any other neighboring fire protection agency. The foregoing sentence shall apply unless OPUD reasonably determines that another fire protection agency is better able to respond to the specific circumstances of a Services Call. The intent of this provision is to provide the best possible service at the earliest possible opportunity.

b. As between OPUD and WFA, WFA shall be the first responder to calls that do not originate on the Yuba Site but that originate in PBFDP's or WFA's service area.

c. In the event that the responding agency requires the assistance of another agency at a Services Call subject to this Agreement, the first responding agency shall request the assistance of OPUD or WFA (as applicable) unless another responding agency is better able to respond to the specific circumstances of a Services Call. The intent of this provision is to provide the best possible service at the earliest possible opportunity.

d. OPUD and WFA shall communicate and coordinate the above response priorities with dispatch providers (including the Tribe to the extent reasonably feasible) and other area fire protection agencies as necessary.

4. **Compensation.**

a. For Fire Services Calls at the Yuba Site or those related to casino operations that WFA properly responds to, OPUD shall pay to WFA the “Per-Fire Services Call Amount” set forth in the MOU. For Fire Services Calls at the Yuba Site or related to casino operations that a neighboring fire protection agency properly responds to, OPUD shall pay to such responding fire protection agency the “Per-Fire Services Call Amount” set forth in the MOU.

b. For Emergency Medical Services Calls at the Yuba Site or those related to casino operations that WFA properly responds to, OPUD shall pay to WFA the “Per-Emergency Medical Services Call Amount” set forth in the MOU. For Emergency Medical Services Calls at the Yuba Site or those related to casino operations that a neighboring fire protection agency properly responds to, OPUD shall pay to such neighboring fire protection agency the “Per-Emergency Medical Services Call Amount” set forth in the MOU.

c. If more than one fire protection agency responds to a single Services Call, that Services Call will be treated as multiple Services Calls under the MOU.

d. Any Offsite Services Calls (i.e., Services Calls that do not originate from the Yuba Site but that otherwise originate from the WFA and/or PBFDP service area) that occur on Forty Mile Road between the intersection of Highway 65 and Forty Mile Road south to the intersection of Forty Mile Road and Plumas Arboga Road and west between the intersection of Forty Mile Road and Plumas Arboga Road to the railroad tracks east of the intersection of Plumas Arboga Road and Algodon Road, including, or that occur within Area 1 as depicted in yellow on the diagram attached hereto and incorporated by reference herein as Exhibit “A”, shall be presumed to be Services Calls related to casino operations under the MOU unless there is an event simultaneously occurring at the facility now known as the Toyota Amphitheater. OPUD shall maintain in its records an ongoing schedule of Toyota Amphitheater events to facilitate the determination whether a Services Call is related to casino operations or not. Nevertheless, should the responding fire protection agency deem a Services Call that occurs while an event is occurring at the Toyota Amphitheater to be related to casino operations, then that Services Call shall be treated as a Services Call related to casino operations under the MOU until such presumption shall be rebutted.

e. Any Offsite Services Calls that occur in WFA’s and/or PBFDP’s services area outside of the area described in Section 4.b. above (including, or that occur within, Area 1 as depicted in yellow on Exhibit “A,” hereto), whether or not there is an event simultaneously occurring at the facility now known as the Toyota Amphitheater, shall be presumed not to be Services Calls related to casino operations under the MOU. Nevertheless, should the responding fire protection agency deems the Services Call to be related to casino operations, then that Services Call shall be treated as a Services Call related to casino operations under the MOU until such presumption shall be rebutted.

5. **Command Responsibility.**

The incident commander of the first responding agency at the scene of the emergency, to which the response is made, shall be in command of the operations under which the equipment and personnel sent by any secondary responding agency shall serve; provided, however, that the responding equipment and personnel shall be under the immediate supervision of the officer in charge of the responding apparatus.

6. **Liability.**

Without limiting any Parties' rights under the MOU or any other agreement with the Tribe, each Party agrees to protect, save harmless, indemnify, and defend the other, its governing body, officers, agents, and employees from any and all loss, damage or liability (including injury and death), including without limitation, all reasonable legal fees, expert witness or consultant fees and expenses related to the response to, settlement of, or defense of any claims or liability, which may be suffered or incurred by a Party hereto, its governing body, officers, agents and employees, caused by, arising out of, or in any way connected with the respective responsibilities and duties hereby undertaken, except that each Party shall bear the proportionate cost of any damage attributable to the fault of that Party, its governing body, officers, agents, contractors, and employees. It is the intention of the Parties that, where fault is determined to have been contributory, principles of comparative fault will be followed.

This indemnity shall survive the completion, cancellation or termination of the Agreement. This indemnity does not affect any immunities or defenses available to either Party to any third party claim.

7. **Insurance.**

Each Party shall maintain adequate insurance coverage for its own equipment and personnel. Insurance coverage may be provided through a self-insurance risk pool.

8. **Pre-Incident Planning.**

The Parties may, from time to time, mutually establish pre-incident plans which shall indicate the types of, and locations of, potential problem areas where emergency assistance may be needed, the type of equipment that should be dispatched under such circumstances, the number of personnel that should be dispatched under such circumstances and the training to be conducted to ensure efficient operations.

9. **Administration and Finance.**

A. OPUD shall administer and prepare all documentation necessary to invoice the Tribe for payment for Services Calls. WFA shall reasonably assist OPUD with preparing such documentation as necessary. OPUD shall remit payment for any

Services Call to WFA within thirty days of receipt of such funds from the Tribe. OPUD shall use commercially reasonable efforts to collect invoices for WFA Service Calls, provided that OPUD need (i) take any action it would not take to collect its own unpaid invoices and (ii) pay WFA for Services Calls until the invoiced amount is received from or on behalf of the Tribe.

B. There is not hereby created any separate or legal administrative entity pursuant to any of the laws of the State of California. There shall be no joint or cooperative acquiring, holding and disposing of real or personal property and each Party hereto shall be responsible for and finance their separate obligations hereunder, including, if applicable, establishing and/or maintaining budgets therefore.

10. **Termination.**

This Agreement shall remain in full force and effect unless terminated or modified by the Parties. It may only be terminated for cause by one of the Parties for default (and the defaulting Party failing to cure within a reasonable time after notice of default) or with the written consent of the Board of Directors of OPUD, PBFPD and WFA.

11. **Personnel.** Each of the Parties shall pay all wages, salaries, and other amounts due to their own personnel in connection with any and all services under this Agreement and as required by law. Each Party shall be responsible for all reports and obligations respecting their own personnel, including, but not limited to, social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance. Employees or agents of one Party shall not be deemed employees of the others for any purpose.

12. **No Third Party Beneficiaries.** The Parties agree that the provisions of this Agreement are not intended to create or clarify any rights in third parties not a Party to this Agreement. In addition, no third party shall have any right of action hereunder.

13. **Retained Rights.** All privileges and immunities of OPUD, PBFPD and WFA provided by state or federal law shall remain in full force and effect.

14. **Complete Agreement.** Other than the Settlement Agreement and the MOU, this Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. However, this Agreement satisfies the Parties' obligations under Settlement Agreement Section 2(a), and that portion of the Settlement Agreement is fully superseded hereby. This Agreement may only be modified by a written agreement signed by all Parties.

15. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of California. Venue shall be in Yuba County.

16. **Successors and Assigns.** This Agreement shall be binding on the successors and assigns of the Parties, and shall not be assigned by either Party without the prior written consent of the other two Parties.

17. **Counterparts.** This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original. Copies of signatures transmitted by facsimile from counsel of the signatory shall be deemed an original counterpart hereunder at all times until receipt of the original signature.

IN WITNESS WHEREOF, this Agreement has been executed the day and year first above written by the Parties hereto by their duly authorized officers.

**OLIVEHURST PUBLIC UTILITY DISTRICT**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
John Tillotson, General Manager

**WHEATLAND FIRE AUTHORITY**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Art Paquette, Fire Chief

**PLUMAS-BROPHY FIRE PROTECTION DISTRICT**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Art Paquette, Fire Chief

**APPROVED AS TO FORM:**

**BURKE, WILLIAMS & SORENSEN, LLP**

By: \_\_\_\_\_  
Deirdre Joan Cox  
Attorneys for OPUD

**BEST BEST & KRIEGER LLP**

By: \_\_\_\_\_  
Harriet Steiner  
Attorneys for Wheatland Fire Authority

and Plumas-Brophy Fire Protection  
District